

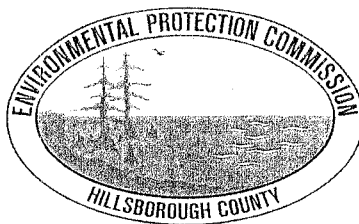
**ENVIRONMENTAL PROTECTION COMMISSION  
OF HILLSBOROUGH COUNTY  
COMMISSIONER'S BOARD ROOM  
MARCH 17, 2005  
10 AM – 12 NOON**

**ADDENDUM**

- I. **LEGAL DEPARTMENT**  
EPC v. CC Entertainment Music – Tampa LLC and Florida State Fair Authority,  
Case No. 04-11404-Authorization to Sue and Status Report on Amended Complaint A-2
  
- II. **WETLANDS MANAGEMENT DIVISION**  
Memorandum of Understanding With Southwest Florida Water Management District A-3

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

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## Supplemental EPC Agenda Item Cover Sheet

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

**Subject:** EPC v. CC Entertainment Music – Tampa LLC and Florida State Fair Authority, Case No. 04-11404  
Authorization to Sue and status report on Amended Complaint

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

**Division:** Legal Department

**Recommendation:** Reaffirm Board's previous authorization to sue and notice of filing an amended complaint.

**Brief Summary:** On December 9, 2004, the EPC met in special session and authorized the EPC staff to file suit in the Amphitheatre matter. On December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC and the Florida State Fair Authority for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheatre. The Defendant CCE has challenged the validity of the notice for the meeting held on December 9, 2004. While the meeting was properly noticed and conducted, in an abundance of caution, the EPC staff requests a reaffirmation of the authority to file a lawsuit in this matter. Furthermore, staff will discuss its intention to file a second amended complaint.

**Background:** On or about 11 a.m. December 9, 2004, the EPC met in special session and authorized the EPC staff to file suit in the Amphitheatre matter. The notice for the meeting was posted on the County website and e-mailed or faxed to dozens of media outlets on the afternoon of December 8, 2004. The meeting information was also provided to counsel for CC Entertainment Music – Tampa, LLC (CCE) on the afternoon of December 8, 2004. The December 9, 2004, meeting was held in the sunshine. CCE filed written comments regarding staff's request for authorization to sue and the CCE comments were summarized on the record by the EPC General Counsel. The meeting was not a public hearing. The EPC Board voted to authorize the lawsuit. Pursuant to Commission direction, on December 21, 2004, the EPC filed a complaint and a motion for temporary injunction against CC Entertainment Music – Tampa, LLC (CCE) and the Florida State Fair Authority (Fair) for violations of the EPC Act and Chapter 1-10, Rules of the EPC (Noise) regarding noise level violations and noise nuisance violations stemming from concerts held at the new Ford Amphitheater.

While the December 9, 2004, meeting was properly noticed and conducted, in an abundance of caution, the EPC staff requests a reaffirmation of the authority to file a lawsuit in this matter. Furthermore, staff will discuss its intention to file a second amended complaint. The parties continue to conduct settlement negotiations, but this action will assist in future litigation if necessary.

**List of Attachments:** None

## AGENDA ITEM COVER SHEET

**Date:** March 17, 2005

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

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**Description/Summary:**

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

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

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

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

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

SWFWMD has determined that the amended MOU would need to be formally adopted as a rule pursuant to chapter 120, Florida Statutes.

EPC staff is seeking a recommendation from its Board to move forward with the negotiation of final terms of the MOU, attached as Exhibit "A", with SWFWMD. Staff will provide the final proposed version of the MOU to the Board for approval prior to its execution.

**Commission Action Recommended:**

EPC staff recommends that the Board provide staff permission to move forward with negotiation of the final terms of the MOU with SWFWMD.

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

WHEREAS, the Environmental Protection Commission (EPC) and the Southwest Florida Water Management District (SWFWMD) both have authority to regulate activities affecting water pollution in Hillsborough County;

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WHEREAS, it is in their interest to coordinate their activities and eliminate duplication or unnecessary expenditures wherever possible;

WHEREAS, EPC already has a significant infrastructure specifically directed toward delineating wetlands, responding to complaints, mitigation monitoring compliance, and performing investigations within Hillsborough County; and

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WHEREAS, SWFWMD and the Florida Department of Environmental Protection have split environmental resource permitting responsibilities as per the operating agreement dated September 27, 1994, and attached hereto as Exhibit "A".

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NOW, THEREFORE, EPC and SWFWMD agree to coordinate their activities subject to that operating agreement as follows:

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1. WETLAND DELINEATIONS:

a. For environmental resource permitting review and evaluation purposes, SWFWMD and EPC will accept formal determinations of the landward extent of wetlands and other surface waters performed by either agency's staff, as long as the determination delineates all wetlands and surface waters located within the specified property boundary as legally described within an application, as provided for under Chapter 1-11, Rules of the EPC, and Chapter 40D-4, F.A.C., Basis of Review, Section 3.4, and in accordance with the statewide methodology established by Chapter 62-340, F.A.C., as ratified in section 373.4211, Florida Statutes.

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b. To enable each agency to maintain current information on wetland delineation activities in Hillsborough County, each agency, upon request, will provide the other with copies of surveys or other appropriate documentation, reflecting each approved wetland delineation performed by its staff in Hillsborough County subsequent to the effective date of this agreement. SWFWMD will provide copies to EPC of all proposed final agency actions acknowledging formal wetland determinations performed by the SWFWMD in Hillsborough County prior to the agency action becoming final.

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2. COMPLAINT INVESTIGATION:

a. When SWFWMD staff observes or receives a complaint regarding unpermitted activities in, on, or over wetlands or other surface waters, they will forward the

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complaint to EPC as soon as possible for investigation. SWFWMD will not distinguish between cases involving thresholds, or possible state permit exemptions in notifying EPC. However, SWFWMD will notify EPC but not forward to EPC complaints regarding projects permitted by SWFWMD and EPC may choose to proceed under its own authority to investigate these complaints. EPC will provide SWFWMD with a copy of all complaint investigation forms.

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b. In all cases referenced above, except those involving a project permitted by SWFWMD, EPC will investigate on behalf of SWFWMD and, where appropriate, issue a Warning Notice or appropriate enforcement document. EPC will forward a copy of the Warning Notice or enforcement document to SWFWMD for tracking. If the complaint is not substantiated or if a minor violation is resolved prior to the issuance of a Warning Notice, EPC will provide SWFWMD with a copy of the closed complaint form. SWFWMD may choose to intervene and independently pursue resolution in any case, but specifically when correction of the violation requires mitigation, or if the unpermitted activities involve construction of appurtenances or works or involve concerns with flooding or stormwater treatment.

3. MITIGATION COMPLIANCE MONITORING:

a. As of February 2, 2004, the date of adoption of Chapter 62-345, F.A.C., SWFWMD will transfer Environmental Resource Permit ("ERP") mitigation compliance responsibilities to EPC for compliance and monitoring responsibility for all wetland impacts occurring in Hillsborough County which are subject to Chapter 1-11, Rules of the EPC.

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EPC and SWFWMD will strive to implement a uniform set of mitigation success criteria guidelines which will be used to review compliance with permitted conditions. Site specific project variance from such uniform guidelines will be reviewed by staff from both agencies prior to any deviation from the guidelines.

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b. Prior to providing an ERP mitigation permit to EPC for compliance and monitoring oversight under this section, and prior to authorizing commencement of the required monitoring and maintenance period, both agencies will strive to conduct a joint initial compliance inspection of the site or sites within thirty (30) days of receipt of the construction completion report to ensure construction in accordance with the permitted plans. SWFWMD will formally transfer the ERP permit to EPC within thirty (30) days of the initial compliance inspection.

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c. Upon transfer of an ERP mitigation permit from SWFWMD to EPC, EPC staff will respond with a timely written acknowledgment of permit receipt. All correspondence sent to permittees, or their agents, by either agency in regards to the monitored file shall be copied to the other agency.

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d. EPC will provide quarterly tracking reports to SWFWMD documenting status of all open ERP mitigation permits being monitored by EPC. The permittee will be responsible for providing SWFWMD copies of all monitoring reports.

SWFWMD will provide timely written response to EPC upon receipt of a monitoring report.

- e. Minor modifications to a permitted mitigation plan, such as changes in planting species, may be accomplished through written correspondence to the permitted entity or their agent. SWFWMD will be copied in a timely manner on all correspondence.
- f. Major modifications to a permitted mitigation plan will require prior SWFWMD review and approval. Any EPC approval will be conditioned on SWFWMD permit modification approval. All major modification approvals must be copied to EPC. Deleted: the
- g. Upon determination that a mitigation site has successfully complied with all EPC permitting conditions, EPC staff will provide written notice to SWFWMD of the site's release from EPC's monitoring and maintenance requirements and EPC's intent to issue a Certificate of Completion for the site. Any Certificate of Completion issued to a permittee subject to ERP permitting conditions will additionally specify that specific release is also required by SWFWMD, and that additional monitoring or maintenance conditions may be required. Upon issuance of the Certificate of Completion, EPC will not conduct further mitigation compliance activities for the site.
- h. SWFWMD may opt to maintain ERP mitigation compliance responsibility for specific projects upon written notification to EPC.
- i. Neither agency may release a Conservation Easement required to be placed on a mitigation site subject to the jurisdiction of EPC without written approval from the other agency. Deleted: the
- h. For projects permitted prior to the adoption of Chapter 62-345, F.A.C., in an effort to enhance consistency where possible, EPC and SWFWMD will strive to coordinate site investigations and meetings regarding mitigation compliance, particularly where mitigation appears not to be in compliance. EPC and SWFWMD will participate in joint training and information exchange to facilitate this coordination.

4. PRE-APPLICATION MEETINGS:

In an effort to streamline the application process between agencies, SWFWMD and EPC will notify any applicant that the other agency may attend pre-application meetings if the applicant chooses. Deleted: the  
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This agreement will take effect upon the signature by the Executive Director of EPC and the Governing Board Chairman of SWFWMD. The agreement will be reviewed by the signatory agencies two (2) years subsequent to its date of execution to review its effectiveness. This agreement can be modified by mutual agreement of the parties, or revoked by either party at any time upon notice to the other. Deleted: the  
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Protection Commission

Management District

Richard D. Garrity, Ph.D.  
EPC Executive Director

Roy G. Harrell, Jr.  
Chairman, Governing Board

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