

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
COMMISSIONER'S BOARD ROOM
WEDNESDAY, MARCH 25, 1992
1:30 - 4:00 P.M.**

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

WEDNESDAY, JANUARY 29, 1992

The Hillsborough County Environmental Protection Commission (EPC) met in Regular Meeting, scheduled for 2:00 p.m., in the County Commission Board Room, Courthouse, Tampa, Florida.

The following members were present: Chairman Jan Platt and Commissioners Phyllis Busansky, Joe Chillura, Pam Iorio, Sylvia Kimbell (arrived 2:05 p.m.), Ed Turanchik, and James Selvey.

Chairman Platt called the meeting to order at 2:02 p.m., and indicated before commencing the regular agenda, Mr. Roger Stewart, Executive Director, EPC, wished to introduce a new member of staff.

Mr. Stewart handed out a list of publications and introduced their author, Dr. Zhongyan Lin. Dr. Lin was an extremely prominent soil scientist and Mr. Stewart stated he was happy to have him on staff. The Board conveyed their welcome.

AGENDA CHANGES

Commissioners Iorio, Turanchik, and Busansky asked for certain of their agenda items out of turn. Commissioner Busansky suggested in the future, if it was intended the meeting go to 5:00 p.m. instead of 4:00 p.m., that should be noticed. Chairman Platt reminded that EPC had not had a meeting in three months and asked that the Commissioners all protect the EPC designated time slot in the future. She would make every effort to conclude the meeting by 4:00 p.m.

Mr. Stewart requested the following agenda changes:

Added an addenda item under the Executive Director's Section to Authorize Chairperson to Execute Contract Amendment to DER Contract No. GC 152.

Delete the Double Branch Mobile Home Park WWTP under Legal Department Requests for Authority to Take Appropriate Legal Action.

Chairman Platt agreed to take Commissioner Iorio's item at 2:45 p.m. and Commissioner Turanchik's item around 3:00 p.m. Additionally, she understood two Commissioners had contacted staff requesting that Mr. John Frantz have more than the usual three minutes allotted. Commissioner Turanchik indicated Mr. Frantz had requested 45 minutes; since the agenda was so heavy, if time permitted, his suggestion was to allow Mr. Frantz 10 minutes, otherwise let Mr. Frantz be scheduled at a subsequent meeting. **Commissioner Kimbell so moved. The motion was seconded by Commissioner Turanchik and carried seven to zero.**

Chairman Platt called for a motion to approve the amended agenda. **Commissioner Turanchik so moved. The motion was seconded by Commissioner**

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Iorio and carried seven to zero.

CONSENT AGENDA

Approval of Minutes of September 25, 1991; November 5, 1991; November 26, 1991; December 19, 1991; and January 8, 1992

Report of the Executive Director

Acceptance of Monthly Activity Reports; Legal Department Monthly Reports; Acceptance of Pollution Recovery Funds October, November and December, 1991

Chairman Platt called for any comments; there were none. **Commissioner Chillura moved approval of the consent agenda. The motion was seconded by Commissioner Turanchik and carried seven to zero.**

EXECUTIVE DIRECTOR

Update Commission on Building Acquisition

Mr. Tom Koulianos, Director, Finance and Administration, advised he had met with Don Harwig, Director, Facilities Management, people from the Real Estate and Architectural Services Departments and an RFP/RFI had been put together and would be finalized this week for advertisement next week. The ad would run 30 days and he hoped to have the results at the March meeting.

Commissioner Chillura referred to the November 5, 1991, minutes wherein he had moved for a ranking in priority within 60 days. He was concerned that he had placed a specific time limit to have the information returned and there had actually been a thirty day delay. Mr. Koulianos indicated the County departments had been very cooperative and that was everyone's best effort. Commissioner Chillura did not have a problem with the delay, but requested in the future any delay in a time requirement set out in a motion he had made be reported to him.

Request Approval for Budget Amendment

Mr. Koulianos presented a budget amendment request for approval to go before the Board of County Commissioners (BOCC) as follows: Request to transfer \$32,200 from the Underground Storage Tank (UTS) Contingency Fund. The funds would be used to purchase a boat for the Water Monitoring Program (\$16,500); a pick-up truck to be used in conjunction with the USF Solar Energy Project (\$9,000); additional computer memory expansion for the Lozano network (\$2,500) and the balance (\$4,200), to be used to purchase emulation packages for computer links with FDER. After this request there would be a balance of \$139,583 remaining in the UST Contingency Funds.

Mr. Koulianos wished to change the pickup truck requested \$9,000 to be taken from the Underground Storage Tank (UST) Contingency Fund to the Pollution Recovery Fund (PRF), thus donating that money to the University of South Florida, along with previous money of \$30,000 donated for the project.

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Mr. Stewart responded to questions as to placement of the batteries on the roof of the EPC building to power the electric car. Mr. Koulianos related that he had checked with the Sheriff's drug arrests sales and U.S. Government for a boat, but nothing had been suitable. Commissioner Iorio questioned using the UST funds for a boat for water monitoring. Mr. Hooshang Boostani, Director, Waste Management Division, advised there were no restrictions to the use of the UST funding and same could be used for overall administrative costs. Commissioner Chillura moved to approve staff recommendation. The motion was seconded by Commissioner Busansky.

Mr. Richard Boler, staff scientist, reported on the deteriorated condition of the boat; that it was coming apart and could not be repaired because the structure had weakened and pounding into seas could cause the boat to break open.

Commissioner Selvey objected to a capital item, such as the boat, being addressed at this time in the budget cycle; he did not think it was wise to use the UST Contingency Fund for water monitoring. When asked for the balance in the PRF Fund, Mr. Koulianos reported a \$420,000 balance. EPC Chief Counsel Sara Fotopulos could not give an opinion on the use of the UST Funds until she had reviewed the contract. Commissioner Chillura withdrew his motion until a legal opinion was obtained, to the effect that the UST Contingency Fund was unrestricted. Commissioner Busansky withdrew her second. Commissioner Selvey moved to defer until the next EPC meeting. (There was no second to the motion.)

Commissioner Kimbell moved approval with the boat to come from PRF if Legal said that was permitted. The motion was seconded by Commissioner Iorio, and Commissioner Turanchik stated he would second the motion, contingent on the boat request for PRF to go before Citizens Environmental Advisory Committee (CEAC) because that was the procedure to be followed. The maker accepted that contingency. The motion carried six to one, Commissioner Selvey voting negatively.

Addendum Item: Authorize Chairperson to Execute Contract Amendment to DER Contract No. GC 152

Mr. Boostani presented a request to ratify amendment to one of the Underground Storage Tank Contracts with the Department of Environmental Regulation (DER) which would give EPC an additional \$5,991.08. Commissioner Turanchik moved approval. The motion was seconded by Commissioner Kimbell and carried seven to zero.

Mr. Boostani introduced EPC staff member Gregory Cowden, who had been promoted to environmental manager and would serve as the new contract manager with DER.

CITIZENS ENVIRONMENTAL ADVISORY COMMITTEE (CEAC)

Request Approval of Changes to By-laws

Mr. Toxey Hall, CEAC Chairman, reported when the CEAC had been formed,

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it had used as a format for its By-laws, those of the Citizens Advisory Committee (CAC). The CAC was appointed by the BOCC. It had not been realized at the time that CEAC was an EPC board appointed committee. He had found those BOCC references and had replaced them with EPC as the appointing board. **Commissioner Turanchik moved to approve the changes to the CEAC By-laws. The motion was seconded by Commissioner Kimbell and carried seven to zero.**

LEGAL DEPARTMENT

Request Authority to Take Appropriate Legal Action Against: Coulter; Pert Group/P.Savage; Underberg/Richards; Double Branch Mobile Home Park WWTP

Mr. Stewart had earlier requested deletion of Double Branch Mobile Home Park WWTP from the request. Attorney Fotopulos referred to the history of the Coulter case in the backup; there was currently no case pending, but there was currently a continuing environmental problem constituted by an excavation and filling activity in Sand Pond. Staff wished to take that case to Circuit Court.

Commissioner Iorio moved approval of the three requests. The motion was seconded by Commissioner Kimbell.

Commissioner Selvey noted that in the widening of State Road 60, a wall was being placed along the edge of Sand Pond and fill behind the wall. He thought the Department of Transportation (DOT) had argued they could do this. He questioned the effect on the Coulter lawsuit. Attorney Fotopulos responded it should have no effect; it was her understanding DOT obtained a permit from the DER and that they had agreed to mitigation. Mr. Coulter's impact had been caused to the Pond itself and to the area along his property. DOT had placed a retaining wall to protect the Pond from the road and had conformed the bank. Commissioner Selvey maintained he could not support the motion because he felt it was a waste of funds to continue the fight as the County had not been able to prove that Sand Pond was once a wetland. Attorney Fotopulos responded that the question before the criminal court had been subject to a different standard. The Circuit Court standard would not be the same, and her opinion was that EPC had a very good chance for a satisfactory conclusion.

Commissioner Turanchik asked about the collateral estoppel issue, saying a finding as to whether or not it was a wetland in the Coulter case would estop the agency. He also inquired if there was a time limit in the Coulter case. Attorney Fotopulos answered the court had not made that finding; that there were no time constraints. Commissioner Turanchik asked that Attorney Fotopulos find out if EPC was collaterally estopped before filing suit. **The motion carried four to three, Commissioners Busansky, Selvey, and Turanchik voting negatively.**

Consideration of Amendments to Commission's Rules of Procedure

Attorney Fotopulos reported that many years ago the EPC had adopted

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Rules of Procedure based on the Rules of Procedure that the Board of County Commissioners (BOCC) had adopted. The BOCC had amended its Rules and the EPC Rules had been amended to conform with the BOCC present Rules. **Commissioner Busansky moved approval. The motion was seconded by Commissioner Turanchik.** Commissioner Iorio questioned Rule 5, failure to vote shall be construed as an affirmative vote. Commissioner Turanchik explained that was on oral vote. It could be deleted if wished. **The motion carried seven to zero.**

Commissioner Selvey thought there was a conflict on Rule 11, with the recommendation of the Clerk, as to reconsideration of any vote, within a given meeting, same must be initiated by a person on the prevailing side; however, once that meeting was adjourned, at a subsequent meeting, that was a completely new item which could be brought up from the floor and there was no necessity for the reconsideration process. **Commissioner Selvey moved to follow that same procedure as being done during BOCC meetings, as far as reconsideration was concerned. The motion was seconded by Commissioner Chillura.** Chairman Platt stated her understanding was that the essence of the motion was to have Attorney Fotopulos meet with Sue Parrish, Chief Deputy Clerk, to work out language to amend that particular rule to conform with that of the BOCC. **The motion carried seven to zero.**

COMMISSIONERS' REQUESTS

Discussion of Michaelson/Malouf Request for an Appeal - Commissioner Iorio

This item was taken out of turn to be heard at a time certain of 2:45 p.m. Commissioner Iorio gave background on the request to appear, the gist of which was that the Michaelsons objected to a very large double decker dock next to their home on White Trout Lake, obscuring their view. In speaking with the County Administrator, she discovered the County did not act as an agency to permit docks. This was an omission, and Mr. Karl had rectified that administratively. The second part of the problem had been that the Michaelsons could not find anyone to address their issue; they felt they had not been treated properly by EPC.

Attorney Fotopulos advised that Mr. and Mrs. Michaelson had filed an appeal (as to the decision of the Executive Director), as a third party, and it would not be wise to discuss the facts of the case as the EPC board would also be making the final decision. The EPC could discuss the right of a third party to file an appeal on the basis that the Act authorized any person who felt they had been aggrieved by an action of the director to file an appeal. Commissioner Turanchik thought the Michaelsons should be heard, if they could limit their remarks to things outside the basis of their appeal and could restrict their comments to what was wrong with the agency process.

Mr. Stanley Michaelson appeared with his wife, Lorna Michaelson, and stated at this point he was thoroughly confused. He objected to EPC filing a request that his appeal be dismissed. He felt his privacy had been invaded and his property value diminished by the dock next door. Mrs. Michaelson stated, since she had experienced a great deal of difficulty with the department in recent months, and where she believed information had been

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deliberately withheld from her, she was at a loss to know how she could give information to the hearing officer if it was at the discretion of the legal department as to how much and when this information would be given. She wanted to be able to mail written materials to the hearing officer's box number.

EPC staff differed with the information given and EPC Assistant Attorney Mary Lynne Richards, assured Mrs. Michaelson that no information had been or would be withheld and that there was no restriction as to her mailing any information directly to the hearing officer.

ECOSYSTEMS MANAGEMENT DIVISION

Request Approval of Expenditure from Gardinier Trust Fund for the "South Parcel" Project

Mr. Allen Burdett, DER, requested authorization to use money from the Gardinier Trust Fund for the restoration of the South Parcel Project. He described what was to be done, in two phases, to the 42 acre parcel, retaining upland habitat, a marsh complex, and restoration of wetlands, and to the main channel at the mouth of the Alafia River. He was asking for \$500,000, the same amount which had been authorized by DER for construction. He also presented a tri-party agreement for approval. Mr. Mike Holtcamp, DER Surface Water Improvement and Management Program (SWIM), detailed the project configurations and related SWIM was administering the project at no charge.

Commissioner Chillura moved approval of staff recommendation, including authorization for Mr. Stewart to sign the agreement. The motion was seconded by Commissioner Iorio and carried seven to zero. Chairman Platt asked for a future line item accounting of the funds as expended.

Request for Pollution Recovery Funds: United States Geological Survey (USGS) -- Artificial Reef Program

Staff recommended approval of \$5,000 from PRF and authorization of signature to the USGS agreements. Staff recommended approval of \$20,741 from PRF to reclassify the Artificial Reef Program part-time Scientist II position to a full-time Scientist I position. Both requests had the approval of the CEAC.

Commissioner Iorio moved approval of both requests. The motion was seconded by Commissioner Chillura and carried seven to zero.

Authorize DNR Grant Application

The application to the Florida Department of Natural Resources (DNR), Division of Marine Resources, Artificial Fishing Reef Program, asked for continuation of the program and for \$25,000 of Artificial Reef Development Grant moneys for FY 1991/92; same having to be approved by EPC.

Commissioner Iorio so moved. The motion was seconded by Commissioner Chillura and carried seven to zero.

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COMMISSIONERS' REQUESTS (continued)

Cockroach Bay - Commissioner Turanchik

Commissioner Turanchik advised that last fall the Commission had asked that he meet with others on two issues, i.e. water quality and sea grasses. Two days ago he had flown over Tampa Bay and taken photographs. He referred to memorandums of December 4, 1991, January 13, 1992, and January 29, 1992, provided and gave the task force recommendations as follows. Because of the stress being placed on sea grasses in some areas of the Bay, he recommended that some of the actions be undertaken on an emergency basis.

1) The EPC/BOCC endorse and support the effort to create a consolidated geographic information data base from which we can assess and evaluate strategies for improving water quality in the Cockroach Bay Aquatic Preserve. This information base would consolidate water quality, topographic, drainage basin, and land use data in one place. Much of this data is already available, but is not consolidated or coordinated. We have discussed this with Hillsborough County staff and it appears that this project is feasible and may be within the scope of our current National Pollution Discharge Elimination System (NPDES) work program.

Commissioner Turanchik moved the recommendation. The motion was seconded by Commissioner Busansky and carried seven to zero.

2) Direct the EPC staff to initiate an emergency rule making which would give the EPC authority to exclude motorized boat traffic from those areas of Tampa Bay where sea grasses are being stressed or damaged by propeller driven watercraft and to make explicit that the destruction of sea grasses is a violation of Hillsborough County law. It is our understanding that Pinellas County is also considering the creation of such boat exclusion zones. One leading candidate for exclusion in Hillsborough County is Cockroach Bay and Hole-in-the-Wall Pass. Members of the task force will be meeting with South County residents and fishermen in February to talk about the critical sea grass destruction problem in Cockroach Bay. Members of the board are welcome to attend.

Commissioner Turanchik referred to the Memorandum from Assistant County Attorney Hank Ennis, dated December 4, 1991, concerning rule making. Commissioner Iorio had a concern that the boaters would object to EPC being asked to initiate rule making, without the subject being on the agenda. **Commissioner Iorio suggested giving more time to the process; to go forward with the meeting of the South County residents and fishermen; following that meeting, agenda the subject for an EPC meeting; at that time, Mr. Stewart could be asked to proceed. She moved that be the format; the meeting first; agenda the issue for an EPC meeting and take discussion and public comment; following that discussion, Mr. Stewart could be directed to proceed with the rule making. The motion was seconded by Commissioner Selvey. Commissioner Turanchik spoke again as to the emergency status of the loss of sea grasses, but agreed to vote for the motion as stated. At the next meeting he would provide videotapes. The motion carried six to zero. (Commissioner Kimbell was out of the room.) Commissioner Busansky asked to be provided with the**

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information as to the six or seven agencies charged with the same responsibility; who they were; if they were needed. Commissioner Turanchik responded that the task force had spent about six hours on that issue. Commissioner Iorio thought it would be a better use of time to have the task force analyze that problem and bring forward a summary as to what they saw as the problem.

3) Give conceptual approval to hiring and equipping a full-time environmental sheriff deputy(s) to patrol sea grass areas. The prime objective of this officer would be to educate recreational and commercial fishermen and boaters about sea grasses, but in some instances arrest power may be needed to arrest those individuals who intentionally destroy sea grasses or violate other local ordinances. The deputy would also enforce all other boating safety and water laws. Funds for this position(s) and equipment would come from the Pollution Recovery Fund. The Sheriff has expressed an interest and willingness to work on this concept. Staff should be directed to prepare a detailed proposal for presentation to the EPC within the next fifteen days.

Commissioner Selvey suggested combining this recommendation with 2). Commissioner Busansky thought that during the interim, the Solid Waste enforcement group could be educating and protecting. **Commissioner Busansky moved approval of items 3), 4), 5), and 6). The motion was seconded by Commissioner Chillura.**

4) Support publication of a boaters information guide by SWIM and National Estuary Program (NEP) and authorize EPC to prepare public bulletin boards to be placed at all public docks, ramps, pump-out stations, and gasoline docks. The purpose of the boards would be to inform the public about the importance of sea grasses to recreational and commercial fishing as well as to our ecology and to explain that it is a violation of Hillsborough County's water pollution laws to intentionally run propeller driven craft through sea grass beds. Funds for the bulletin boards should come from the Pollution Recovery Fund.

5) Request the Agency on Bay Management and DNR to develop a buoy/marker which can be used by Hillsborough and Pinellas Counties to delineate exclusionary zones and/or sea grass areas.

6) These requests for Pollution Recovery Funds should be considered by the CEAC, on an emergency basis if required.

Chairman Platt thought the moneys for the bulletin boards could come from the National Estuary Program (NEP), rather than the PRF and suggested saying in all cases, "most appropriate funds." Attorney Fotopulos inquired if the motion had approved the use of PRF moneys, or just the direction to look into that aspect and return to the Commission. Commissioner Turanchik indicated staff was directed to return to the Commission with a detailed plan at the next meeting, after going through CEAC and first approaching NEP. Commissioner Chillura asked that Mr. Stewart provide, at the next meeting, an estimate of what all the recommendations would cost. Mr. Stewart asked that, instead of 15 days, he be given until the next meeting to prepare a detailed

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proposal on the environmental deputy, recommendation 3). It was the consensus to do so. The motion carried six to one, Commissioner Selvey voting negatively.

Commissioner Turanchik indicated he had been delegated to the task force while he was Chairman; he was willing to step down, or to continue. Commissioner Kimbell moved to implore Commissioner Turanchik to continue the good work he had done, until the task was complete. The motion was seconded by Commissioner Busansky, and carried unanimously by consensus and/or acclamation.

WATER MANAGEMENT DIVISION

Update Commission on NOAA Project

Chairman Platt gave the background that the program under the National Oceanographic and Atmospheric Administration (NOAA), although having the tide charting equipment installed within the port at a cost of over \$1 million, would no longer continue to fund the operation. There had been a concerted effort to find an agency to operate that system, once NOAA phased out in May. One option was the EPC staff do so, as it was already out in the Bay on water monitoring tasks. There were also funding and liability questions.

Mr. Jeff Buck, General Manger, Tampa Pilots' Association, appeared representing a joint committee of Agency on Bay Management, the Greater Tampa Bay Marine Advisory Council, Physical Oceanographic Real Time System (PORTS). He explained the importance of bringing the tide table, currents, and channel information up to date, not only for the pilots, but for the benefit of the Coast Guard, and for environmental and safety considerations. Mr. Stewart indicated staff was in the process of gathering factual information and cost of operation, as well as the liability question, and would keep the Commission updated.

CITIZENS WISHING TO APPEAR

Mr. John Frantz

This item was taken out of turn before Commissioner Turanchik left the meeting.

Mr. Frantz spoke to fairness, because his investigation of EPC staff had taken a year and a half; his video presentation would take 20 minutes and he would be speaking for eight minutes prior to the video and four minutes after. Since he had only been allotted 10 minutes, he wished to show the video 10 minutes and also be placed on the next EPC agenda for a time certain of 35 minutes. Commissioner Chillura moved to give Mr. Frantz the full 35 minutes at the next scheduled meeting. The motion was seconded by Commissioner Busansky and carried six to zero. (Commissioner Iorio was out of the room.) Chairman Platt indicated the film would be seen at the next meeting. Mr. Frantz believed he had been misunderstood, he still wished to give the 10 minute video. Commissioner Chillura reiterated the intent of his motion was that Mr. Frantz return at the next meeting with his full

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presentation. Commissioner Selvey thought if Mr. Frantz had put in a year and a half, he had no objection to seeing the 10 minute video now and giving 35 minutes to Mr. Frantz' presentation at the next meeting. Chairman Platt called the next item while the video equipment was being set up.

COMMISSIONERS' REQUESTS (continued)

Briefing on Erosion at Egmont Key - Commissioner Platt

Ms. Susan Kessel, President, Egmont Key Alliance, the community support organization for Egmont Key State Park, spoke of the erosion problem, or what the newspapers called the vanishing island. Her aim was to provide a management plan for the State Park and asked the Commission's help in trying to determine why there had been excessive erosion over the past 18 months to 2 years.

Mr. Robert Baker, Park Manager, Egmont Key, distributed copies of aerial photographs of 1976, 1979, 1982, and a map made from the 1987 air photograph. In the sixteen years a gradual change was shown; however, since the winter of 1990-1991 there had been a rapid acceleration of the erosion rate and sand movement. He needed to determine if that erosion was natural or if activity elsewhere in the Bay or headwaters was affecting the island. Until that study was completed, it would be difficult to make any kind of management decision.

Chairman Platt stated she had placed the item on the agenda because Egmont Key belonged to Hillsborough County. She noted the Agency on Bay Management had requested that there be a hydrogeological analysis of the mouth of Tampa Bay to evaluate the erosion and document any potential corrective action that could be taken. That request had been made to DNR. It seemed appropriate that EPC join in the request. **Commissioner Selvey moved that recommendation. The motion was seconded by Commissioner Busansky and carried five to zero.** (Commissioners Turanchik and Iorio had left the meeting.) Chairman Platt asked how EPC could assist Ms. Kessel in the accomplishment of her task. Ms. Kessel related the next meeting of the Alliance would provide further information and if there was something additional EPC could do, she reserved time at the next meeting to make any further request. Chairman Platt instructed Mr. Stewart to draft the letter to DNR.

Discussion of EPC Participation in County Zoning Review Process - Commissioner Platt

Chairman Platt requested an update on the directive BOCC had given that EPC staff attend the zoning hearing master (ZHM) hearings and participate in that process. The Board also requested that EPC staff do an onsite inspection of the zoning and write their recommendations based on their site review.

Mr. Chuck Courtney, Director, EPC Ecosystems Management, advised the current fee structure on zoning reviews did not permit time for a site visit; however, a rezoning generally did not constitute an activity that impacted a

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wetland, it only created a reasonable expectation that the property could be used for a certain purpose. EPC commented mostly to defuse the reasonable expectation when staff observed there was a wetland present; this could be done from the soil survey and aerial reviews. If staff went on site, staff would have to delineate the wetland--that caused a fee which was covered under the fee structure. There had been some discussion that EPC staff would participate in the one-stop permit information desk and attend the ZHM hearings. He would like to do so and anticipated putting that program into effect; perhaps that staff person could make a site inspection with the team. It was not yet known what that staff person should do when he went on site.

Chairman Platt thought the EPC staff person could give a better view of what existed on site; that did not require a delineation. The motion made had been that staff proceed to do this. Commissioner Busansky added there was no intention to add to the fees already in place.

Mr. Stewart advised that, at one time, EPC staff had made such zoning review. The EPC board needed to know that, after considerable discussion, it was decided to be too burdensome for developers to bear the cost of any kind of real evaluation at that stage of the game when no one knew what they were going to do with the property. Consequently, the present practice of issuing a disclaimer to make it clear there was no commitment and to the effect that at some future time the wetlands would have to be delineated, for which there was a fee, and that the lands would also have to be surveyed before any attempt at construction was instituted. He cautioned that by going out and giving an off-hand opinion, which was not definitive, it might tend to lead some astray. Commissioner Chillura commented that the intent of his motion had been for EPC to do a field visit so there was more than just a cursory inspection through maps. Perhaps it would be good to get a recommendation on this procedure at the next EPC meeting.

After further discussion, Mr. Stewart acknowledged EPC staff was to do an informal observation; staff was not to recover the cost; staff would commence attending the ZHM meetings immediately. He would also return to the EPC board with a hard proposal on carrying out what was wanted. Mr. Terry Gilbert, Development Services Center, advised how the program would work, and related there would be an effort made to eliminate transportation problems by coordinating the EPC staff visit with Planning and Development Management (P&DMD) staff site review.

John Frantz (continued)

Mr. Frantz narrated his video which, to his belief, illustrated the inconsistencies, poor management, and lack of commitment shown by EPC staff to protect the wetlands of Hillsborough County. (The ten minutes allotted did not permit the entire showing of the tape.) Chairman Platt suggested Mr. Stewart report back at the next meeting on that portion of the video seen.

Automated Petroleum and Energy Company (APEC)

Mr. Bill McKnight advised that last year he had built a service station and convenience store at the corner of Orient Road and Hillsborough Avenue

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and had been required to put in a lift station. EPC, DER, BOCC, and City of Tampa Health Department all made inspections. All permits were checked off by the Building Department and a Certificate of Occupancy (CO) granted. He opened the station and 45 days later found out that even though the lift station was done correctly and the paperwork sent to EPC, EPC approval was required before opening the station. He had been fined \$2,000 and, after protest, Mr. Stewart had reduced the fine to \$1,000. He still felt he had not been treated fairly, on account of his CO. He believed EPC and the County had to work together in those matters and asked that the County develop another system and also to waive the \$1,000 fine.

Mr. Chris Dunn, Director, EPC Water Management Division, indicated APEC had violated Chapter 17.604 and Chapter 4.03, Florida Statutes; that EPC staff issued the DER permit, as its agent, in this type of matter and this process was separate from permits issued by the County Building Department. From 1989 to 1991, at least 33 such assessments had been given by EPC because of operating a system before acceptance letter by EPC. Attorney Fotopulos spoke on the details of the appeal and clarified this was not a fine but an agreed settlement. Mr. Stewart believed it inappropriate for the EPC to deal with the settlement and did not believe the Commission could take any action at this time. Chairman Platt indicated Mr. Stewart should avoid this type of item on the agenda, if possible, because of the fact that there was no action which could be taken.

Commissioner Busansky clarified there were two issues: EPC had been asked to drop the settlement and that was not appropriate; Mr. McKnight's first point of process made about receiving the CO and still being cited was pertinent. Commissioner Busansky thought the BOCC had asked the County Administrator to coordinate inspections. She questioned why EPC was not making its inspection at the same time as the Building Department. Mr. Dunn answered staff was working with County staff to correct this type of problem. This was apparently a slip-up, and the Building Department issued the CO before checking off the required permits from EPC. Commissioner Busansky requested to see, at the next meeting, a chart of how the process dovetailed and the process of coordination, and what happened when coordination failed.

Commissioner Chillura moved that the County checklist include EPC signoff before a Certificate of Occupancy was issued. The motion was seconded by Commissioner Busansky. Commissioner Chillura repeated his motion was that the EPC signoff be included in the checklist that the Building Department reviewed prior to a Certificate of Occupancy being issued. The motion carried four to zero. (Commissioners Turanchik and Iorio had left the meeting; Commissioner Selvey was out of the room.)

Mr. John Ariemma

Mr. John Ariemma handed documentation to the Commission and complained that EPC had designated his entire land on Van Dyke Road as wetland, thus depreciating his property, for which he paid \$56,000 in 1985, so as to be worthless (or valued by the Tax Appraiser at \$575). He had already expended \$4,000 in his efforts to be able to build. He believed that when Darby Lane (the cutoff to Dawson Lake) was paved by the County, the drainage pattern was

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changed, causing certain upland on his property to turn into a wetland. He asked that EPC delineate 1.85 acres upland (which he had always paid taxes on) and the balance of his 2.5 acres as wetland.

Mr. Courtney reported he did not have a formal application for delineation, but, as a courtesy, in 1988 EPC had visited the property, at which time Mr. Ariemma was told that most of the property appeared to be wetland but asked that he file an application for a delineation. Mr. Courtney had been unable to reach Mr. Ariemma to avoid this agenda item without an application being made. He had also looked at the aerials back to 1938 which showed the entire property as a wetland; it had always been mapped as hydric soils; it was a cypress head. EPC had not made a formal delineation.

Commissioner Chillura moved to refer the issue to staff; staff had heard the comments, the sentiments of the board; staff to report back at the next meeting. Commissioner Selvey seconded the motion and requested a report on the land Mr. Ariemma was and was not paying taxes on. The motion carried five to zero. (Commissioners Turanchik and Iorio had left the meeting.)

Vincent Stona

Mr. Vincent Stona, Director of Marketing, Grand Prix of Tampa Bay, requested a sound exemption, from 68 decibels (db) to 78 db to run a Grand Prix race at the Florida State Fairgrounds. He passed out a document on Hoover & Keith, Inc. letterhead regarding Acoustical Evaluation of a Proposed Noise Abatement system for the Tampa Racetrack. He noted the world class event during 1989 had generated tremendous national and European exposure; that over a period of three years \$50 million in economic impact had been generated for all the residents of the County; that a quarter million dollar, state of the art, sound wall had been built around the Fairgrounds; Tampa today had a competitive edge in motor sport marketing; the sound problems which had existed with the first race in 1988 had been alleviated.

Mr. Stona distributed a newspaper article of October 2, 1990, and a two page EPC document listing relative noise complaints and parallel db samples. He related that complaints diminished after the sound wall was installed, in 1989 and 1990 only 10 complaints each year were registered. No less than 80 percent of the time, sounds from the race were less than 68 db. He passed out another newspaper article, written by Tom McEwen, dated April 22, 1989, giving high praise of the GTE World Challenge auto race.

Chairman Platt asked what authority the Commission had this day. Attorney Fotopulos stated there was no provision in the EPC Rules for competitive motor racing; there was for cultural events. A formal application had to be made to staff for review; the request had to be advertised for a public hearing before the EPC board; the EPC board was authorized to consider whether it wished to waive any portions of the Rule, as applied to that particular event.

Mr. Iwan Choronenko, Director, Air Management Division, related that the 78 db requirement had been long standing. The EPC board, at public hearing,

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had lowered the standard to 68 db. For Mr. Stona to conduct any racing, he would have to meet the 68 db standard. Mr. Stewart reiterated the staff recommendation, from the very inception of the noise issue, was that 68 db be the limit for racing. There was one exception, the EPC had granted East Bay Raceway a 78 db limit.

When asked if Mr. Stona had time constraints, Mr. Stona explained he was negotiating with two race sanctioning groups, who were working with national television contracts; consequently, he was operating under a very tight framework over the next 21 days at getting it all together so he could bring a race to Tampa near the end of September 1992. Commissioner Busansky questioned how much notice was necessary for a public hearing. Mr. Choronenko answered 15 days notice was comfortable, and Attorney Fotopulos indicated the Rule did not specify the amount of time of notice, only that it be a public hearing. A date would have to be determined when the matter could come before EPC and that date would be part of the advertisement. In the meantime, EPC staff needed the technical information in order to evaluate what the effect of this race would be and to provide a recommendation to EPC. As to the question of whether the race was a cultural event, same could be addressed at the public hearing.

Ms. Kitty Barber, Spencer Circle, East Lake Park, spoke against the request; reminded the Commission of the pending case against the Florida State Fairgrounds; reminded that the zoning permitted a track in the northeast corner and said the present racing track was illegal; she would continue to fight this type of application because of the adverse impact upon her neighborhood. Mr. Richard Dakin, 4001 Fawn Circle, spoke in opposition to the request. Mr. Alvin Dollar spoke in opposition because of the noise and further said that he believed the largest portion of the money created by the race went to the promoters and not to benefit the County residents. Ms. Barbara Merritt, Chelsea Street, quoted various newspaper articles in which representatives of the Fairgrounds had said they would not sanction future racing events; that the track was designed and installed without proper approvals; and that the sound barrier wall was a disgrace because it was falling apart and had numerous holes. Ms. Billie Morales, 7906 Downing Circle, spoke in opposition, saying the requirement for a race track was 1,000 feet distant from residential and the present track was 500 feet from her property.

Mr. Stona related his organization was a new race group and had put together the flyer for information because he knew about the past difficulties. He had received back 78 results from the residents, which was more than 10 percent of the sample mailed out (having mailed out 602). Of that number, 26 indicated they were against the race, 51 said the noise was not a problem. He stated he would submit this to the Board because this had been an independent research survey. (Mr. Stona did not submit the independent research survey.)

Commissioner Kimbell commented that the County had an ordinance which defined racing to be at the 68 db level, which had been arrived at scientifically and with the best knowledge; therefore, **moved that this board refuse any waiver to the 68 db requirement for racing in this County.**

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Commissioner Chillura seconded the motion for discussion purposes.

Commissioner Chillura had Mr. Stewart conduct a decibel noise demonstration of 68, 78, and to a peak of 82. Commissioner Busansky remarked that the race brought money into the County for the private individuals and added to the Tourist Development tax; she felt it was a positive thing for the economic times at hand.

Attorney Fotopulos advised that if Mr. Stona submitted his application, the Commission would have to deal with the issue at a public hearing and could not vote today, finally, on that particular question. If the Commission wished to vote on the motion on the floor, it would give Mr. Stona an indication of how the individual Commissioners might vote at a subsequent public hearing.

Commissioner Chillura thought the Fair needed to stay here, it and the race were economically important to the community, but there was a limit, and that was the 68 db. He supported the due process, but thought the event needed to be postured in a more positive fashion. He also referred to the Neighborhood Bill of Rights and its ramifications in this case. In the final analysis, the Commission had to represent the entire community.

Chairman Platt stated the vote would give an indication of how the Commission felt, without the public hearing. This would be a straw vote. **The motion carried three to two, Commissioners Busansky and Selvey voting negatively.** (Commissioners Turanchik and Iorio had left the meeting.)

There being no further business, the meeting was adjourned at 5:44 p.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
RICHARD AKE, CLERK

By: _____
Deputy Clerk

(Permanent cassette tapes of the foregoing proceedings on file in the Records Department, Room 214-F, Courthouse. Meeting recorded and transcribed by C. O. McCall, Senior Executive Secretary.)

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The Hillsborough County Environmental Protection Commission (EPC) met in Regular Meeting, scheduled for 2:00 p.m., in the County Commission Board Room, Courthouse, Tampa, Florida.

The following members were present: Chairman Jan K. Platt and Commissioners Phyllis Busansky (arrived at 2:05 p.m.), Joe Chillura, Pam Iorio, Sylvia Kimbell, James Selvey, and Ed Turanchik.

Chairman Platt called the meeting to order at 2:03 p.m.

AGENDA CHANGES

Sara Fotopulos, EPC Chief Counsel, reported that Mr. John Frantz had proposed a settlement of his appeal to the Second District Court of Appeals, and that one of his requests was for EPC to pay him his attorney's fees. She had learned that the Second District Court of Appeals had affirmed the Board's order, and, therefore, the case had been decided, and there was no need for the Board to consider this item.

Mr. Roger Stewart, Executive Director, EPC, stated he had nothing to add to the agenda nor any changes to make.

Commissioner Turanchik referenced the section regarding responses to Commissioners' directives from prior meetings and questioned why there was no explanation for the delays in the Fishhawk Tract and the need for an extension of the Development of Regional Impact (DRI). Chairman Platt stated that Commissioner Turanchik's question would be considered a directive to staff.

CONSENT AGENDA

Approval of Minutes of July 31, 1991, and August 13, 1991.

Report of the Executive Director

Acceptance of Monthly Activity Reports; Legal Department Monthly Reports; Acceptance of Pollution Recovery Funds January 1992.

Responses to Commissioners' Directives from Prior Meetings

Commissioner Busansky--Permitting Flow Chart, and Commissioner Selvey--Mr. Ariemma's Request.

Chairman Platt called for a motion to approve the consent agenda. Commissioner Turanchik so moved. Commissioner Kimbell seconded the motion, which carried seven to zero.

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COMMISSIONERS' REQUESTS

Gardinier Fund

Mr. Robin Lewis, 6502 Lenora Drive, Tampa, suggested a letter be sent to Mr. Howard Rhodes, Assistant Secretary, Department of Environmental Regulation (DER), and a copy to Dr. Rick Garrity, requesting that the balance of the monies from the Gardinier settlement be immediately transferred to EPC so that the funds could be spent on the Cockroach Bay Restoration Project.

Chairman Platt explained that interest monies had been removed from the trust fund and that there was also a seven percent surcharge against the interest accrued. Mr. Lewis revealed that the South Parcel Project, which was for the restoration of the Alafia River's original channel, had been developed to use a certain portion of the trust fund. DER had requested and placed a claim upon a half million dollars, which could not be lost; but, the balance of the fund, which started as \$1.5 million and had thousands of dollars added due to interest, was not tied up and was subject to being taken any time. He suggested the unclaimed funds be tied up by transferring them into a specific project fund, which DER did not have; thus, his request for the funds to be placed into the Cockroach Bay Restoration Project.

Commissioner Busansky moved that the Board send a request to encumber the funds for sea grass, nurseries, or the restoration of Cockroach Bay; however the Board would want to phrase that so that the funds could come to the Board as soon as possible. Chairman Platt suggested that Commissioner Busansky add also about trying to get back the interest. Commissioner Busansky agreed to add that to the motion. Commissioner Turanchik seconded the motion. Mr. Lewis recommended that the letter be directed to Mr. Rhodes, Dr. Garrity, and to the Legislative Delegation.

Commissioner Turanchik perceived it to be an insult that the monies had been awarded as a result of a pollution incident, which was to be placed into the Pollution Recovery Fund, as agreed to by all parties--DER, EPC, etcetera--and the state of Florida had raided the funds for its own uses. He felt there should be a demand made and not a request, and the letter should indicate that the Board would sue the state of Florida by moving the Court for an Order of Civil Contempt. Attorney Fotopulos confirmed the Board could file for civil contempt against the state of Florida, as EPC was a party of record. Chairman Platt questioned whether Commissioner Busansky wanted to strengthen the motion with the language suggested by Commissioner Turanchik. Commissioner Busansky agreed to add the suggestion by Commissioner Turanchik.

After further discussion, Commissioner Busansky restated the motion as a two part motion--first to encumber the money to bring the funds back to work for the restoration project, and then, two, to demand that the state of Florida give back the money; otherwise, the Board would hold the state of Florida in contempt and do whatever the appropriate legal action. Attorney Fotopulos asked that the demand letter be written separate from the request to encumber, as she felt the demand letter would be stronger by itself. The Board concurred. Chairman Platt suggested that the letter be sent to Ms. Carol Browner, Secretary, DER, rather than to Mr. Rhodes, with copies to the

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members of the Legislative Delegation. The Board concurred. Commissioner Turanchik suggested copies also be sent to the Attorney General and to the head of the Office of Budget. The Board concurred. The motion carried seven to zero.

SPECIAL PRESENTATIONS

Mr. Lewis and Mr. Peter Clark, representative of the Tampa Bay Regional Planning Council (TBRPC), provided a slide presentation regarding the loss of sea grass meadows due to water pollution and physical damage. Commissioner Turanchik recommended that EPC allow the task force, comprised of all the regulatory agencies and the Planning Commission, another 30 days to work with the people in the area of Cockroach Bay in order to explore other options and solutions.

In response to Chairman Platt, Attorney Fotopulos explained that the Commission could adopt a rule which would close certain areas of Cockroach Bay, and the time frame that would be required, should such a rule be approved by the Commission. Mr. Lewis suggested the process be initiated without identifying the actions specifically, and informed the Commission that Pinellas County had passed such a closure. Chairman Platt stated she had made available to Attorney Fotopulos Pinellas County's ordinance on closures.

Commissioner Chillura felt there had been an impression implied, in lieu of closure of certain areas of Cockroach Bay, that staff and Commissioner Turanchik had been in the position to recommend that some full-time--24-hour--Sheriff's patrol deputy be budgeted and presented to the Commission as a compromise or interim solution.

Responding to Commissioner Selvey, Commissioner Turanchik related that the Port Authority owned the land and leased those lands to the Department of Natural Resources (DNR), which meant that the Florida Marine Patrol could enforce the laws if they had the jurisdiction to protect sea grasses, as that was an arguable issue. DNR had informed staff this issue was a low priority for them. He stressed that EPC had jurisdiction to prevent water pollution, which he perceived to include the destruction of sea grasses, as a violation of the Clean Water Act.

Discussion ensued, with Commissioner Selvey stating that the recreational person enjoyed the use of his boat and had the option of taking the boat to some other place should the area of Cockroach Bay be restricted; but, the commercial fishermen had certain areas they fished because of proximity of where they were located and where the catch would be delivered, thus keeping them confined to a particular area. By restricting the use of power boats in the Cockroach Bay area, the commercial fishermen could be put out of business. He proposed not to restrict the commercial fishermen, but to restrict the recreational person.

Mr. Stewart, in response to Commissioner Iorio, stated both recreational and commercial enterprises that utilized engines with massive horsepower were damaging to the area, and he had no qualms about restricting their presence

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in certain waters. He recommended a limitation of under 10 horsepower be instituted in a lot of water areas, not just the Cockroach Bay area. He did not believe that vessel traffic should be restricted, but just the kinds of vessels.

Commissioner Iorio questioned why, in the past six years, this issue had not been brought before the Board, rather than to bring it forth now as an emergency issue. Commissioner Busansky maintained that for the past three years Mr. Lewis had tried to bring the matter to everyone's attention. Commissioner Iorio stated, from a policy-making standpoint, if EPC and its staff were charged with the protection of the environment and to bring before this Board issues that were critical to the environment, such as air pollution, water pollution, wetland destruction, sea grass destruction, etcetera, she perceived that it was the job of the EPC to do so and not an outside individual's job to have to keep bringing an issue up. She questioned why the initiative had not come from the EPC Director.

Mr. Stewart responded that the city of Tampa had been involved with the mapping of sea grasses for some time and that Mr. Chuck Courtney, Director, Ecosystems Management Division, EPC, had been working cooperatively with the city of Tampa for some time; and he did not have all of the facts to be able to state that the situation was an emergency. He pointed out the sea grasses had been coming back steadily for a few years.

Mr. Courtney related that some of the sea grass species were part of the Wetland Rule; were under Port ownership, but did fall under EPC's water quality jurisdiction. He explained the problems with enforcing the water quality jurisdiction. In reply to Commissioner Iorio, Mr. Stewart stated he did not have adequate staff to monitor the sea grass situation. Commissioner Iorio felt something to be wrong, since staff had no one to monitor such a serious problem.

Commissioner Busansky recommended the implementation of an educational program for commercial and recreational boaters, emphasizing the need to respect and preserve the Bay. Further, that someone be allowed to monitor the boats that were destroying the sea grasses, and that signs of caution should be posted in abundance, which would read: "Entering Sea Grass Areas," not only within Cockroach Bay but beyond.

Chairman Platt suggested public hearings be held at the courthouse to allow all citizens, as it was everyone's Bay, to provide input regarding Cockroach Bay, and recommended every operator of a boat should have a license to operate that boat. She supported Mr. Lewis's suggestions and moving ahead with a public hearing.

Commissioner Turanchik perceived it irresponsible for Mr. Stewart to state that a 10 horsepower engine would be his recommendation.

Mr. Gus Muench, Little Manatee Preservation Committee, referenced the Aquatic Preserve Management Plan book, which indicated that the DNR had jurisdiction over this issue, but that other agencies played a part in that plan. He read a letter he had written to Governor Lawton Chiles in which he

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requested a legal opinion from the Board of Trustees of the Internal Improvement Trust Fund as to why it condoned the destruction of sea grass meadows by propeller dredging. He requested that the legal department of Hillsborough County, which might be EPC legal department, also request the same information from the appropriate authorities within the state.

Mr. Eugene McRoberts, Ruskin, stated he had lived in the Cockroach Bay area all of his life, and pointed out that a petition had been provided to the task force indicating that there were 1,218 individuals opposed to taking the combustion engine out of the area of Cockroach Bay and 58 individuals had been in favor of removing the engines. He disagreed with Mr. Lewis's claims of the situation being an emergency, as numerous areas reflecting sea grass losses had never had sea grasses present in the first place. He requested Commissioner Turanchik to add some commercial fishermen to the resource group that would soon be meeting.

Mr. Floyd DeForest, Director, Hillsborough County Chapter of Organized Fishermen of Florida, claimed that his organization had placed on itself a self-imposed tax of \$300 to buy sea grasses, and had donated over a million dollars towards the planting of sea grasses. He pointed out that all of the deep water areas were closed to commercial fishing, which was why the fishermen fished in the preserves.

Commissioner Chillura suggested deputizing someone from the Hillsborough County Sheriff's Office to make sure that sea grasses were protected, as an interim solution.

Mr. Ken Hartley, Pinellas County, stated he had been active with the Pinellas County commissioners concerning closing down the area around Fort DeSoto, and he provided the Commission with written documentation expressing his concerns.

Mr. Robert Graves, Ruskin, expressed his disagreement with the presentation by Mr. Lewis, as the sea grasses died in the winter and returned in the summer.

Mr. Stewart suggested that it might be instructive to collate all of the things, with help from the TBRPC, that dealt with this issue. He perceived that the impression that nothing had been done was not correct.

Commissioner Kimbell moved the recommendation by Commissioner Turanchik--dealing with a 30 day hiatus period in which to do some additional study to see if the Board could come up with a balanced approach as a resolution to this problem. Commissioner Busansky seconded the motion.

Commissioner Chillura requested that the minutes reflect all of his suggestions and be transmitted to the committee for consideration and discussion.

Commissioner Turanchik acknowledged the presence of members of the Sheriff's Office, and stated that there would be a report brought back regarding the Sheriff's deputy position.

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The motion carried five to one, with Chairman Platt voting negatively. (Commissioner Selvey was out of the room.)

Commissioner Kimbell suggested that someone from staff be a part of this committee, and, since this was a supposed emergency, that Mr. Stewart find someone to look into the issue and prove whether the situation was a crisis. Mr. Stewart recapitulated a prior statement by himself as being, that he did not have staff out in the field doing sea grass survey work, but did have staff involved with all agencies, including Commissioner Turanchik's committee.

Commissioner Platt stated the entire public of Hillsborough County had an investment in Cockroach Bay and she hoped that the next meeting would be somewhere more central and that the committee be a broader committee.

LEGAL DEPARTMENT

Lawson Brothers Welding

Attorney Fotopulos reported that in response to citizen complaints regarding nuisances caused by paint overspray, grit blasting dust, and objectionable odors from the Lawson Brothers Welding facility, the EPC and DER required Lawson Brothers Welding to obtain a permit. Such a permit would require Lawson Brothers Welding to expand its existing structure to accommodate the painting and grit blasting operations, subject to the Board of County Commissioners (BOCC) approval. She explained that a permit had been granted and that the permit was nearing expiration with no structure having been constructed by Lawson Brothers Welding. Staff had initiated enforcement for continued nuisance caused by the grit blasting operation. Staff recommended EPC take the appropriate legal action against Lawson Brothers Welding.

Commissioner Kimbell moved to accept staff recommendation. Commissioner Selvey seconded the motion, which carried six to zero. (Commissioner Busansky was out of the room.)

Michaelson

Attorney Fotopulos requested the Commission to approve the dismissal of the appeal by the Michaelsons, as recommended by the hearing officer and Mr. Stewart. She explained the hearing officer procedures, and referred the Commission to the backup information reflecting the recommendations of the hearing officer. In response to Commissioner Iorio, Attorney Fotopulos stated the complaint filed by the Michaelsons had been found not to be within the perimeters of the EPC, and should the Commission disagree with the findings of the hearing officer, then the policies would be disagreed with.

Commissioner Iorio stated the process with the hearing officers, as set up, created problems for people who were not able to hire an attorney to represent them. She believed it to be difficult for residents to become involved in the process, as they were really forced to hire an attorney to protect what they would consider to be their rights as taxpayers. Further,

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the Commission would not be allowed to hear the facts of the case. She believed after following the case, as the Michaelsons were her constituents, that the Michaelsons had been denied their due process in front of a governmental body, and she questioned the entire hearing officer process.

Responding to Chairman Platt, Attorney Fotopulos confirmed there was another forum available, as the question was about land use and the appropriateness of the placement of the dock. She perceived the issue not to be within EPC's jurisdiction.

Commissioner Iorio questioned why the Michaelsons had been denied the opportunity to present the facts of the case, as they had never been awarded standing, and it had been recommended by EPC that standing not be granted.

Commissioner Chillura suggested that this case be referred to the BOCC and have land use and the appropriate agencies review the issues.

Ms. Lorna Michaelson expressed opposition to the hearing officer's recommendation, and stated that EPC appeared to be the only body regulating this kind of situation. She pointed out that what the hearing officer had determined was that the Michaelsons **lacked** standing in respect to the controversy. She indicated that F.S. Chapter 84-446 created and established this Hillsborough County EPC, **Section 9** of the law stated in part, "any person aggrieved by an action or decision of the Environmental Director may appeal to the Commission." She explained the definition of the word, aggrieved, from The American Heritage Dictionary, and indicated distress as to the fact that the director of EPC had treated them unfairly. She felt they should be granted **standing so as to have the appeal heard.**

Ms. Michaelson claimed the hearing officer, Robert Fraser, had contacted her the day before the February 7 hearing, to inform her that there would not be any discussion of **factual matters; but that** the hearing would be confined to a discussion of the right of the Michaelsons to appeal. Nonetheless, Mr. Fraser did, during the hearing on February 7, request EPC Attorney Mary Lynn Richards to provide him with **the factual background.** She indicated the bulk of a 44 page transcript was devoted to a recital of factual information by Attorney Richards. She further claimed that Mr. Stewart had changed the EPC rules, at the last minute, to allow uses that had been specifically prohibited previously--three boats were really only two, and that the phrase, "no sundecks," actually meant, "some sundecks" complete with railings, lights, and staircase. She felt the actions of the director and some of the staff had been directed almost solely to prevent the facts of the case from being heard and to prevent the Commission from finding out what had been transpiring. She requested the Commission to reject the recommendation of the hearing officer.

Attorney Richards confirmed that she had been requested by the hearing officer to cite background facts of **the case** at the beginning of the hearing, and pointed out that the Michaelsons had been afforded the opportunity to present their testimony. In her opinion, the structure was in compliance with all of EPC and DER regulations, and that it did not cause environmental harm.

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Responding to Commissioner Chillura, Ms. Michaelson related that zoning in her part of northwest Hillsborough County had been left out of the Nuisance Code, which afforded her no recourse to complain to the zoning department.

Mr. Stanley Michaelson, in response to Commissioner Turanchik, stated his contention, when testifying before the hearing officer, had been that the rules of EPC and DER were specific in prohibiting sundecks.

Commissioner Turanchik moved to continue this matter to review the transcript. Commissioner Selvey seconded the motion, which carried seven to zero. Chairman Platt stated this issue would be continued at the next EPC meeting.

Attorney Fotopulos acquainted the Board with ex parte communication. Commissioner Kimbell requested that staff provide, in writing, the information as to how there was a policy or ordinance that would exclude one section of the community.

Mr. Terry Gilbert, Manager, Development Services, stated the 1985 Zoning Code did not have the nuisance provision, but the 1976 Zoning regulations did, and Code Enforcement had no authority, under the Zoning Code, to enforce any kind of nuisance complaint. He confirmed that part of the Land Development Code (LDC) would place the regulation back into the Zoning Code.

Church of Latter Day Saints

Attorney Fotopulos reported a demand letter had been received from the Church of Latter Day Saints indicating that EPC should pay them the sum of \$73,226 for attorney fees expended in pursuing their appeal regarding wetlands. The recommendation was not to voluntarily pay the fees and turn down the demand.

Commissioner Turanchik explained the case history, as he knew it, while having been Chairman of the EPC. Attorney Fotopulos cautioned the Commission about any comments that might be made, regardless of what was done with the demand, as everything spoken was on the record.

Commissioner Chillura moved to concur with the staff. Commissioner Kimbell seconded the motion. After discussion, Assistant County Attorney John Dingfelder confirmed he was not prepared to provide an analysis of the case this day, but was present to monitor, as requested by Commissioner Turanchik. Commissioner Kimbell, being disturbed by comments by the Commission, withdrew the second to the motion.

Commissioner Turanchik moved to refer this item to the County Attorney for her recommendation either with respect to the demand letter or to also consider whether this should be referred to the kind of mediation the Board was doing with other disputes, and for her to report back to the Board as to how she felt would be best to proceed. Commissioner Iorio seconded the motion. Commissioner Turanchik added to the motion that the County Attorney provide the information at the next Board meeting.

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Commissioner Iorio requested the Commission start meeting at 8:30 a.m. Commissioners Busansky and Chillura agreed. Commissioner Busansky requested the Chairman and the Secretary determine what morning would be convenient to start the meetings.

The motion carried five to two, with Chairman Platt and Commissioner Chillura voting negatively.

OFF-THE-AGENDA

Commissioner Turanchik moved to evaluate the course and conduct of the administration of the Environmental Protection Commission, with this item being placed on the next agenda. Commissioner Busansky seconded the motion to evaluate Mr. Stewart and staff, which carried six to one, with Chairman Platt voting negatively.

SPECIAL PRESENTATIONS Continued

Mr. John Frantz

Mr. Frantz provided the Commission with and reviewed documentation regarding five complaints that he had, which were: 1) chickens, chicken manure, and chicken pen connected to wetland by swale, which was entering the wetland causing high fecal coliform, as well as destroying native vegetation; 2) Old Hillsborough Avenue road project having been completed without proper agency permits, project had significantly changed stormwater drainage plan, adversely impacting the wetland; 3) harassment complaint--since filing an appeal of case number FRA 90-157, EPC had violated constitutional rights, causing loss of enjoyment of life; 4) solid waste complaint--that solid waste had been disposed of in the wetland, and that EPC had failed to investigate such complaint; and 5) pipe connected to County ditch and EPC jurisdictional wetland, County spraying herbicides in ditches emptying into wetland, and stormwater entering wetland causing high levels of coliform.

Mr. Frantz tendered a video tape presentation, and expressed concern that even though the wetlands were protected under both state and federal laws, that due to EPC's reputation for protecting the wetlands of Hillsborough County, the other jurisdictional agencies had failed to take an interest in this issue.

In summation, Mr. Frantz reminded the Commission that he had provided written information regarding various concerned parties, interdepartmental memorandums, chronologies, and other information obtained outside of EPC. He felt the staff of EPC lacked accountability and commitment, was inconsistent, and reflected poor leadership, which he believed should be corrected. He requested the Commission to direct Mr. Stewart and staff to investigate his five complaints, and to provide him with written documentation within the next 30 days on all five complaints.

After the presentation by Mr. Frantz, Chairman Platt stated that several allegations had been made, and she requested staff to prepare a response to the items, in writing, to be placed into the backup for the next meeting.

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Commissioner Busansky suggested that staff have 60 days in which to present the information back to the Commission. Chairman Platt concurred with the suggestion of 60 days.

Commissioner Busansky confirmed that a different Board had not allowed Mr. Frantz to do his beekeeping at his location, and she questioned whether this Commission could bring this issue up for reconsideration. Mr. Stewart stated that the beekeeping was not specifically the issue before the previous Commission, but, rather, the construction of a structure in the wetland. Attorney Fotopulos stated an appropriate mechanism would be for Mr. Frantz to submit the same plan or a modified plan for consideration.

Commissioner Iorio requested the Board re-hear the case--re-hear the facts; read the hearing master's opinions; re-hear from the director the reasons why this was a threat to the environment; and then make a determination. Also, that Attorney Fotopulos research the request and advise the Commission of her findings. Chairman Platt asked that Attorney Fotopulos also provide information as to what kind of damages could be placed against this Commission if it did re-hear the case.

COMMISSIONERS' REQUESTS Continued

Tampa Bay Crematory

Commissioner Selvey explained that a citation from EPC had been issued to Mr. Dick Stowers, Stowers Funeral Home/Tampa Bay Crematory, several years prior, and provided background information as such: 1) upon receipt of a citation, Mr. Stowers had immediately shut down the operation and ordered a new crematorium; and 2) EPC assisted with the permit and placed a requirement that the temperature in the furnace had to be 1800 degrees Fahrenheit, which was not a law at that time, but there was pending a Bill that would require that amount of degrees.

Mr. Stewart related that the issue was a permit violation, whereby the state of Florida had received from Mr. Stowers' consultants, under a registered engineer's seal, a statement regarding the performance of the unit in question--an after burner. He emphasized EPC did not set the standards, the rules to be followed were the guidelines and standards set by the state of Florida, and EPC was designated to process the permits, as an agent of the state, enforce the permits, and to make inspections to assure that permit conditions were maintained. He explained that should there be technical deficiencies in the permit, the proper avenue was through the DER to seek an amendment of the standards.

Commissioner Turanchik expressed concern about hearing this matter due to its being in the enforcement process. Commissioner Selvey explained that the permit in question had become effective in 1989, and Mr. Stowers had applied for the construction permit in 1988; and, he reiterated that during the permitting process, EPC had assigned to Mr. Stowers the amount of degrees that the after burner had to have, which had not yet gone into effect.

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Attorney Fotopulos stated there was no hearing process at the moment, as there were on-going negotiations to resolve the matter. She advised that the Commission should not become involved, but, on the other hand, if the discussion were about a policy matter regarding how permits were developed, along with the standards, that would be another issue. Chairman Platt felt it might not be a good idea to accept delegation from DER for enforcement of DER's laws.

Mr. Ken Robinson, Industrial Equipment and Engineering Company, Orlando, related that EPC had passed through an 1800°F. temperature in January 1989, when, in fact, that rule had not gone into effect until September 1989, with full compliance by July 1992. And, as of February 14, 1991, the DER had put this rule on hold and was only mandating visual emissions--smoke and odor--until a new rule making process had passed. He pointed out that the rule in effect when the permit was issued was for 1400°F., and that DER had determined existing units that had been permitted prior to September 1989 would continue on the basis of just being monitored on visual and odor. He requested, on behalf of Mr. Stowers, relief of the fine and mechanical stipulations that EPC had set. Attorney Fotopulos advised there was a normal process for obtaining relief from a condition in a permit that could not be met, which was to request a modification.

Mr. Jerry Campbell, Air Management Division, EPC, provided the historical written record information to the Commission, and pointed out that a test had been performed in 1982 by Mr. Robinson's company that represented how the unit was to operate. The test indicated the unit tested ran at 1800°F., which was the amount of degrees listed on the application for permit. He reported that the primary concern with crematories was the destruction of pathogens in the combustion process. In order to assure such destruction, the temperatures should be anywhere from 1600 to 2000°F. When the application was presented for permitting and the recommendation had been for 1800°F., with the state's rule work being somewhere in the same neighborhood, EPC had placed that amount of degrees on the permit.

In response to Commissioner Chillura, Attorney Fotopulos stated no actual fines had been imposed. Mr. Robinson and Commissioner Selvey objected, stating there were fines of \$3,000. Attorney Fotopulos confirmed that there were no fines being enforced, and that EPC had recommended an amount consistent with prior actions of a similar nature. Mr. Campbell stated Tampa Bay Crematory had been offered a consent order with a penalty included. He reported that an unannounced inspection had taken place in September 1991 where it had been found that the after burner was not operating. A warning notice had been issued. The response had been that the equipment had been replaced, but, upon reinspection, the after burner temperature had read 1350°F. At that point, the enforcement case had been escalated to notice of intent. Tampa Bay Crematory again responded that they had, once again, replaced the equipment and another inspection was completed, with temperatures found to be approximately 1650°F.

Mr. Robinson stated the unit had melted down as a result of trying to obtain 100 percent at 1800°F. He stressed that the tests submitted did not reflect 1800°F., but, rather, between the 1600 and 1800°F. range. He

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referenced a letter from EPC instructing Tampa Bay Crematory to deliver to the director a check payable to the Pollution Recovery Fund, Hillsborough County, in the amount of \$3,000, which would constitute a reasonable settlement amount.

Mr. Iwan Choronenko, Director, Air Management Division, EPC, explained that a draft consent order had been issued as a starting point for negotiation and was not a final judgment. He suggested Mr. Stowers agree to a meeting to open up negotiations. After brief discussion, it was determined that Mr. Stowers had shut down Tampa Bay Crematory. Commissioner Iorio felt that EPC staff and Mr. Stowers should meet and attempt to negotiate, and if no agreement could be met, that the issue come back to the Commission for determination.

Mr. Stowers stated he had contacted the EPC office a dozen times during 1988 to discuss the situation and had never received a return telephone call from Mr. Stewart. He related that he had sent a check to EPC on July 29, 1988, in the amount of \$2,285, and then proceeded to replace the old unit. The new unit ran for two years and eleven months before burning up, due to the attempts to maintain the 1800°F. requirement, and the estimate for repairs was \$10,000. The fine received from EPC was \$3,000. As a result of such costs, he shut down the crematory on December 27, 1991.

Mr. Stewart stated staff rigorously enforced the provisions of permits, which had been submitted by registered engineers, who were hired by the applicants. He did not believe that matter was under the purview of the Commission, but, rather, a matter for DER, who had issued the permit. He related that if Tampa Bay Crematory had a problem with the way the permit was written, the engineer of record, or some other registered engineer, was welcome to submit a requested amendment to the permit for consideration. Mr. Robinson reiterated that the application reflected between 1600 and 1800°F.

In response to Commissioner Turanchik's questions regarding what had been written for a temperature amount on the original application for permit, Mr. Campbell stated that the original application did not list a specific temperature in the test; but, a test had been run in 1982 which indicated that the heat input to the secondary chamber during the test was equivalent to what they had on the application that had been submitted--around 460,000 BTUs--which equated to 1800°F.

Chairman Platt suggested the parties sit down and work the problem out. In response to Commissioner Selvey, Mr. Stewart stated the fine was considered a voluntary contribution on the part of someone with a violation.

OFF-THE-AGENDA

Commissioner Chillura related that Mr. Stewart was prepared to assign a temporary person until such time that a permanent assignee could be found to work in Development Services. Mr. Courtney related that there were two vacancies available in his section, and hoped that everyone understood what his staff's work load was before committing them to go somewhere. In response to Chairman Platt, Commissioner Chillura stated that this issue

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should have been on the agenda, as past responses to Commissioners' directives from prior meetings. Chairman Platt stated this issue would appear on the next agenda.

There being no further business, the meeting was adjourned at 6:18 p.m.

READ AND APPROVED: _____
CHAIRMAN

ATTEST:
RICHARD AKE, CLERK

By: _____
Deputy Clerk

DRAFT COPY
Subject To Revision

(NOTE: A verbatim on the Tampa Bay Crematory is on file.)

(Permanent cassette tapes of the foregoing proceedings on file in the Records Department, Room 214-F, Courthouse. Meeting recorded and transcribed by Joanne L. Knight, Executive Secretary.)

MONTHLY ACTIVITIES REPORT

AIR MANAGEMENT DIVISION
February 1992

A. Administrative Enforcement

1. Cases Initiated:	
a. Notice of Intent to Initiate Enforcement	<u>0</u>
b. Citation	<u>0</u>
c. Other _____	<u>0</u>
Total Cases Initiated	<u>0</u>
2. Cases Resolved:	<u>2</u>
3. Cases Referred to Legal Department:	<u>1</u>
4. Consent Orders Signed:	<u>1</u>
5. Enforcement Costs Collected:	<u>\$ 1,016.87</u>
6. Contributions to the Pollution Recovery Fund:	<u>\$ 13,225.00</u>

<u>Organization Name</u>	<u>Violation</u>	<u>Amount</u>
a. Johnson & Johnson Med.	Excess Emission	\$3,100.00
b. Johnson Controls, Inc.	Improper Maintenance	\$5,625.00
c. Lafarge Corporation	Excess V.E.	\$4,500.00

B. Industrial Air Pollution Permitting

1. Permit Application Fees Received:	
a. Operating:	<u>11</u>
b. Construction:	<u>2</u>
c. Amendments:	<u>4</u>
d. Transfers:	<u>1</u>
2. Permits Recommended for Approval:	
a. Operating:	<u>3</u>
b. Construction:	<u>3</u>
c. Amendments:	<u>1</u>
d. Transfers/Extensions:	<u>1</u>

C. Inspections:	
1. Industrial Facilities:	<u>36</u>
2. NESHAPS Facilities:	<u>0</u>
3. Asbestos Demolition/Renovation Projects:	<u>15</u>
4. Gasoline Retailers:	<u>0</u>
5. Vehicle Service Facilities:	<u>1</u>
6. Retail Vehicle Dealers:	<u>0</u>
7. Automotive Parts Stores:	<u>0</u>
8. Fleet Operators:	<u>0</u>
D. Open Burning Permits Issued:	<u>6</u>
E. Total Citizen Complaints Received:	<u>85</u>
F. Noise Sources Monitored:	<u>2</u>
G. Air Program's Input:	
1. DRI's:	<u>1</u>
2. EIS:	<u>0</u>
3. Borrow Pits:	<u>0</u>
H. Compliance:	
1. Warning Notices Issued:	<u>7</u>
2. Warning Notices Resolved:	<u>4</u>

FEES COLLECTED FOR AIR MANAGEMENT DIVISION
February 1992

	Total Revenue
1. Construct/modify an air pollution source	
(a) class A2 or smaller facility	<u>\$1,600.00</u>
(b) class A1 facility	<u>-0-</u>
2. Operate an air pollution source	
(a) class B or smaller facility - 5 year permit	<u>\$6,225.00</u>
(b) class A2 facility - 5 year permit	<u>-0-</u>
(c) class A1 facility - 5 year permit	<u>\$15,870.00</u>
3. Revise an air pollution source permit	<u>\$720.00</u>
4. Transfer ownership of air permit	<u>\$45.00</u>
5. Notification for commercial demolition	
(a) for structure less than 50,000 sq ft	<u>\$380.00</u>
(b) for structure greater than 50,000 sq ft	<u>-0-</u>
6. Notification for asbestos abatement	
(a) renovation 160 to 1000 sq ft or 260 to 1000 linear feet of asbestos	<u>\$360.00</u>
(b) renovation greater than 1000 linear feet or 1000 sq ft	<u>\$1,155.00</u>
7. Annual compliance certification	
(a) automobile retail operations	<u>-0-</u>
(b) automobile repair operations	<u>-0-</u>
(c) automotive parts and supplies retail operations	<u>-0-</u>
8. Open burning authorization	<u>\$2,130.00</u>
9. Enforcement Costs	<u>\$1,016.87</u>
10. Environmental Audits	<u>-0-</u>

Ecosystems February 1992 Agenda
page two

B. Investigations/Compliance Section

1. Complaints		
a. Received		<u>35</u>
b. Inspections Performed		<u>45</u>
c. Closed		<u>48</u>
2. Warning Notices		
a. Initiated		<u>20</u>
b. Resolved		<u>11</u>
3. Return Inspections		<u>26</u>
4. Mitigation/Compliance Monitoring		
a. Reviews		<u>59</u>
b. Inspections		<u>25</u>
5. Warning Notices referred to Enforcement Coordinator		<u>0</u>
6. Survey Costs Recovered		<u>0</u>

C. Administrative Enforcement Activities

1. New cases received - pending		<u>1</u>
Pending -	<u>7</u>	
Active -	<u>14</u>	
Legal -	<u>12</u>	
2. Notices of Intent to Initiate Enforcement issued		<u>0</u>
3. Citations issued		<u>0</u>
4. Emergency Orders of the Director issued		<u>0</u>
5. Consent Orders signed		<u>1</u>
6. Cases closed (not including referral to Legal Dept.)		<u>2</u>
7. Contributions to the Pollution Recovery Fund		<u>\$3000.00</u>
8. Enforcement costs collected		<u>\$1309.91</u>
9. Cases referred to Legal Department		<u>0</u>

D. Significant Activities

1. Committees:

a. Public Relations:

- 1) Staff set up and manned booth for Expo '92 at USF (7 staff members participated).
- 2) Staff attended Earth Day meeting on 2/12/92.

b. In-Service:

- 1) Two in-house workshops were held on the Mitigation and Miscellaneous Activities in Wetlands SOPs.
- 2) Staff continues to take courses provided by Hillsborough County.

2. Artificial Reef Program:

- 1) Attended Artificial Reef Workshop in Jacksonville highlighting statewide reef monitoring techniques and goals.
- 2) Dedication of Memorial Plaque for Clyde Parrish at Ballast Point Pier.
- 3) Continued construction on Courtney Campbell and Port Manatee Reef Sites.
- 4) Coordination and distribution of DRI-related materials.

3. Miscellaneous:

- 1) Director, Stan Maloy and Lisa Scott began working with Sierra Club members to arrange for volunteers from the club's membership to assist the Division with clerical/support tasks.
- 2) Director participated in Cockroach Bay Task force organized by Com. Turanchik.

\cw

WASTE MANAGEMENT DIVISION

February Agenda

A. Administrative Enforcement

1.	New cases received	<u>0</u>
2.	Ongoing administrative cases	
a.	Pending	<u>5</u>
b.	Active	<u>14</u>
c.	Legal	<u>10</u>
d.	Criminal compliance tracking	<u>4</u>
3.	NOI's issued	<u>0</u>
4.	Citations issued	<u>2</u>
5.	Consent Orders signed	<u>0</u>
6.	Administrative cases resolved	<u>0</u>
7.	Contributions to the Pollution Rec. Fund	<u>\$00.00</u>
8.	Enforcement costs collected	<u>\$00.00</u>
9.	Cases referred to legal	<u>0</u>

B. Solid and Hazardous Waste

Received/Reviewed

1.	Permits	<u>0 / 0</u>
a.	Construction Permits	
I.	Class I or II Facility	<u>0 / 0</u>
II.	Class III Facility	<u>0 / 0</u>
III.	Yard Trash/Compost Facility	<u>0 / 0</u>
IV.	Resource Recovery/Incinerator	<u>0 / 0</u>
V.	All Other Solid Waste Facilities	<u>0 / 0</u>
b.	Operation Permits	
I.	Class I or II Facility	<u>0 / 0</u>
II.	Class III Facility	<u>0 / 0</u>
III.	Yard Trash/Compost Facility	<u>0 / 0</u>
IV.	Resource Recovery/Incinerator	<u>0 / 0</u>
V.	All Other Solid Waste Facilities	<u>0 / 0</u>
c.	Closure Permits	
I.	Class I or II Facility	<u>0 / 0</u>
II.	Class III Facility	<u>0 / 0</u>
III.	Yard Trash/Compost Facility	<u>0 / 0</u>
IV.	Resource Recovery/Incinerator	<u>0 / 0</u>
V.	All Other Solid Waste Facilities	<u>0 / 0</u>
d.	General Permits	
I.	Commercial Const./Demo.	<u>0 / 0</u>
II.	Residential Const./Demo.	<u>0 / 0</u>
III.	All Other Solid Waste Facilities	<u>0 / 0</u>
e.	EPC Authorization For Facilities Not Requiring DER Permit	
I.	Commercial Facility	<u>0 / 0</u>
II.	Residential Facility	<u>0 / 0</u>
f.	SQG Surcharges Received	<u>\$ 5,560.00</u>

2.	Other permits and Reports	<u>462/483</u>
	a. County Permits	<u>0/0</u>
	b. Other Reports	<u>30/51</u>
	c. SQG Surveys	<u>432/432</u>
3.	Inspections	<u>268</u>
	a. Complaint	<u>78</u>
	b. Compliance	<u>98</u>
	c. Small Quantity Generator	<u>92</u>
4.	Enforcement	
	a. Complaints Received/Closed	<u>96/55</u>
	b. Warning Notice Issued/Closed	<u>5/5</u>
	c. Non Compliance Letters	<u>45</u>
	d. Letters of Agreement	<u>1</u>
	e. DER Referrals	<u>1</u>
C. Underground Storage Tank - Cleanup Department		
1.	Inspections:	<u>45</u>
	a. Investigation	<u>35</u>
	b. SUPER Act	<u>10</u>
2.	Reports Received/Reviewed	<u>40/29</u>
	a. Contamination Assessment (CARs)	<u>24/14</u>
	b. Initial Remedial Action (IRA)	<u>4/4</u>
	c. Remedial Action Plans (RAPs)	<u>4/4</u>
	d. Site Rehabilitation Completion (SRCRs)	<u>0/1</u>
	e. Others	<u>8/6</u>
3.	Reimbursement Applications	
	a. Received	<u>10</u>
	b. Reviewed	<u>7</u>
4.	Eligibility Determination	<u>0</u>
	a. State Sites	<u>0</u>
	b. Reimbursement Sites	<u>0</u>
5.	State Cleanup Site Activities	
	a. Active Sites	<u>35</u>
	b. Funds Disbursed	<u>\$300,000</u>
D. Underground Storage Tank Compliance Department		
1.	Inspections	<u>267</u>
2.	Enforcement	
	a. Noncompliance Letters	<u>56</u>
	b. Warning Notices	<u>0</u>
3.	Cases Referred to DER	<u>0</u>
4.	UST Installation Plans Reviewed	<u>11</u>
5.	Closure Reports Reviewed	<u>29</u>
6.	Complaints Investigation	<u>7</u>

- E. Record Review 61
- F. Public Information Projects 2
 - 1. Various staff participated in setting up and manning displays for the USF Expo.
 - 2. Ron Cope gave a presentation on the environment at Shore Elementary. was Superfund Sites.
 - 3. Various staff participated in the Florida High School Law Expo at King High School.
- G. Current Issues:
 - 1. Normandy Park Apartments
 - 2. USF landfill and Greek housing projects
 - 3. Duncan/Howard Property
 - 4. Doc Cooke Property

ACTIVITIES REPORT
WATER MANAGEMENT DIVISION
FEBRUARY, 1992

A. Enforcement

1. New Enforcement Cases Received:	2
2. Enforcement Cases Closed:	3
3. Enforcement Cases Outstanding:	34
4. Enforcement Documents Issued:	6
5. Warning Notices:	
a. Issued:	20
b. Resolved:	10
6. Contributions to the Pollution Recovery Fund:	\$89,425.00
7. Recovery Cost:	\$ 2,838.41

B. Permitting - Domestic

1. State Permit Applications Received:	22
a. Operation:	3
(i) Types I and II	1
(ii) Type III	2
b. Construction:	1
(i) Types I and II	1
(ii) Type III	0
c. Temporary Operation:	1
(i) Types I and II	0
(ii) Type III	1
d. Collection Systems-General:	17
e. Collection Systems-Dry Line:	0
f. Residuals Disposal:	0
2. State Permit Applications Recommended for Approval:	23
a. Operation:	4
b. Construction:	2
c. Temporary Operation:	0
d. Collection Systems:	15
e. Collection Systems-Dry Line:	2
f. Residuals Disposal:	0
3. State Permit Applications Recommended for Disapproval:	0
a. Operation:	0
b. Construction:	0
c. Temporary Operation:	0
d. Collection Systems-General:	0
e. Collection Systems-Dry Line:	0
f. Residuals Disposal:	0
4. State Permit Applications Outstanding:	33
a. Operation:	8
b. Construction:	10
c. Temporary Operation:	0
d. Collection Systems-General:	14
e. Collection Systems-Dry Line:	0
f. Residuals Disposal:	1

C. Inspections - Domestic:	<u>203</u>
1. Compliance Evaluation:	<u>31</u>
a. Inspection (CEI):	<u>0</u>
b. Sampling inspection (CSI):	<u>31</u>
c. Toxics Sampling Inspection (XSI):	<u>0</u>
d. Performance Audit Inspection (PAI):	<u>0</u>
2. Reconnaissance Inspection:	<u>170</u>
a. Inspection (RI):	<u>108</u>
b. Sample Inspection (SRI):	<u>4</u>
c. Complaint Inspection (CRI):	<u>55</u>
d. Enforcement Inspection (ERI):	<u>3</u>
3. Special Inspection:	<u>2</u>
a. Diagnostic Inspection (DI):	<u>0</u>
b. Residual Site Inspection (RSI):	<u>2</u>
c. Preconstruction Inspection (PCI):	<u>0</u>
d. Post Construction Inspection (XCI):	<u>0</u>
D. Permitting - <u>Industrial</u>	
1. State Permit Applications Received:	<u>0</u>
a. Operation:	<u>0</u>
(i) Types I and II	<u>0</u>
(ii) Type III with groundwater monitoring	<u>0</u>
(iii) Type III w/o groundwater monitoring	<u>0</u>
b. Construction:	<u>0</u>
(i) Types I and II	<u>0</u>
(ii) Type III with groundwater monitoring	<u>0</u>
(iii) Type III w/o groundwater monitoring	<u>0</u>
c. Temporary Operation:	<u>0</u>
(i) Types I and II	<u>0</u>
(ii) Type III with groundwater monitoring	<u>0</u>
(iii) Type III w/o groundwater monitoring	<u>0</u>
d. Other(s):	<u>0</u>
2. State Permit Applications Recommended for Approval:	<u>1</u>
a. Operation:	<u>0</u>
b. Construction:	<u>1</u>
c. Temporary Operation:	<u>0</u>
d. Other(s):	<u>0</u>
3. State Permit Applications Recommended for Disapproval:	<u>0</u>
a. Operation:	<u>0</u>
b. Construction:	<u>0</u>
c. Temporary Operation:	<u>0</u>
d. Other(s):	<u>0</u>
4. State Permit Applications Outstanding:	<u>10</u>
a. Operation:	<u>6</u>
b. Construction:	<u>3</u>
c. Temporary Operation:	<u>1</u>
d. Withdrawn:	<u>0</u>

E. Inspections - Industrial:	<u>29</u>
1. Compliance Evaluation:	<u>4</u>
a. Inspection (CEI):	<u>4</u>
b. Sampling Inspection (CSI):	<u>0</u>
c. Toxics Sampling Inspection (XSI):	<u>0</u>
d. Performance Audit Inspection (PAI):	<u>0</u>
2. Reconnaissance Inspection:	<u>25</u>
a. Inspection (RI):	<u>7</u>
b. Sample inspection (SRI):	<u>3</u>
c. Complaint Inspection (CRI):	<u>15</u>
d. Enforcement Inspection (ERI):	<u>0</u>
3. Special Inspection:	
a. Diagnostic Inspection (DI):	<u>0</u>
b. Preconstruciton Inspection (PCI):	<u>0</u>
c. Post Construction Inspection (XCI):	<u>0</u>
F. Citizen Complaints:	
1. Domestic:	
a. Received:	<u>26</u>
b. Closed:	<u>1</u>
2. Industrial:	
a. Received:	<u>2</u>
b. Closed:	<u>2</u>
3. Water Pollution:	
a. Received:	<u>0</u>
b. Closed:	<u>0</u>
G. Environmental Analyses:	
1. Air Management:	<u>135</u>
2. Ecosystems Management:	<u>4</u>
3. Waste Management:	<u>5</u>
4. Water Management:	<u>162</u>
H. Special Projects Review:	<u>1</u>
1. DRI's:	<u>1</u>
2. Others:	<u>0</u>
I. Record Reviews:	<u>7</u>
1. Permitting:	<u>4</u>
2. Enforcement:	<u>3</u>
J. Water Quality Monitoring Special Studies	
1. Sulphur Springs	

MONTHLY ACTIVITIES REPORT

AIR MANAGEMENT DIVISION
December 1991

A. Administrative Enforcement

1. Cases Initiated:	
a. Notice of Intent to Initiate Enforcement	<u>2</u>
b. Citation	<u>0</u>
c. Other <u>Consent Order</u>	<u>1</u>
Total Cases Initiated	<u>3</u>
2. Cases Resolved:	<u>1</u>
3. Cases Referred to Legal Department:	<u>0</u>
4. Consent Orders Signed:	<u>1</u>
5. Enforcement Costs Collected:	<u>\$ 354.79</u>
6. Contributions to the Pollution Recovery Fund:	<u>\$ 3,375.00</u>

<u>Organization Name</u>	<u>Violation</u>	<u>Amount</u>
a. Tampa Bay Stevedores	V.E. Violation	\$3,375.00

B. Industrial Air Pollution Permitting

1. Permit Application Fees Received:	
a. Operating:	<u>4</u>
b. Construction:	<u>14</u>
c. Amendments:	<u>0</u>
d. Transfers:	<u>4</u>
2. Permits Recommended for Approval:	
a. Operating:	<u>6</u>
b. Construction:	<u>3</u>
c. Amendments:	<u>2</u>
d. Transfers:	<u>6</u>
e. Extensions:	<u>0</u>

EPC PUBLIC EDUCATION REPORT
February 1992

	Ad.	Air	Eco.	Waste	Water	Legal	Total
Media contact	4	6	2	3	5	5	25
News releases	1	0	1	0	0	0	2
Materials dist.	470	121	450	332	300	178*	1851
Talks given	3	2	1	1	0	4	11
Displays/demos	1	1	1	1	1	1	6

* Includes rules/regulations

From January 1, 1992 to Date

Media contact	6	21	3	6	8	6	50
News releases	2	0	1	0	0	0	3
Materials dist.	574	163	514	787	300	221	2559
Talks given	5	2	3	2	0	4	16
Displays/demos	1	1	5	2	1	1	11

ACCOMPLISHMENTS

1. Began work on spring edition of agency newsletter
2. Served as guest speaker at Citizens Environmental Advisory Committee's February meeting
3. Distributed new promotional materials (pencils, litter bags, Earth Day buttons, Earth Care stickers, etc.)
4. Conducted monthly meeting with Public Education Committee to discuss educational projects/division goals
5. Participated in Expo '92 at USF
6. Participated in State Law Fair at King High School
7. Ordered new wall display case for EPC's Lozano building
8. Submitted static display requisition to Purchasing & Contracts
9. Scheduled speakers for SERVE presentations
10. Wrote environmental messages for Fact Finder
11. Received legal department's new brochure from Print Shop
12. Received updated brochure for water division from printer's
13. Submitted news release on EPC's role in Earth Day to Public Information Office for NewsLine
14. Finalized public education strategic guidance plan
15. Communicated with National Estuary Program and Tampa Parks Department about Cockroach Bay signage project/informed Commissioner Turanchik of same
16. Conducted Earth Day Steering Committee meeting/involved other county agencies
17. Prepared educational materials for distribution to BOCC's Citizens Advisory Committee
18. Posted plaque at EPC administration building, recognizing efforts of Ecosystems staff in constructing courtyard's artificial wetland
19. Presented talks to Welcome Wagon and Neighborhood Watch Association

CURRENT PROJECTS

1. Conducting feasibility study regarding EPC participation in county's 13 chambers of commerce
2. Expanding EPC's contact with public by informing clubs and organizations of availability of EPC speakers
3. Negotiating with GATV to air monthly environmental program

FUTURE PROJECTS

1. Design brochure to give overview of entire agency
2. Produce video explaining functions of EPC
3. Development of an "adopt-a-program" brochure

LEGAL DEPARTMENT MONTHLY REPORT
MARCH 25, 1992

A. ADMINISTRATIVE APPEALS

1. NEW CASES [1]

Wellford Corporation and Daemi, Mohammed: Appealed 3/3/92, Citation issued for violations of the Storage Tank Rule. Proceeding to assign a hearing officer.

2. EXISTING CASES [6]

DiGerlando, et al: Appealed Citation for solid waste violation. Holding appeal in abeyance at the request of DiGerlando until determine if State Attorney will prosecute violator.

Durkin: Appealed 7/16/91, Director's determination that a seawall had been constructed in wetland without the Directors approval. Final hearing held 3/2/92; waiting for hearing officer recommendation.

Roy Pippin Farms, Inc.: Appealed 7/19/91, Citation issued for clearing and filling portions of several wetland areas. Settlement by Consent Order imminent.

Eaglebrook Associates: Appealed 9/6/91, by Pleasants and 11/27/91 by Dunn. Citation issued for failing to maintain several mitigation areas. Investigating appropriate settlement solutions.

Tarmac: Appealed 11/6/91, Director's request for emission testing. Pre-hearing held 2/25/92. Settlement before final hearing date likely.

Michaelson: Appealed 11/26/91, Director's decision to allow boathouse to remain on Malouf's property. Motions to Dismiss filed by Malouf's and EPC's legal department. On 2/7/92, the Hearing Officer recommended the Commission dismiss the appeal due to the Michaelson's lack of standing. On 3/25/92 agenda for the Commission's consideration.

3. CASES RESOLVED [0]

B. LITIGATION CASES

1. NEW CASES [1]

Lawson Brothers: Authority received 2/26/92 to take appropriate legal action for air pollution violations. Settlement meeting scheduled for 4/1/92.

2. EXISTING CASES [23]

Puig: Complaint filed 12/9/87, to restore wetland, penalty and costs. Jury Trial set for 3/23/92.

Martinez: Complaint filed for injunction and correction of solid waste violation. Injunction Granted. Mediation did not result in settlement. Trial is rescheduled for 6/8/92.

Nasrallah: Complaint filed 12/1/89, for improper solid waste disposal. Default against foreign property owner Inmobiliaria M.C., Mediation 3/12/92. Trial set for 5/4/92.

Cudlipp; Sherwood Forest: Complaint filed 2/6/90, for discharge of effluent from WWTP, and operating without a DER permit. Temporary operating permit has been issued. Awaiting response on Settlement offer.

Sardegna: Complaint filed 5/2/90, to restore wetland, penalties and costs. Non-Jury Trial scheduled for 5/22/92.

Cecil, Millard (Puleo): Complaint filed 10/3/90, for improper disposal of solid waste seeking penalties and costs. Property owner has corrected violation. Motion to set for trial against Cecil to recover costs and civil penalty.

United Waste: Re-opened legal file. Received authority on 8/25/90. Consent Order signed. Pursuing

compliance with Consent Order in Small Claims Court.

American Construction: Complaint filed 1/24/91, for NESHAPS, open burning, solid waste and wetland violations, seeking correction, penalties and costs. George Sherwood pleaded nolo contendere in the criminal action. Received 5 yrs. probation, 500 hours of community service, removal of all solid waste, restoration of wetland and EPC costs. Discovery in progress in Civil case.

Tampa Bay Cab Company, Inc.: Complaint filed 9/4/91, for emission, tampering and maintenance violations on numerous taxi vehicles. Assets purchased by United Cab who corrected all emission violations. Amended Complaint seeking civil penalties and costs filed; awaiting Answer.

Pentecostal Holliness Church: Complaint filed 12/20/91, for solid waste and open burning violations. Complaint served 1/30/92. No Answer. Motion for Default filed.

Lowe's Nursing Home: Received authority 1/30/91, to take appropriate legal action for discharges from waste water treatment plant, seeking correction, penalty and costs. Negotiating Consent Order with new owner to correct violations. Preparing suit against previous owner for penalties and costs.

Carmichael: Received authority on 2/27/91, to take appropriate legal action for solid waste violation; seeking injunction, penalties and costs. Pollution Recovery Funds approved for correction. Preparing lien for Carmichael's to sign.

Tampa Television: Channel 8 filed suit alleging EPC improperly withheld public records. Waiting courts decision.

Parrish: Complaint seeking injunctive relief, penalties and costs filed 3/27/91 for wetland and solid waste violations. Fleet Finance foreclosed on property and Complaint amended to add Fleet Finance as a party. Settlement negotiations in progress.

Alberto Luis/ P&M Trucking: Authority 4/24/91, to take appropriate legal action. Luis requested Pollution Recovery Funds for correction. CEAC to review.

Rainbow Rock: Received authority 7/31/91, to take appropriate legal action for violations at its waste water treatment plant. Application for permit to correct portions of the violation received. Preparing to file Complaint.

Oakview Estates: Received authority 7/31/91, to take appropriate legal action for violations at its waste water treatment plant. Working with County Attorney to resolve ownership issues.

Green Industries: Complaint filed 12/20/91, for violation of open burning and solid waste rules. Negotiated settlement. Consent Order signed and is on the agenda for consideration by the board.

Roy Pippin Farms: Complaint filed 10/11/91 in anticipation of bankruptcy claim. Settlement imminent.

Lang Engineering: Complaint filed 2/12/92 for violations of Asbestos regulations. Bay Gulf Federal Credit Union, a co-defendant, removed the case to Federal Court. Settlement meeting to be scheduled with Lang.

Coulter: Authority received 1/29/92 to take appropriate legal action for destruction of wetland. Researching collateral estoppel issue before proceeding per Commissioner Turanchik's request.

Richards/Underberg: Received authority 1/29/92 to take appropriate legal action for solid waste violations. Negotiating settlement possibilities with Richards.

Savich: Received authority 1/29/92 to take appropriate legal action for solid waste violations. Obtaining additional evidence from County Code Enforcement to include in civil suit.

3. CASES RESOLVED [1]

Frantz: Second District Court of Appeal ruled against Frantz and affirmed the Commission's final order.

COMMISSION
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JOE CHILLURA
PAM IORIO
SYLVIA KIMBELL
JAN KAMINIS PLATT
JAMES D. SELVEY
ED TURANCHIK

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TELEPHONE (813) 272-7104

MEMORANDUM

DATE: March 16, 1992

TO: Roger P. Stewart, Executive

FROM: Sara M. Fotopulos, Chief Counsel *S m f*

SUBJECT: Legal Department Performance Record (1987 through 1991)

The St. Petersburg Times reported on March 7 that Commissioner Busansky said she is tired of "court cases that we are losing all the time..." Review of cases handled by the Legal Department indicates that of the complaints filed in court and concluded in the last five years, all 47 resulted in a judgment or settlement in favor of the EPC and protection of the environment.

Of the 24 appeals of decisions or actions of the Director concluded during the last five years, 20 were resolved by order or settlement confirming your original position. The Sherman/Dennen case was a little different in that we agreed during the proceeding that the requested development would impact the wetland we were protecting less than the access required to develop the upland, and therefore you agreed that it was the better plan from an environmental perspective. In two other cases (Dyer and Church), we learned additional information during the process and you voluntarily changed the determination being appealed. As you know, however, in the Church case we were not able to have the appeal dismissed. In only one appeal (Buzbee) did we go through the entire process attempting to prevail on your original determination, and lose.

Counting the total of 71 cases (court and appeals) concluded during the last five years, and the three involving what proved to be error in the agency's original determinations, the score is equivalent to better than a 95% success record. It must be ascribed to the well reasoned positions taken by the agency and the excellent support given by staff to the legal department in litigation.

ljh

xc: Legal Department Staff
Tom K. ✓
Division Directors

(rps.mem)

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
ACTIVITY ANALYSIS
FOR PERIOD FY 87 THROUGH FY 91**

DIVISION / ACTIVITY	PERMITS REVIEWED	REVIEWS APPEALED	WARN NOTICE & NOI'S	CITATIONS	CITATIONS APPEALED	SETTELEMENTS CONSENT ORDERS
AIR MANAGEMENT	1245	0	240	25	4	170
WATER MANAGEMENT	1602	0	755	34	3	122
WASTE MANAGEMENT	N/A	N/A	323	14	5	8
ECOSYSTEMS MANAGEMENT *	1484	3	901	32	12	25
TOTALS	4331	3	2219	105	24	325

NOTES: * WETLAND DELINEATION /DREDGE AND FILL PERMIT REVIEWS REPRESENT 1990 & 1991 ONLY.

**ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
CONTRIBUTIONS TO POLLUTION RECOVERY FUND
FISCAL YEAR 91/92**

MONTH	AIR MGMT DIV	ECOSYSTEMS DIV	WASTE MGMT DIV	WATER DIV	TOTAL
OCTOBER	22,800.00	0.00	31.00	30,108.60	52,939.60
NOVEMBER	10,000.00	0.00	0.00	4,075.00	14,075.00
DECEMBER	3,375.00	2,250.00	0.00	42,450.00	48,075.00
JANUARY	0.00	0.00	2,956.00	11,955.00	14,911.00
FEBRUARY	13,225.00	3,000.00	0.00	89,425.00	105,650.00
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
TOTAL	49,400.00	5,250.00	2,987.00	178,013.60	235,650.60

ENFORCEMENT COST RECOVERY

OCTOBER	484.58	224.00	23.00	9,293.75	10,025.33
NOVEMBER	379.79	60.00	100.00	372.37	912.16
DECEMBER	354.79	2,149.62	0.00	7,341.58	9,845.99
JANUARY	685.00	156.99	2,987.85	6,977.45	10,807.29
FEBRUARY	1,016.87	1,309.91	0.00	2,838.41	5,165.19
MARCH					
APRIL					
MAY					
JUNE					
JULY					
AUGUST					
SEPTEMBER					
TOTAL	2,921.03	3,900.52	3,110.85	26,823.56	36,755.96

Mobil Chemical Company

COMPOSITE PRODUCTS DIVISION

800 CONNECTICUT AVENUE
P.O. BOX 5445
NORWALK, CT 06856
TEL: (203) 831-4200
FAX: (203) 831-4222

February 19, 1992

Mr. Roger Stewart
Executive Director
Environmental Protection Commission
of Hillsborough County
1900 - 9th Avenue
Tampa, FL 33605

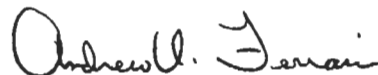
Dear Mr. Stewart:

I want to bring to your attention the excellent service Darrel Graziani of your office provided to Mobil Chemical. His review of two permit applications for our new plant in Tampa was comprehensive, timely and highly professional.

During the permit review process, business reasons beyond Mobil Chemical's control forced us to abandon plans to locate in Plant City. One of the considerations leading to our selecting an alternative site in Hillsborough County was the knowledge that we would continue to be working with the EPC and Mr. Graziani.

Mobil Chemical appreciates the high environmental standards set by Hillsborough County. We look forward to working with your office in the future as we expand our operations in Tampa.

Sincerely,



A. U. Ferrari
Business Manager

AUF:s1

/3

REC'D

FEB 21 1992

**ENV. PROT. COMM.
OF H.C.**

Board of County Commissioners

Hernando County



John Richardson

20 N. Main Street, Room 460
Brooksville, FL 34601

(904) - 754-4000
(904) - 754-4002

February 27, 1992

Ms. Jan Platt, Chairperson
Hillsborough County
Environmental Protection Commission
P.O. Box 1110
Tampa, FL 33601

Dear Ms. Platt:

I wish to express my deep appreciation for the assistance given Hernando County by Mr. Roger Stewart and staff. The information they provided to the Hernando County Board of County Commissioners will certainly assist the Board in developing an environmental program for the County.

If we may ever be of assistance to you please feel free to call.

Sincerely,

John Richardson, Chairman
Board of County Commissioners

cc: Lawrence Jennings, Department Manager
Katherine P. Liles, Environmental Planner

KPL/mfs

RECEIVED

MAR 3 1992

CLERK OF COMMISSIONERS
PLATT'S OFFICE

HILLSBOROUGH COUNTY

Florida

Office of the County Administrator
Frederick B. Karl

BOARD OF COUNTY COMMISSIONERS

Phyllis Busansky
Joe Chillura
Pam Iorio
Sylvia Kimbell
Jan Platt
James D. Selvey
Ed Turanchik



Senior Assistant County Administrators

Patricia Bean
Larry Blick
James M. Bourey

Assistant County Administrators

Edwin Hunzeker
Jimmie Keel

March 4, 1992

Mr. Hooshang Boostani
Director, Waste Management Division
Hillsborough County Environmental Protection Commission
1900 Ninth Avenue
Tampa, Florida 33605

Dear Mr. Boostani:

This is to advise you of the outstanding support staff received at the Household Chemical Collections by volunteers of the Environmental Protection Commission's Waste Management Division.

The Hillsborough County Department of Solid Waste has scheduled the County's next two Household Chemical Collections, details as follows:

Northwest County Household Chemical Collection Center
9805 Sheldon Road
Tampa

Saturday, 9:00 AM - 3:00 PM
April 18, 1992

South County Household Chemical Collection Center
626 Golf & Sea Boulevard
Apollo Beach

Saturday, 9:00 AM - 3:00 PM
May 16, 1992

If you should require additional information, please contact Steve Young or Jerry Snow of this Department at 272-6674.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Smith".

Thomas G. Smith
Executive Manager
Department of Solid Waste

TGS/sy

cc: Paul Schipfer, Environmental Protection Commission

REC'D

MAR 06 1992

ENV. PROT. COMM.
OF H.C.



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MEMORANDUM

Date March 18, 1992

To Roger Stewart
From Iwan Choronenko
Subject: Tampa Bay Crematory (TBC)

Following the last EPC meeting, we were able to meet with Mr. Stowers and discuss his situation. We are happy to report that an amicable resolution was negotiated. The terms of the settlement are consistent with the joint resolution recently consummated by the State and the Florida Funeral Directors Association. It will allow Mr. Stowers the option of resuming operation of his incinerator at a slightly lower temperature, while the State develops a new rule specifically for crematories. Once the new regulation is promulgated, TBC and all other crematories operating in the County will be required to comply in a timely fashion.

We intend to participate in this rule work and will encourage the affected industry to do the same. The first workshop is scheduled for March 31 in Tallahassee. Ken Robinson, Mr. Stowers' consultant who appeared in front of the Commission last month, has been notified as well.

If anything further develops regarding this matter, we will keep you advised.

cag

COMMISSION
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MEMORANDUM

Date March 10, 1992

To Tom Koulianos
From Iwan Choronenko
Subject: Agenda Back-up for March 1992 EPC Meeting

Per your request, I am forwarding the back-up materials for our March 25, 1992, EPC Meeting.

Should you have any additional questions on the two air related subjects, please let me know.

Attachments

cag



United States Environmental Protection Agency Green Lights: A Bright Investment in the Environment



Green Lights is an innovative program sponsored by the U.S. Environmental Protection Agency that encourages major U.S. corporations and state and local governments to install energy-efficient lighting. Using new technologies, participants dramatically reduce energy consumption while delivering the same or better quality lighting. Under this voluntary, non-regulatory program, participants upgrade their facilities with energy-efficient lighting wherever it is profitable and maintains or improves lighting quality.

Green Lights will produce multiple national benefits by addressing critical issues of energy efficiency, pollution prevention, and economic competitiveness. Corporations and governments that make the commitment to Green Lights will profit by lowering their electricity bills, improving lighting quality, and increasing worker productivity. They also will reduce the air pollution caused by electricity generation, which includes carbon dioxide, sulfur dioxide, and nitrogen oxides.

Benefits of Energy-Efficient Lighting

Lighting accounts for 20 to 25 percent of electricity used annually in the United States. Lighting for industry, stores, offices, and warehouses represents 80 to 90 percent of total lighting electricity use.

If energy-efficient lighting were used everywhere it were profitable, the electricity required for lighting would be cut by approximately 50 percent, and aggregate national electricity demand would be reduced by 10 percent.

This reduction would free \$18.6 billion per year from ratepayer bills for useful investment and lower annual carbon dioxide emissions by 232 million tons (4 percent of the national total), the equivalent of 42 million cars. It also would reduce annually sulfur dioxide emissions by 1.7 million tons, or 7 percent of the national total, and nitrogen oxide emissions by 900,000 tons, or 4 percent of the national total.

Other forms of pollution—boiler ash, scrubber waste, acid drainage and waste from coal mining, radioactive waste, and natural gas leakage—also would be reduced.

The Green Lights Process

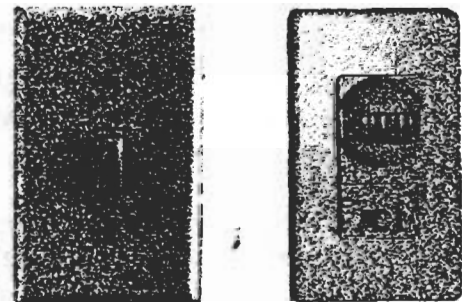
When a corporation or government joins the Green Lights program, it signs a Memorandum of Understanding with EPA. This agreement commits the new Partner to survey all of its facilities and install new lighting systems that maximize energy savings to the extent that they are profitable and do not compromise lighting quality.

There are no technology prescriptions. The Partner agrees to complete these upgrades within five years and to document the improvements it makes. After the Partner joins the program, it commits to build new facilities using the most current building energy guidelines.

Typically, a Partner will implement the Green Lights process through four phases:

1. **Survey:** Green Lights corporations and governments will survey their facilities to determine where lighting can be upgraded.

How Much Can an Occupancy Sensor Save?*



An occupancy sensor turns the lights on when a room is occupied and off when the room is empty. Replacing a common light switch with an occupancy sensor saves 941 kilowatt-hours, prevents 1505 lbs. of carbon dioxide, 11 lbs. of sulfur dioxide, and 6 lbs. of nitrogen oxides per year. It also realizes an internal rate of return (IRR) of 94.1% and a payback of 1.1 years.

* 35% savings on 4 4-lamp fixtures @ 192 watts

GREEN LIGHTS PARTNERS

(173 as of January 27, 1992)

CORPORATE PARTNERS (165 total):

A & C Enercom	Eaton Corporation
Abbott Laboratories	Electric Power Research Institute (EPRI)
Alaska Airlines, Inc.	Elkhart General Hospital
Albany General Hospital	Energy User News
The Alliance to Save Energy	First Data Resources, Inc.
American Council for an Energy Efficient Economy	The First National Bank of Chicago
American Express Company	G.M. Popkey Company, Inc.
American Public Power Association	General Dynamics Corporation
American Standard, Inc.	Genovese Drug Stores, Inc.
Amoco	Georgia Institute of Technology
ARCO	Gerber Products Company
Aristech Chemical Corporation	The Gillette Company
Ashland Oil, Inc.	The Goodyear Tire & Rubber Company
Automatic Data Processing, Inc.	Grainger
B.P. Exploration-Alaska	GTE
Baldor Electric Company	Hasbro, Inc.
Bank of America	Haworth, Inc.
Baxter Healthcare Corporation	Hewlett-Packard Company
Bechtel	Hoechst Celanese
Bell Atlantic	The Home Depot
Bellcore	Honeywell Inc.
BellSouth Telecommunications	Hope Network
Boeing	Horizon Air Industries, Inc.
E.J. Brach Corporation	Humana, Inc.
Brown Univeristy	ICF International
Browning Ferris, Inc.	IPS Electric and Midwest Gas
The Bruce Company	(Divisions of Iowa Public Service Company)
Carnegie Mellon University	Jaakko Poyry
Carolina Frieght Carriers Corporation	Jantzen, Inc.
The Oliver Carr Company	Jewel Food Stores
Carrier Corporation North America	Johnson Controls World Services Inc.
The Catalyst Group	Johnson & Johnson
Central Carolina Bank	Karastan Bigelow
Chemical Bank	Kenyon Oil Company Inc.
Chevron	Kerr-McGee Corporation
Childhelp USA	KinderCare
Citicorp / Citibank	Kolar Management, Inc.
Citizen's Photo	LTV Aerospace and Defense Co.
Colonial Pacific	Eli Lilly and Company
Colonial Pipeline	Lockheed Corporation
Columbia University	Lone Star Steel
COMPAQ Computer Corporation	Louisville Resource Conservation Council
Continental Insurance	Lyondell Petrochemical Company
Cox Newspapers	MagneTek, Inc.
Cracker Barrel Corporation	Marriott Corporation
Crestar Bank	Martin Marietta Corporation
CTEC Corporation	Maytag
Data General Corporation	McKeesport Hospital
The Dexter Corporation	The Melville Corporation
Digital Equipment Corporation	Memorex Telex
DMB Associates, Inc.	Fred Meyer, Inc.
Domino's Pizza Corporation	Herman Miller, Inc.
Dresser Rand	3M
Duracell U.S.A.	Monsanto Company

GREEN LIGHTS ALLIES

(210 as of January 27, 1992)

MANUFACTURER ALLIES (139 total):

A.L.P. Lighting + Ceiling Products	K-Lite Division of ICI Acrylics/K-S-H Inc.
Advanced Control Technologies, Inc.	Kenall
Advanced Transformer Company	Kilowatt Saver, Inc.
Amalco Metals, Inc.	The Kirlin Company
American Electric	Lamar Lighting Company, Inc.
American Energy Management	LexaLite International
American Lighting Corporation	Light Energy Corporation
American Lighting Systems	Lighting Resources, Inc.
American Illuminetics, Inc.	LightMedia Corporation
American Systems and Services	Lightron of Cornwall, Inc.
Badger USA, Inc.	Literonics International
Brayer Lighting, Inc.	Lightway Industries
Brownlee Lighting	Litecontrol
Bryant Electric	Lithonia Lighting
Canterra Electronics International	Lorin Industries
Cooper Lighting	Lumatech Corporation
C.E.W. Lighting, Inc.	Lumax Industries, Inc.
CSL Lighting Mfg., Inc.	Magnaray International
Dark To Light Inc.	MagneTek, Inc.
Davis Controls Corporation	Megalite Corporation, Inc.
Dazor Manufacturing Corporation	Mercury Recovery Services
DuraLux Industries	MetalOptics, Inc.
Duro-Test Corporation	3M
Dynamic Energy Products, Inc.	MirrorLight, Inc.
Edison Price Lighting	ML Systems
Elba USA, Inc.	Mor-Lite
Electronic Ballast Technology, Inc.	Motorola Lighting, Inc.
Emergency Safety Products, Inc.	Mule Emergency Lighting, Inc.
Energy Deziign Corporation	MyTech Corporation
Enersave Company	NOVA Conservation and Load Management
Enertron Technologies, Inc.	Novitas, Inc.
Enterprise Lighting, Inc.	NRG Lighting Inc.
Environmental Energy Group	Omega Energy Inc.
Etta Industries	Optical Coating Laboratory Inc.
Exitronix Division of Barron Manufacturing Corporation	OrEqual, Inc.
Flexiwatt Corporation	OSRAM Corporation
FTI	Paramount Industries
FulCircle Ballast Recyclers	Parke Industries, Inc.
GE Lighting	Parrish Lighting and Engineering, Inc.
Geissenberger Manufacturing	Peerless Lighting Corporation
The Genlyte Group	Peschel Energy, Inc.
Guardian Lighting Controls, Inc.	Philips Lighting Company
Harris Manufacturing, Inc.	Powerline Communications, Inc.
Heath Company	Pre Finish Metals, Inc.
Hetherington Industries	Prime Ballast
Holophane Company, Inc.	Pritchett Wilson Group, Inc.
Honeywell Inc.	Prolight
House O' Lite	RAB Electric Manufacturing Company
Hubbell Incorporated, Lighting Division	Reflect-A-Light
Illumination Control Systems	Reflective Light Technologies
International Conservation Equipment, Inc.	Remtec Systems
Janmar Lighting	Roth Bros., Inc.
Jedcor Energy Management Company, Inc.	Ruud Lighting, Inc.
Johnson Controls, Inc.	Salesco Systems USA
	Scientific Component Systems

COMMISSION
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RESOLUTION

GREEN LIGHTS

WHEREAS, the Green Lights Program is an innovative undertaking sponsored by the United States Environmental Protection Agency which encourages major U.S. corporations, States, Counties and local municipalities to install energy-efficient lighting;

WHEREAS, utilizing the latest technology, energy consumption can be dramatically reduced while still delivering the same or better quality of lighting;

WHEREAS, the Green Lights Program will produce multiple national benefits by addressing critical issues of energy-efficiency, pollution prevention and economic competitiveness;

WHEREAS, organizations which make the commitment to the Green Lights Program will reduce air pollution caused by electrical generators which emit carbon dioxide, sulfur dioxide and nitrogen oxides;

WHEREAS, this initiative is enjoying considerable national visibility, and is proving to be very successful among many private and public organizations;

NOW, THEREFORE, BE IT RESOLVED that the Environmental Protection Commission of Hillsborough County endorses the Green Lights Program and encourages full implementation within the governmental framework of Hillsborough County to achieve economic competitiveness, enhanced air quality and reduced energy consumption.

Date

Jan K. Platt, Chairperson

COMMISSION
PHYLLIS BUSANSKY
JOE CHILLURA
PAM IORIO
SYLVIA KIMBELL
JAN KAMINIS PLATT
JAMES D. SELVEY
ED TURANCHIK

FAX (813) 272-5157



ROGER P. STEWART
EXECUTIVE DIRECTOR
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AND
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ECOSYSTEMS MANAGEMENT DIVISION
TELEPHONE (813) 272-7104

BEFORE THE
ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY
Complainant,

vs.

Case No. 01019BLZ1
Legal Case No. LGRE91-166

GREEN INDUSTRIES, INC.
Respondent.

CONSENT ORDER

This Consent Order is made and entered into between the Environmental Protection Commission of Hillsborough County (Commission) and Green Industries, Inc. (Green Industries), pursuant to Chapter 84-446, Laws of Florida.

The Commission finds and Green Industries admits the following:

1. Green Industries, formerly named Steve's Landscape & Maintenance, Inc. (Steve's L & M) is a corporation duly authorized to conduct business in the State of Florida. Green Industries owns and operates a business located at 5827 Harvey Tew Road, Plant City, in Hillsborough County, Florida.
2. Steve's L & M, Inc. signed a Consent Order with the Commission effective February 2, 1989, to settle two open burning violations. Paragraph eight of that Order required adherence to all applicable open burning regulations.

3. On April 2, 1990, an agent of the Commission inspected Green Industries in response to a complaint from the Department of Forestry. The Commission inspector observed two 55-gallon burn barrels, one containing unburned material and the other containing evidence of burned paper products, wood, glass, and metals. Warning Notice No. 00402AGW1 was issued, alleging violations of Sections 13 and 17 of the Act, and of Chapter 1-4, Rules of the Commission.

4. On October 19, 1990, an agent of the Commission inspected Green Industries and observed the following:

a) An area approximately thirty-five feet in diameter, containing partially burned natural vegetation;

b) An area approximately twelve feet in diameter, containing burned natural vegetation; and

c) A burn barrel containing smoldering paper, glass and wire. Warning Notice No. 001019BLZ1 was issued, alleging violations of Sections 13, 16, and 17 of the Act, and of Chapter 1-4, Rules of the Commission.

5. Green Industries responded to the last Warning Notice by letter dated October 31, 1990, and stated that the open burning witnessed by the inspector was extinguished. Green Industries also stated that the debris had been removed.

6. On October 29, 1991, an agent of the Commission inspected Green Industries and observed that solid waste which consisted of landscape materials, grasses, dirt and plastic had been dumped on the property without the appropriate permit or approval. Additionally, the agent noted that used oil or other petroleum products had been dumped on the property.

7. Commission personnel inspected the Green Industries site on January 10, 1991, and found no evidence of additional open burning. Vegetation is growing over the burned areas described in 4.a) and 4.b) above. Two burn barrels, both containing ashes, were found on site.

8. Commission personnel attempted to meet with Green Industries on several occasions in order to resolve the alleged violations.

9. On August 28, 1991, the legal department was given authority to take appropriate legal action necessary to resolve the violations by the Commission.

10. On December 20, 1991, a Civil Suit was filed by the Commission against Green Industries, Inc. for breach of the terms of a Consent Order and for violations of the Open Burning, Solid Waste and Used Oil Rules and Regulations.

11. On January 7, 1992, Green Industries met with Commission's Air Management Division, Waste Management Division, and Legal Department personnel and agreed to resolve the Civil Suit by entry into a Consent Order.

WHEREFORE, Green Industries and the Commission mutually agree and it is ORDERED:

12. Within thirty (30) days of the effective date of this Consent Order, Green Industries shall remove all yard waste from the Property. The waste must be disposed of at a permitted yard waste facility. Receipts must be submitted as proof of proper disposal.

13. Within forty-five (45) days of the effective date of this Consent Order, Green Industries shall dispose of the petroleum contaminated soil on the Property at a permitted soil thermal treatment facility. Receipts must be submitted as proof of proper disposal.

14. Green Industries shall strictly adhere to all open burning regulations pursuant to: Chapter 1-4, Rules of the Commission; Chapter 5I-2, Division of Forestry; and 17-5, renumbered 17-256, Florida Administrative Code Rule; and, shall strictly adhere to all solid waste regulations pursuant to: Sections 16 and 17 of the Act, Rule 1-7, Rules of the Commission, Chapters 17-701 and 17-710, Florida Administrative Code Rule and Chapter 403, Florida Statutes.

15. Green Industries shall pay to the order of the Environmental Protection Commission of Hillsborough County a sum in the amount of seven hundred eleven dollars fifty-eight cents (\$711.58). This amount represents the reasonable cost expended by the Commission in investigation and resolving this matter. This sum shall be paid in twelve (12) consecutive monthly payments. The first installment of \$59.29 will be due within fifteen (15) days of the effective date of this Consent Order, followed by ten (10) consecutive monthly payments of \$59.29 and one (1) payment of \$59.39. All payments shall be paid with a money order of certified check.

16. Green Industries shall pay to the order of the Hillsborough County Pollution Recovery Fund a sum in the amount of two thousand two hundred fifty dollars (2,250.00). This amount represents the appropriate settlement amounts ascribed to the above violations. This sum shall be paid in twelve (12) consecutive monthly payments. The first installment of \$200.00 will be due within fifteen (15) days of the effective date of this Consent Order, followed by ten (10) consecutive monthly payments of \$200.00 and one (1) payment of \$50.00. All payments shall be paid with a money order of certified check.

17. The Commission, for and in consideration of the complete and timely performance by Green Industries of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for violations outlined in this Order. The civil suit filed against Green Industries will be voluntarily dismissed by the Commission. Green Industries waives its right to a hearing or judicial review of this Order.

18. Entry into this Consent Order does not relieve Green Industries of the need to comply with other applicable federal, state, or local laws, regulations or ordinances. The entry of this Consent Order does not abrogate the rights of substantially affected persons who are not parties to this Consent Order.

19. The Commission hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes, or the rules promulgated thereunder.

20. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction. Failure to comply with the terms of this Consent Order is a violation of Chapter 403, Florida Statutes and of Chapter 84-446, Laws of Florida.

21. Green Industries is fully aware that a violation of the terms of this Consent Order may subject Green Industries to judicial imposition of damages, civil penalties of up to \$5,000 per violation, criminal penalties and costs and expenses incurred in litigating this matter.

22. This Consent Order shall take effect upon the date of execution by the Director of the Commission and shall constitute final agency action by the Commission.

RESPONDENT by: John C. [Signature]
signature _____
print John C. [Printed Name]

(Corporate Seal)

COMMISSION
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JOE CHILLURA
PAM IORIO
SYLVIA KIMBELL
JAN KAMINIS PLATT
JAMES D. SELVEY
ED TURANCHIK

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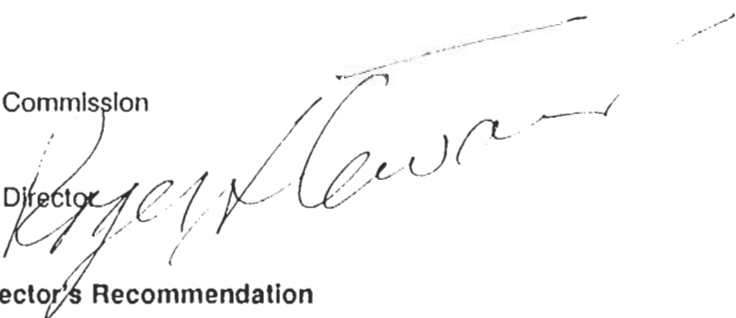


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MEMORANDUM

DATE: February 19, 1992

TO: Environmental Protection Commission

FROM: Roger Stewart, Executive Director 

SUBJECT: Michaelson Appeal - Director's Recommendation

On February 13, 1992, Robert Fraser, the Hearing Officer assigned to hear the above referenced appeal of my decision filed a Recommendation On Motion To Dismiss Appeal with the Environmental Protection Commission of Hillsborough County (Commission). Mr. Fraser recommended that the Commission dismiss the appeal; and a copy of the Recommendation is included as agenda back-up information.

Following are the reasons that I am in agreement with the Hearing Officer's Recommendation to Dismiss the Appeal:

1. The Warning Notice Issued to the Maloufs (property owners) was closed when they decreased the size of the structure to that allowed by the DER regulations,
2. The structure which I authorized is in compliance with both the DER and the EPC's rules and regulations,
3. There is no environmental harm as a result of the authorization,
4. The Hearing Officer found that there is not an injury to the environment which affects their interests, and such is required in the Act before the right to appeal arises,
5. The Hearing Officer found that the injuries alleged by the Michaelson's to have occurred i.e. Invasion of their privacy and decreased property value are not environmental issues and can not be resolved by the Commission,

Michaelson memorandum
February 19, 1992
Page Two

6. The Hearing Officer found that he, as a Hearing Officer appointed by the Commission pursuant to the Act, does not have the authority to make determinations which do not involve the application of the Act and Rules of the Commission.

Pursuant to Section 9 of the Act, the Michaelson's and I, as the Executive Director, may file exceptions to this recommendation within ten days from the date of service (February 13, 1992). The Michaelson's were notified by the legal department of this right and the time frames that are applicable. As I previously stated, I am in complete agreement with the Hearing Officer's Recommendation; and, at the time of this memorandum, do not intend to file formal Exceptions to the Recommendation. However, if the Michaelson's file Exceptions which raise issues that need to be addressed, the necessary Exceptions will be drafted and presented by the Mary Lynne Richards, Esquire.

(michaelson\agendabk.mem)

25
a letter to the Department of Environmental Regulation regarding a structure being built without permits by the Maloufs into the waters of White Trout Lake. The Commission staff responded and eventually found that the structure, consisting of a dock with boat slips and a roof, should be permitted. The crux of the Michaelsons' objection arose when the Maloufs built a stairway to the roof, surrounded the roof with a railing, installed lights and used it as a sun deck.

The Commission staff found no injury to the wetland as a result of the roof/sun deck. The Commission staff also approved the sunbathing function of the roof as it was considered sufficiently distinct so that it would not set a precedent for too many other cases.

Mr. and Mrs. Michaelson have protested the dual use of the roof for a number of reasons during the pendency of this dispute, but they relied on two at the hearing. The first concerned an invasion of privacy into their home and backyard since sunbathers can use the roof/sun deck as an observation point. Second, the lights attached to the roof/sun deck shine into several rooms of their home.

As legal authority for their positions, the Michaelsons rely on Department of Environmental Regulation rule 17-312.808 (2)(b), which provides:

There shall be no bait houses, storage shelters, sun decks, gazebos, screen porches, wet bars, living quarters, or other non-water-dependent structures over waters of the State or on the pier.

The Michaelsons argue that the regulation means that sun decks are

not permitted over waters of the State. Within the facts of this case, however, this hearing officer finds that the regulation does not pertain to this controversy. The Commission staff has determined that the roof causes no injury to the wetlands. Since the roof covers the dock, it too is a "water-dependent structure." The staff has determined that its other use as a sun deck poses no more danger to the wetlands than it does as a roof. Accordingly, the staff has decided to permit the dual use of the structure.

While the Michaelsons' objection to the sun deck appears facially logical in light of the rule, it lacks any connection to the environment. The Environmental Protection Commission is, after all, concerned with the environment, not with invasions of privacy or light intrusion. The Michaelsons do not contend that the structure disturbs the wetlands. Thus, the Michaelsons provided no nexus between their complaints and the wetlands of White Trout Lake. Put another way, the controversy between the Commission staff and the Maloufs did not involve any invasion of privacy or light intrusion. In either event, the Michaelsons lack standing with respect to the controversy, which the staff and the Maloufs have resolved.

Accordingly, this hearing officer recommends that the appeal of Lorna and Stanley Michaelson be dismissed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Mr. and Mrs. Stanley Michaelson, 3107 Mossvale Lane, Tampa, Florida 33618, Jeffrey A. Blau, Esquire,

1511 South Church Avenue, Tampa, Florida 33629 and Mary Lynn Richards, Esquire, 1900 Ninth Avenue, Tampa, Florida 33605 on this 12th day of February, 1992 and by hand delivery to the Board of County Commissioners of Hillsborough County, Florida and the Honorable Fred Karl, Hillsborough County Administrator, Hillsborough County Courthouse, Tampa, Florida 33602, on the 13th day of February, 1992.

Respectfully submitted,



ROBERT FRASER, ESQUIRE
Post Office Box 3470
Brandon, Florida 33509-3470
(813) 654-3335
Florida Bar No. 218529

COMMISSION
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MEMORANDUM

DATE: February 19, 1992

TO: EPC Members

FROM: Sara M. Fotopulos, Chief Counsel *SMF*

SUBJECT: Demand Letter From Church of Latter Day Saints

The Church of the Latter Day Saints, through their counsel Greg Williams, has submitted a demand that EPC pay \$73,226.76 in attorney fees expended during their appeal of a wetland identification. As support for their claim, Mr. Williams cites to erroneous statements made by one staff member that wetland species not on EPC's list were used to claim the area as wetland, and to statements made by the Hearing Officer in his recommendation to the Commission. These factors, although not admitted, will be involved and will have to be explained in any litigation. Never-the-less, I recommend rejection of the offer for the following reasons:

I. They do not have a case.

- (a) The final decision of the Commission, favorable to the Church, did not deny them due process.
- (b) Their argument will have to be that they were denied some right because they had to exercise their right to due process and go through the established appeal hearing procedure.
- (c) It is a question of fact whether the Director abused his discretion, and there is abundant evidence we can present to a jury that he did not. The Hearing Officer's statements in his recommendation, which the Commission did not adopt, are a factor but can be discredited as gratuitous statements made by opposing counsel when he drafted the report.
- (d) The extent of their attorney fees (damages) was exacerbated by their insistence in proceeding with the appeal process despite the fact that the Director changed his position and agreed with them upon receiving evidence that the area was artificially created and therefore not protected wetland.
- (e) In my opinion, by filing a complaint against the Commission or the Director, the Church of Latter Day Saints would be subjecting itself to Federal Rule 11 sanctions for filing a lawsuit without merit.

II. The law they are relying on does not apply.

The Driggers case, which is referred to in Mr. Williams' letter, involved the second denial of a rezoning by the Manatee BOCC in a decision which was not only contrary to the zoning regulations, but contrary to a court order regarding the prior denial. Driggers therefore, was improperly denied in a final administrative order the appropriate zoning. In this case for which payment is demanded, the Commission issued one final order which favored the complainant. The complainant has not been denied anything. I know of no case law holding that there was a denial of any right by a preliminary administrative decision which was appealed before it became final, and which was not a part of the final administrative decision.

III. Voluntary payment would be bad precedent.

If the Commission voluntarily agrees to pay attorney fees for an individual having to go through the administrative appeal process, the Commission will be subject to similar demands from every aware litigant who claims staff erred. The Director's ability to implement the Act will be substantially undercut since violators will have nothing to lose by appealing every action of the Director.

ljh

(church\payment)

BOARD OF COUNTY COMMISSIONERS
HILLSBOROUGH COUNTY, FLORIDA

Office of the County Attorney

Emeline C. Acton, County Attorney
Ronald G. McCord, Chief Assistant
Donald R. Odom, Chief Assistant
Jennie Granahan Tarr, Chief Assistant
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February 14, 1992

TO: Sara Fotopulos, Chief, Counsel, EPC
FROM: John J. Dingfelder, Assistant County Attorney
SUBJECT: Appeal of Church of Jesus Christ of Latter Day Saints

Enclosed please find a letter I just received from Greg Williams in regard to the Church of Latter Day Saints' demand for \$73,226.76 from the "County." As it appears from his correspondence that his claim is actually against the Environmental Protection Commission (and probably Mr. Stewart), we will assume that your office will handle this matter.

On a different note, thank you again for your assistance in providing me with the Commission's documentation in support of our brief in the Sherman case.

JJD/ew

Enclosure

cc: Jan Platt, Chairman, Environmental Protection Commission
Ed Turanchik, Board of County Commissioners
Emeline C. Acton, County Attorney

SMITH & WILLIAMS

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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ANA P. ANDREWS
DALE K. BOHNER
MARGARET E. BOWLES
DAVID L. COOLEY
J. GREGORY HUMPHRIES*
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(407) 849-5151

*ALSO ADMITTED VA BAR

PLEASE REPLY TO TAMPA

February 13, 1992

John J. Dingfelder,
Assistant County Attorney
Post Office Box 1110
Tampa, Florida 33601

**Re: Appeal of Church of Jesus Christ of Latter Day Saints
EPC No. 89-159**

Dear John:

As you know from previous correspondence, this law firm represents the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints ("LDS"). The purpose of this letter is to set forth a formal demand for damages sustained by our client with respect to certain actions of the Environmental Protection Commission of Hillsborough County ("EPC") and its Director, Roger Stewart ("Director").

The facts underlying LDS's claim are summarized in my letter to Commissioner Turanchik of May 24, 1991, a copy of which I am enclosing for your convenience. Essentially, the Director made a wetlands determination on our client's property which was later found by the Hearing Officer to be arbitrary and capricious. In his Recommended Order, the Hearing Officer concluded that the Director's determination was not in compliance with applicable EPC regulations. As a result of this determination, LDS has sustained damages for redesign costs (including additional administrative costs), construction delays, and the attorneys' fees incurred by LDS in challenging the determination.

The liability of EPC and the Director is founded upon 11 U.S.C. § 1983, among other theories of state and federal law. Under § 1983, an aggrieved party is entitled to an award of damages sustained as a result of actions by a person(s) who violates due process, where those actions are performed under color of state or federal law. Clearly the Director was acting under color of state law when he made his wetlands determination, and the DOAH Hearing Officer has already concluded that the determination was arbitrary and capricious, and violated LDS's due process rights.

Accordingly, liability in this case is clear. In response to your request for authority for our client's claim, we would invite you to review the case of *Southern Cooperative Development Fund v. Driggers*, 696 F.2d 1347 (1983), cert. denied, 463 U.S. 1208, 103 S.Ct. 3539 (1983) ("Driggers"), a copy of which is enclosed. The facts in *Driggers* are very analogous to these facts, and we believe the federal district court in Tampa would follow the principles set forth in *Driggers* if confronted with the instant case (please note that *Driggers* originated in the Middle District, Tampa Division). Although there were other aspects to the *Driggers* case, the issue on appeal to the 11th Circuit was whether the plaintiffs were entitled to a summary judgment on their claim under § 1983 for violation of their due process rights. The Manatee County Board of County Commissioners had failed to approve a plat proposal even though the plaintiffs had complied with all applicable requirements for approval. The 11th Circuit Court of Appeal affirmed the summary judgment entered by the district court, and concluded that once the plaintiffs had complied with the applicable platting requirements, the BOCC had a duty to approve the plaintiffs' plat, and their failure to do so gave rise to liability under § 1983. In this case, the Director had a duty to follow EPC guidelines in making his determination, which the Hearing Officer concluded he did not do. But for the Director's arbitrary and capricious determination, LDS would not have sustained the damages demanded herein.

Although there is a significant body of caselaw which bears on these issues, we have purposefully selected a case out of our own district which supports our client's position in an attempt to expedite an amicable resolution of this matter.

Demand is hereby made for the sum of \$73,226.76. We have previously provided you with a detailed breakdown of this figure. This amount does not include a claim for other items which would ultimately be compensable, including, but not limited to, pre-judgment interest, costs, and attorneys' fees associated with the § 1983 claim. This offer is only as to the liability of the County; LDS reserves the right to bring an action against the Director individually. If this offer is not accepted within thirty (30) days, it will terminate, and our client has instructed us to proceed with a lawsuit in federal district court.

John J. Dingfelder, Esquire
February 13, 1992
Page 3

Should you wish to discuss any of the foregoing, please do not hesitate to contact Jeff Aman of our office or me. We sincerely hope that litigation will not be necessary, and that this matter can be resolved amicably.

Very truly yours,



Gregory L. Williams

GLW:jac
Enclosures

cc: Mr. Don M. Sleight

SMITH & WILLIAMS

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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*ALSO ADMITTED VA BAR
**ALSO ADMITTED NY BAR

PLEASE REPLY TO TAMPA

May 24, 1991

VIA HAND DELIVERY

Commissioner Ed Turanchik, Chairman
Environmental Protection Commission
Hillsborough County Courthouse
Room 214-B
Tampa, Florida 33602

**Re: Appeal of Church of Jesus Christ of Latter-Day Saints
EPC No. 89-159**

Dear Mr. Turanchik:

As you may know, our law firm has represented the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints (the "Church") in protracted and expensive litigation over two parcels of property the Director of the Environmental Protection Commission (the "EPC") improperly claimed as jurisdictional wetlands.

The Church appealed the Director's attempt to claim its property and prevailed. Enclosed is a copy of the Findings Of Facts And Conclusions Of Law And Recommendation To The Commission For Final Order which was signed by John J. Lazzara, the Commission's designated hearing officer. The conclusions of law are listed on page 9 and 10. Mr. Lazzara concluded that the EPC failed to follow the proper methodology and departed from the essential requirements of law in the manner by which it went about claiming our client's property as "wetlands". In addition to ignoring the essential requirements of law, the Hearing Officer determined that the EPC failed to follow its own policies, and it improperly claimed the disputed property as wetlands. Moreover, the Hearing Officer determined that the Director's conduct was arbitrary, fundamentally unfair, and a denial of due process of law (see paragraph 5 on page 10). Also enclosed, per your request, is a copy of pages 72 and 73 of the deposition of Steven Mortellaro taken on January 23, 1990. The transcript confirms EPC's staff policy of recommending a jurisdictional claim of

property that does not meet the vegetative thresholds of the wetland rule. The record, including Mr. Mortellaro's trial testimony, makes it clear that our client was a victim of this improper and illegal policy. The record also makes it clear that Mortellaro explained that the disputed property did not satisfy those thresholds and the Director made the arbitrary and illegal decision to claim the property as jurisdictional even though the vegetative thresholds were not satisfied.

Although the EPC did not adopt all of the Hearing Officer's recommended conclusions of law, the transcript will clearly reflect that some of the conclusions were rejected, on advice of counsel, because the EPC was concerned about liability. The rejection of some of the conclusions was in effect an effort to protect itself against a future claim for damages.

Even though the EPC did not formally accept all of the Hearing Officer's conclusions, if our client is required to litigate its right to compensable damages, the Hearing Officer's report will be admissible in evidence to establish precisely what the Hearing Officer concluded. Similarly, the transcript of the EPC meeting and, more specifically, recorded statements by those Commissioner's rejecting those conclusions reflecting the EPC's concern with liability as the basis for rejecting those conclusions will be admissible. We believe that the Hearing Officer's findings and conclusions and recorded statements of individual Commissioners will be very compelling evidence to a jury if we are required to litigate the constitutional propriety of the Director's conduct and the liability of the EPC for damages sustained by our client resulting from that conduct. Like the Hearing Officer, we believe that a jury will find that Mr. Stewart acted arbitrarily and denied our client due process of law when he unilaterally made the decision to apply the federal plant list to attempt to continue to claim our client's property after he was advised by a member of his staff, who was sent out specifically for the purpose of reinspecting the property, that the property did not meet the requirements of the wetland rule. In addition, we believe that prior and subsequent acts by the EPC indicate a pattern of continuing harassment of our client, all of which will be presented to the jury if this matter is not resolved.

Although there are several theories of liability that our client will pursue if it is required to file suit to recover the damages it has sustained, perhaps the most significant theory of liability is 42 U.S.C. § 1983 which provides that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit and equity, or other proper proceeding for redress." (Emphasis added). Section 1983 authorizes a court to grant judicial relief, including damages and attorneys' fees, when an individuals rights are violated by a state or local official. In this case, an independent Hearing Officer, appointed, approved, hired and paid by the EPC, has already determined that

the Director's conduct was arbitrary, fundamentally unfair and a denial of due process of law, all of which are rights secured by the Constitution which would thereby trigger liability under Section 1983. Liability seems extraordinarily clear. In addition, there may be liability under other theories of state and federal law which need not be enumerated at the present time in light of the compelling evidence of violation of Section 1983 which will entitle our client to recovery of attorneys' fees and costs in addition to other elements of compensable damages.

As you know, complex litigation in state or federal court is expensive and time consuming. Although the Director does not seem prone to engage in economic analysis, that should certainly be one of the factors that the EPC considers in evaluating this claim. At one point, in a hearing before the EPC, Mr. Stewart made the statement that this is one of the most marginal wetland cases with which he has ever been involved. For your information, we have the video tape of that dialogue with the EPC if any of you are interested in reviewing it. Even though Mr. Stewart apparently recognized from his vantage that the disputed parcels were marginal wetlands, he was nevertheless willing to expend enormous resources in the way of staff time, attorneys' time, out-of-pocket costs, including those fees paid to the Hearing Officer, and time expended by the EPC to preserve what even he acknowledged were wetlands of marginal benefit. He persisted with that position and continued to waste those resources even after a member of his staff, sent to inspect the property, told him that the property did not meet the jurisdictional requirements. In addition, his investigation obviously subjected the EPC to the exposure for damages as set forth in this letter, and ultimately considerably more expenditures of time, money and resources if the case is not resolved short of litigation. It is interesting and curious that he seems to have little or no accountability for this poor exercise of judgment, if not abuse of his discretion. Hopefully, the EPC will now engage in the cost benefit analysis that the Director ignores with impunity.

As indicated, it appears to our client that he continues his program of harassment and abusive tactics. These concerns have been raised with several members of the EPC. One of the Hearing Officer's conclusions was that our client had been unfairly singled out and treated differently from other citizens of Hillsborough County by Mr. Stewart. It is obviously our client's position that each additional act of harassment, discrimination or arbitrariness constitutes a separate federal tort under Section 1983.

Our client has authorized us to communicate an offer to settle the claims resulting from the improper classification of its property as a wetland by the EPC, its failure or refusal to relinquish that claim once it was determined that the property did not meet the requirements of the wetland rule, and the EPC's liability for the constitutional torts outlined in your Hearing Officer's findings for the sum of \$73,226.76. It is my understanding that you have been provided with a calculation showing how those damages were computed. We believe that this is an extremely

reasonable position on the part of our client given the time, inconvenience and expense that our client has incurred as a result of the position taken and the improper conduct of your Director. As many of you know, the church that was to be constructed on the property had to be completely redesigned, construction was delayed, and other expenses were incurred which have been documented. Additional elements of damages that could be claimed in Section 1983 temporary taking case have not been presented, but will be if litigation ensues.

If our client is required to file suit to recover its damages, it will be seeking the recovery of future attorneys' fees and costs which could very well exceed the amount for which it is presently willing to settle. In addition to the EPC's exposure for damages, future attorneys' fees and costs, the EPC will be also required to either retain independent counsel or utilize the County Attorney's office which will involve the expenditure of additional resources. Ultimately, if this case is litigated through a jury trial, the EPC could realistically expend in excess of \$250,000.00, including payment of our client's damages, attorneys' fees, costs and defense costs incurred by the EPC.

It is unfortunate that Roger Stewart's arbitrariness and improper conduct have unnecessarily exposed the EPC to these damages. It is unfair that our client has been required to suffer tremendous delay, inconvenience and economic damages. It will be even more regrettable if the EPC is ultimately required to spend \$250,000.00 of public money to satisfy a claim that can now be settled for much less.

This offer will remain open for a period of thirty (30) days. At the end of that time, the offer will automatically terminate and we our firm will file suit to recover these and other damages.

Very truly yours,



Gregory L. Williams

GLW:amd
enclosures

cc: Mr. Don M. Sleight

ENVIRONMENTAL PROTECTION COMMISSION
OF HILLSBOROUGH COUNTY

AGENDA ITEM COVER SHEET

DATE: 2/24/92

TO: Environmental Protection Commissioners

FROM: Sandi Brooks

SUBJECT: Colony Crossing Wastewater Treatment Plant

RECOMMENDATION: Take appropriate legal action

BACKGROUND: Hillsborough Ltd. is a limited partnership registered with the state of Florida. Hillsborough Ltd. owns the Colony Crossing Shopping Center (Shopping Center) and the wastewater treatment plant and effluent disposal systems (WWTP) which serve it. Both the WWTP and the Shopping Center are located on the northeast corner of the intersection of Elliott Street and State Road 580; Section 34, Township 28, Range 17; Hillsborough County, Florida.
Continued on Page 2.

ACTION TAKEN BY THE COMMISSION

Approved Disapproved Continued/Deferred Until _____

Other: _____

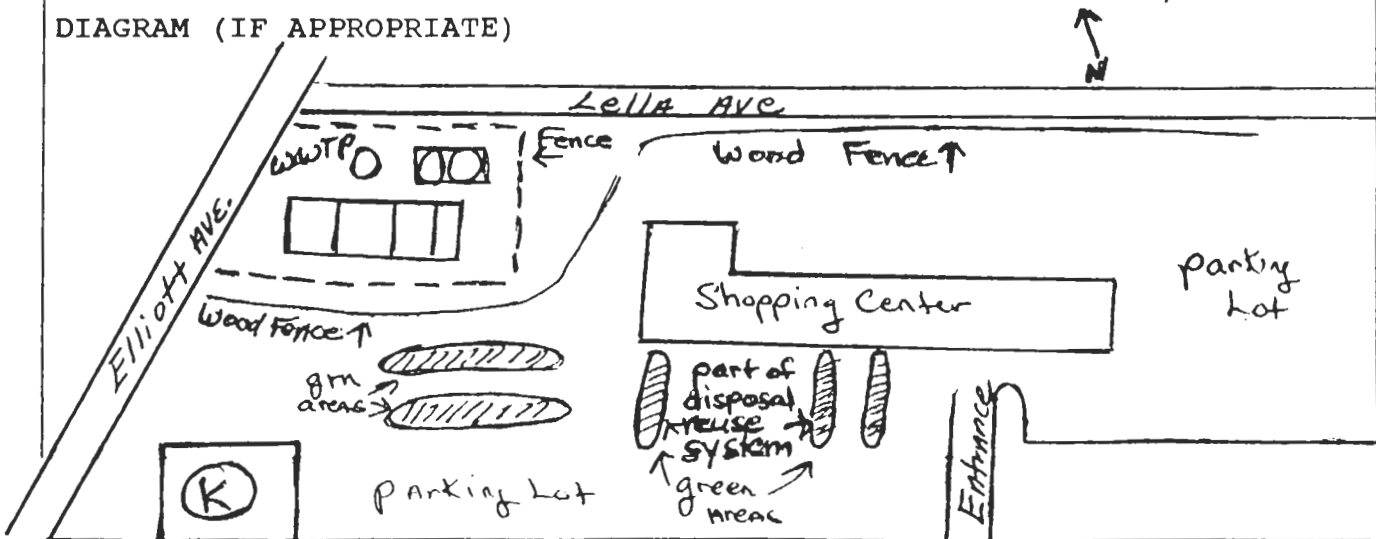
SPECIAL INSTRUCTIONS: _____

By: _____

MEETING DATE:

not to scale

DIAGRAM (IF APPROPRIATE)



SR-581 Hillsborough Ave

Background continued:

An inspection on 9/20/90 revealed that they were in violation of the following: 1. Failure to comply w/ specific condition #8 of their permit (no laundry or food establishment to be connected to the WWTP). 2. Failure to meet basic level of disinfection & failure to meet coliform units. 3. Problems w/ their disposal system (underground drip system discharging in several areas) 4. Failure to operate and maintain the WWTP (pop-ups). Enforcement was delayed since (Hillsborough LTD.) intended to abandon the plant and connect to Hillsborough County's sewer system. In addition, Hillsborough Ltd. has been operating the Colony Crossing WWTP w/out a valid permit (**permit expired 4/15/89**).

On 6/25/91 an upset occurred at the WWTP, due to a receipt of floor stripper from a Publix's Supermarket. On 6/26/91 their attorney (Mike Peterson) was contacted and informed that w/in 30 days the facility must be removed from service or a completed permit application must be received by EPC. On 9/18/91 the case came to enforcement. I had been in contact w/ Mr. Crenshaw (one of the partners) and he was very receptive to the Consent Order (C.O.). The C.O. went out in 11/91 however I received no response to the C.O. or my phone calls. The chief Counsel wrote a letter 1/92 which again received no response. Hillsborough LTD. has also filed for Chapter 11.