

RECORDS RETENTION SCHEDULE

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SCHEDULE NO. 1

Agency No. N0001073

Agency Name: Environmental Protection Commission of Hillsborough County

Record Series Title, Description, and Retention

If approved, this records retention schedule remains in effect until there is a change in series content or until other factors are introduced which would affect the retention period, at which time a new request for an individual records retention schedule should be submitted for approval. If a new general records schedule is later established that requires an equal or longer retention period for the same records, that general records schedule supersedes this individual records retention schedule.

Approved

Environmental Regulatory Records

This record series documents the environmental regulatory and outreach activities conducted by the Environmental Protection Commission of Hillsborough County (EPC) in and/or affecting federal or state-delegated programs and local regulatory programs. The series may include, but is not limited to, permitting, compliance, and enforcement records for air, waste, wetlands, and water regulatory programs; environmental restoration or outreach projects; and any related records, reviews, correspondence, and supporting documents.

Retention: a) **Record Copy.** 5 fiscal years after project completed or case closed provided applicable audits have been released.
b) **Duplicates.** Retain until obsolete, superseded or administrative value is lost.

Disapproved

Comments:

Schedule Review

Analyst Review T. McLean -12/21/2012 *T. McLean*

Archivist Review *E. C. [Signature]* 12/21/12

Supervisor Review *E. C. [Signature]* 12/21/12

Schedule Approval

Judith A. Rung 12/21/12

Director

Date

Division of Library and Information Services
Florida Department of State

STATE OF FLORIDA DEPARTMENT OF STATE Division of Library and Information Services Form LSSE-105REff.2-09 Rule 1B-24.003, F.A.	Request for RECORDS RETENTION SCHEDULE	<i>Department of State Use Only</i> SCHEDULE NO. Agency No. <u>N0001073</u> <input checked="" type="checkbox"/> New Schedule <input type="checkbox"/> Revise Existing Schd #
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2012 DEC 18 AM 10:57

Agency Information

1. Agency Name: Environmental Protection Commission- Hillsborough Division: Agency-wide Bureau:	2. RMLO Contact Information Name: Ricardo Muratti Phone: 813 627 2600 E-mail: murattir@epchc.org Address: EPC Legal Department 3629 Queen Palm Drive Tampa, Florida 33619
3. Custodian Name: Richard Garrity, PhD Phone: 813 627 2600	

Record Series Information

Retention schedules are established for record series, regardless of media or format. A record series is a group of related public records arranged under a single filing arrangement or kept together as a unit (physically or intellectually) because they consist of the same form, relate to the same subject or function, result from the same activity, document a specific type of transaction, or have some other relationship arising from their creation, receipt, or use.

4. Proposed Record Series Title. Provide a brief phrase summarizing the form, function and/or subject of the records, without using agency jargon or abbreviations.

ENVIRONMENTAL REGULATORY RECORDS FOR THE ENVIRONMENTAL PROTECTION COMMISSION

5. Record Series Description. Provide a general description of the record series, including its purpose and use. This information should enable someone not familiar with the record series to identify it and understand its contents. Please attach any related forms or other documentation.

This record series consists of permit applications, permits, reviews, compliance and enforcement documents, and supporting documents and correspondence resulting from environmental regulatory and outreach activities conducted by the Environmental Protection Commission of Hillsborough County (EPC) in and/or affecting federal or state-delegated programs and local regulatory programs. The series may include, but is not limited to, permitting, compliance, and enforcement records for air, waste, wetlands, and water regulatory programs; environmental restoration or outreach projects; and any related records, reviews, correspondence, and supporting documents.

6. What is the primary purpose of this record series? *Administrative* *Legal* *Fiscal*

Is this record series subject to audit? *Yes* *No*

List any federal, state, or local statutes, laws, ordinances, rules or other legal or regulatory requirements specifically relating to this record series. Please attach copies, if available.

Chp. 403, Florida Statutes and Chp. 84-446, Laws of Florida as amended (84-446 is attached)

Agency Recommended Retention

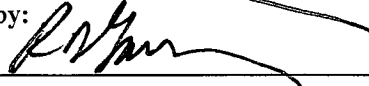
7. Based on your agency's knowledge of the record series and its function, what is your agency's recommended retention period?

Record Copy: 5 fiscal years after completion of project provided applicable audits have been released.

Duplicate Copies: Retain until obsolete, superseded, or administrative value is lost.

Agency Authorization

8. Authorized by:

 Signature	Ex Dir. Title	<u>12.13.12</u> Date
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PLEASE SUBMIT TO: Florida Department of State
 State Library and Archives of Florida
 Mail Station 9A
 Tallahassee, Florida 32399-0250

Please note that this is a retention schedule request and that the schedule is not available for use until reviewed and approved by the Department of State. You will be notified when this review is complete.

**SPECIAL ACT
CHAPTER 84-446
LAWS OF FLORIDA
AS AMENDED BY CHAPTER 87-495**

- Section 1.** Short Title.
- Section 2.** Declaration of Legislative Intent.
- Section 3.** Definitions.
- Section 4.** Creation of Hillsborough County Environmental Protection Commission.
- Section 5.** Environmental Protection Commission; Duties and Powers.
- Section 6.** Hearing Officer; Duties and Powers.
- Section 7.** Environmental Director.
- Section 8.** Environmental Director; Duties and Powers.
- Section 9.** Appeals From Actions or Decisions of Environmental Director.
- Section 10.** Reporting of Sources.
- Section 11.** Permits May Be Required.
- Section 12.** Sampling and Testing.
- Section 13.** Open Burning Prohibited.
- Section 14.** Violations; Citations; Orders of the Director.
- Section 15.** Emergency Order; Penalties.
- Section 16.** Nuisances Prohibited.
- Section 17.** Prohibitions, Violation, Penalty, Intent.
- Section 18.** Enforcement; Procedure; Remedies; Proceedings for Injunction.
- Section 19.** Additional Civil Liability; Assessment of Damages; Joint and Several Liability; Pollution Recovery Fund.
- Section 20.** Appropriations.
- Section 21.** Construction of Act.
- Section 22.** Consolidation of Governments.
- Section 23.** Severability.
- Section 24.** Repealer.
- Section 25.** Effective Date.

Be it enacted by the Legislature of the State of Florida:

SECTION 1. SHORT TITLE.

This act may be known and cited as the "Hillsborough County Environmental Protection Act.

SECTION 2. DECLARATION OF LEGISLATIVE INTENT.

The Legislature finds and declares that the reasonable control and regulation of activities which are causing or may reasonably be expected to cause pollution or contamination of air, water, soil and property, or cause excessive and unnecessary noise may be necessary for the protection and preservation of the public health, safety, and welfare. It is the intent and purpose of this act to designate the board of county commissioners as the environmental protection commission of Hillsborough County to provide and maintain for the citizens and visitors of said county standards which will insure the purity of all waters and soils consistent with public health and public enjoyment thereof, the propagation and protection of wildlife, birds, game, fish, and other aquatic life, atmospheric purity and freedom of the air from contaminants or synergistic agents injurious to human, plant, or animal life, and freedom from excessive and unnecessary noise which unreasonably interferes with the comfortable enjoyment of life or property or the conduct of business.

SECTION 3. DEFINITIONS.

As used in this act and said rules and regulations, the following words and phrases shall have the following meanings, unless some other meaning is plainly indicated:

- (1) "County" means Hillsborough County, Florida.
- (2) "Air contaminants" means a particulate matter as defined herein, gas, or odor, including, but not limited to, smoke, charred paper, dust, soot, grime, carbon, or any other particulate matter, or irritating, malodorous, or noxious acids, fumes, or gases, or any combination thereof, but shall not include uncombined water vapor.

(3) "**Air pollution**" means the presence in the outdoor atmosphere of one or more air contaminants or combination thereof in such quantities and of such duration as to be injurious to human, plant, or animal life, or property, or which unreasonably interfere with the comfortable enjoyment of life or property or the conduct of business.

(4) "**Dusts**" means minute solid particles released into the air by natural forces or by mechanical processes, including, but not limited to, crushing, grinding, milling, drilling, demolishing, shoveling, conveying, covering, bagging, and sweeping.

(5) "**Emission**" means the act of passing into the atmosphere an air contaminant or gas stream which contains or may contain an air contaminant, or the material so passed to the atmosphere.

(6) "**Gas**" means a formless fluid which occupies space and which can be changed to a liquid or solid state only by increasing pressure with decreased or controlled temperature, or by decreased temperature with increased or controlled pressure.

(7) "**Mist**" means a suspension of any finely divided liquid in any gas.

(8) "**Nuisance**" includes the use of any property, facilities, equipment, processes, products, or compounds, or the commission of any acts, that cause or materially contribute to:

(a) The emission into the outdoor air of dust, fumes, gas, mist, odor, smoke, vapor, or noise, or any combination thereof, of such character and in such quantity or level as to be detectable by a considerable number of persons or the public, so as to interfere with such person or the public health, repose, or safety by causing severe annoyance or discomfort, tending to lessen normal food and water intake, producing irritation of the upper respiratory tract, producing symptoms of nausea, or being offensive or objectionable to or causing injury or damage to real property, personal property, or human, animal, or plant life of any kind; or which interferes with the normal conduct of business or is detrimental or harmful to the health, comfort, living conditions, welfare, and safety of the inhabitants of the county.

(b) The discharge into any of the waters of the county of any organic or inorganic matter or deleterious substances or chemical compounds or thermal energy, or any effluent containing the foregoing, in such quantities, proportions, or accumulations as to be detectable at any point beyond the property limits of the premises occupied or used by the person responsible for the source thereof, so as to interfere with the health, repose, or safety of any considerable number of persons or the public by causing severe annoyance or discomfort, tending to lessen normal food and water intake, producing symptoms of nausea, or being offensive or objectionable to or causing injury or damage to real property, personal property, or human, plant, or animal life of any kind; or which interferes with the normal conduct of business or is detrimental or harmful to the health, comfort, living conditions, welfare, and safety of the inhabitants of the county.

(c) The placement in or upon any soils of the county or the maintenance of any accumulation in or upon any soils of the county of any organic or inorganic matter, garbage, rubbish, refuse, or other solid or semi-solid material of a deleterious nature in such quantities, proportions, or accumulations as to be detectable beyond the property limits of the premises, so as to interfere with the health, repose, or safety of any considerable number of persons or the public by causing severe annoyance or discomfort, or being offensive or objectionable to or causing injury or damage to real property, personal property, or human, animal, or plant life of any kind; or which interferes with the normal conduct of business or is detrimental or harmful to the health, comfort, living conditions, welfare, and safety of the inhabitants of the county.

(d) Any violation of the provisions of the act which becomes detrimental to health or threatens danger to the safety of persons or property, or gives offense to, is injurious to, or endangers the public health and welfare, or prevents the reasonable and comfortable use and enjoyment of property by any considerable number of the public.

(9) "**Odor**" means that property of a substance

which materially offends the sense of smell.

(10) **"Particulate matter"** means any material which, at standard conditions, is emitted into the atmosphere in a finely divided form as liquid or solid or both, but shall not include uncombined water vapor.

(11) **"Person"** includes any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, or any other entity whatsoever, or any combination of such, jointly or severally.

(12) **"Smoke"** means the solid particles produced by incomplete combustion of organic substances, including, but not limited to, particles, fly ash, cinders, tarry matter, soot, and carbon.

(13) **"Vapor"** means any mixed material in a gaseous state which is formed from a substance, usually a liquid, by increased temperature.

(14) **"Waste discharge"** means any outfall, ditch, pipe, soakage pit, drainage well, drainfield, or any other method or device by which treated or untreated sewage, industrial wastes, or other wastes can enter the surface waters, tidal salt waters, or ground waters, so as to cause water pollution as herein defined.

(15) **"Water pollution"** means any contamination, destruction, or other alteration, or any activity which contributes to such contamination, destruction, or other alteration, of any physical, chemical, or biological feature or property of any waters of the county, including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the county as will create or may reasonably be expected to create a nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(16) **"Open burning"** means any fire wherein the products of combustion are emitted into the open air, and are not directed thereto through a

stack or chimney.

(17) **"Rules and regulations"** means rules and regulations adopted pursuant to this act.

(18) **"Board"** means the Board of County Commissioners of Hillsborough County.

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

(20) **"Hearing officer"** means that person appointed by the commission in the manner prescribed herein.

(21) **"Noise pollution"** means the presence of noise in excessive or unnecessary amount or of such duration, wave frequency, or intensity as to be injurious to human or animal life or property; or other conduct of business.¹

(22) **"To mitigate"** or **"mitigation"** means activity designed and technologically demonstrated as practical to restore, create, or replace the environmental functions provided by an area before pollution occurred.

SECTION 4. CREATION OF HILLSBOROUGH COUNTY ENVIRONMENTAL PROTECTION COMMISSION.

The Environmental Protection Commission is hereby created and established. The commission shall consist of the duly elected members of the Hillsborough County Board of County Commissioners.

SECTION 5. ENVIRONMENTAL PROTECTION COMMISSION; DUTIES AND POWERS.

The commission shall have the following duties, functions, powers and responsibilities:

(1) To implement and enforce the provisions of this act;

(2) To adopt, revise and amend from time to time appropriate rules and regulations reasonably necessary for the implementation and effective enforcement, administration and interpretation of the provisions of this act and to provide for the effective and continuing control and regulation of air, water and noise pollution in the county within the framework of this act, and to provide for appropriate fees to be charged by the commission for the services rendered under the provisions of this act. No such rules or regulations shall be adopted or become

effective, including amendments, until after a public hearing has been held by the commission pursuant to notice published in a newspaper of general circulation in the county at least ten (10) days prior to the hearing, and then until the rules and regulations have been filed pursuant to law.

(3) To make continuing studies and periodic reports and recommendations for the improvement of air, water and noise in the county, and to work in cooperation with the Department of Environmental Regulation² and other appropriate agencies and groups interested in the field of air, water and noise pollution.

(4) To investigate air pollution, water pollution and noise pollution control programs and activities in operation in other areas and to make recommendations for the improvement of the regulation, administration and enforcement of pollution controls in the county; to publicize the importance of adequate pollution controls, to hold public hearings, discussions, forums and institutes, and arrange programs for the presentation of information by experts in the field of air, water and noise pollution, and to visit and study pollution control programs conducted in other areas, subject to budget limitations.

(5) To issue subpoenas to compel the attendance of witnesses at any hearing who may have information relevant to any issue before the commission.

(6) To designate a hearing officer, who shall be a member of The Florida Bar, to hear appeals from actions or decisions of the environmental director, and any matters relating to this chapter which the Commission may refer.

SECTION 6. HEARING OFFICER; DUTIES AND POWERS.

(1) A hearing officer shall be appointed by the commission. The hearing officer shall hear appeals of actions or decisions of the environmental director and determine all factual disputes relating to compliance with this act and rules and regulations promulgated pursuant to this act. The hearing officer also shall hear and determine any matters relating to this act which the commission may delegate to said officer, provided, however, that all hearings for the

adoption of rules shall be before the commission. All hearings shall be public. The hearing officer shall have the power to issue notices of hearings, subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths and take testimony as may be necessary. A written decision containing findings of fact, conclusions of law and recommendations shall be promptly rendered to the commission in each case.

(2) The hearing officer shall give probative effect to evidence which would be admissible in civil proceedings in the courts of this state, but in receiving evidence due regard shall be given to the technical and highly complicated subject matter which the commission and director must handle and the exclusionary rules of evidence shall not be used to prevent the receipt of evidence having substantial probative effect. Otherwise effect shall be given to the rules of evidence recognized by the law in this state.

(3) The hearing officer shall be compensated for his services from the general revenue fund of Hillsborough County and such compensation shall be set by the commission.

SECTION 7. ENVIRONMENTAL DIRECTOR.

The Hillsborough County environmental protection commission shall appoint an environmental director. Said environmental director shall have at least a bachelor's degree from an accredited university and possess experience in such a field which shall, in the judgment of the commission, qualify him to discharge the duties imposed by this act. The environmental director shall be subject to the supervision of the commission and shall serve at the pleasure of the commission. Compensation for such director shall be determined by the commission and paid from the general funds of Hillsborough County.

SECTION 8. ENVIRONMENTAL DIRECTOR; DUTIES AND POWERS.

The duties, functions, powers, and responsibilities of the environmental director, or his agents, shall include the following:

(1) Serve as technical secretary to the

commission, to handle correspondence, investigations and prepare reports and data between meetings.

(2) The enforcement of the provisions of this act and the rules and regulations.

(3) Investigation of complaints, study and observation of air, water and noise pollution conditions, and recommendations as to institution of actions necessary to abate nuisances caused by air, water and noise pollution, as to prosecution of proceedings for violations of this act.

(4) Making of inspections of property, facilities, equipment, and processes to determine whether the provisions of this act are being complied with.

(5) To intervene for the purpose of providing environmental impact statements, recommendations, and advice in matters having or likely to have an effect upon the environment of Hillsborough County.

(6) Establishing, operating, and maintaining a continuous program for monitoring air, water and noise pollution by means of countywide air and water quality surveillance networks designed to provide accurate data and information as to whether the requirements of this act are being complied with and whether the level of air, water and noise pollution is increasing or decreasing throughout the county.

(7) Publication and dissemination of information to the public concerning air, and water and noise pollution.

(8) Cooperation with appropriate public agencies.

(9) To enter upon any public or private premise or carrier during regular business hours in the performance of his duties relating to pollution control in order to inspect and copy records pertaining to same.

(10) To sample, test, inspect, and make analyses with respect to pollution control within the provisions of this law and rules adopted hereunder, at any time and place and to such an extent as he may deem necessary to determine whether possible sources of pollution are in compliance with the provisions of this law.

(11) To perform all other duties necessary to effect the purpose of this act, including the

implementation of those duties of the commission set forth in section 5(3), (4), and (5) and sections 18 and 19.

SECTION 9. APPEALS FROM ACTIONS OR DECISIONS OF ENVIRONMENTAL DIRECTOR.

Any person aggrieved by an action or decision of the environmental director may appeal to the commission by filing within 20 days after the date of the action or decision complained of, a written notice of appeal which shall set concisely the action or decision appealed from and the reasons or grounds for the appeal. The notice of appeal shall be filed with the chairman of the commission. The hearing officer shall set such appeal for hearing at the earliest reasonable date, and cause notice thereof to be served upon the appellant and the environmental director. The hearing officer shall file his report and recommendations with the commission and serve copies on the parties. The parties may serve exceptions to the report within 10 days from the date it is served on them. If no exceptions are filed within the period, the commission shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party. In such proceeding to review exceptions to the hearing officer's report, the commission shall promptly render a written decision affirming, reversing or modifying the decision of the hearing officer, provided that the commission shall not take any action which conflicts with or nullifies any of the provisions of this act or rules enacted pursuant to the act. Any person aggrieved by the final administrative decision may seek review in accordance with the Administrative Procedure Act, Chapter 120, Part III, Florida Statutes, 1961.

SECTION 10. REPORTING OF SOURCES.

Any person engaging in any activity or operation which may be a source of air, water or noise pollution shall at the written request of the environmental director file with the commission reports on a form approved by the commission containing information relating to the processes and methods of manufacture; the composition

and source of airborne effluents; rate and period of emissions; and such other information as the commission may prescribe.

SECTION 11. PERMITS MAY BE REQUIRED.

The commission may adopt rules and regulations making it unlawful for any person to construct, alter, expand or operate any installation or plant which, through its operation or maintenance, may emit, discharge or permit to escape pollutants or contaminants into the air, water, soil or property without first obtaining a permit from the environmental director as may be provided by such rules and regulations. Commencing construction or operation under such permit to construct or to operate shall be deemed acceptance of all the conditions so specified.

SECTION 12. SAMPLING AND TESTING.

Any person who may be responsible for the emission of air, water or noise pollution from any source shall, upon request of the environmental director, provide in connection with such sources and related source operations, such sampling and testing facilities exclusive of instruments and sensing devices as may be necessary for the proper determination of the nature, extent, quantity and degree of such pollution. The environmental director may also require the person responsible for the source of contaminants to conduct tests which will show the contaminant emissions from the source and to provide the results of said tests to the environmental director. These tests shall be carried out under the supervision of the environmental director or his designated representative and at the expense of the person responsible for the source of contaminants.

SECTION 13. OPEN BURNING PROHIBITED.

No person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open burning except:

(1) Fires or campfires used only for noncommercial preparation of food, for recreational purposes, for ceremonial occasions,

or on cold days for warming of outdoor workers, as long as a nuisance is not created.

(2) Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, including the disposal of dangerous materials where there is no safe alternate method of disposal, or in the instruction of public employees in the methods of fighting fires, which fire is, in the opinion of such official, necessary.

(3) Fires set for the purpose of instruction in the methods of fighting fires, provided prior permission has been granted by a public officer in the performance of official duty.

(4) Fires otherwise permitted by rule of the commission.

SECTION 14. VIOLATIONS; CITATIONS; ORDERS OF THE DIRECTOR.

Whenever evidence has been obtained or received establishing that a violation of this act or any rules or regulations adopted pursuant to this act is occurring or has been committed, the environmental director shall issue a citation to cease the violation, and cause the same to be served upon the violator by personal service or certified mail or by posting a copy in a conspicuous place on the premises of the facility causing the violation. Such citation shall specify the provision of law, rule, regulation, permit, certification or order of the commission or director alleged to be violated and shall include a summary of the facts alleged to constitute a violation thereof. Such citation shall specify a reasonable time within which the violation shall be rectified or stopped, commensurate with the circumstances. If the violation is not stopped within the time so specified, or reasonable steps taken to rectify the violation, the environmental director shall have the power and authority to issue an order requiring the violator to cease the activity or suspend operation of the facility causing the violation until the violation has been corrected. The environmental director may include with a citation an order for restoration or other corrective action, provided that no order for restoration shall become effective until after

service and an administrative hearing before the hearing officer if requested. Failure to request an administrative hearing by service of notice of appeal within 20 days after service of the order shall constitute a waiver thereof, and any such unappealed order for restoration shall become an order of the commission by operation of law.

**SECTION 15. EMERGENCY ORDER;
PENALTIES.**

In the event a violation of this act or the rules and regulations promulgated pursuant to this act creates an immediate health hazard or threatens immediate serious damage to the public health, or threatens or causes irreparable injury or damage to aquatic life or property, the environmental director shall have the power and authority to order immediate cessation of the operations causing such conditions. Any person receiving such an order for cessation of operations shall immediately comply with the requirements thereof. It shall be unlawful for any person to fail or refuse to comply with the requirements thereof. It shall be unlawful for any person to fail or refuse to comply with an emergency order issued and served under the provisions of this section.

SECTION 16. NUISANCES PROHIBITED.

No person shall cause, let, permit, suffer, or allow any emission, placement, or discharge in or upon the soils or into the atmosphere or waters of any substance or thermal energy, or commit any act, affecting soils, the air, or waters, which causes or may reasonably be expected to cause injury, detriment, or nuisance to any person or the public or which endangers the comfort, repose, health, or safety of any person or the public. Each day such violation exists shall constitute a separate offense.

**SECTION 17. PROHIBITIONS;
VIOLATION; PENALTY; INTENT.**

(1) It is unlawful for any person:

(a) To cause or to take such action as may reasonably be expected to cause air, water or noise pollution in Hillsborough County, or to otherwise violate any other provision of this act, or any rules adopted by the commission

pursuant to this act.

(b) To violate or fail to comply with any order of the director or commission, including orders or rules fixing standards for noise, or air or water quality.

(2) Violation is punishable by a civil penalty of not more than \$5,000 for the first offense and of not more than \$5,000 for each offense thereafter. Each day during any portion of which such violation occurs constitutes a separate offense. Failure of any offender to pay any fine imposed under this section within a time set by the court when imposing said fine shall be evidence of an intent to violate orders of the commission and shall enable the court to enter an order for the offender to cease from doing business or carrying on operations within Hillsborough County.

(3) The violation of any provision of this act is declared to be a criminal offense and misdemeanor within the meaning of s. 775.08, Florida Statutes, and shall be punishable as provided by law.

(4) It is the legislative intent that the civil and criminal penalties and fines imposed by the court be of such amount as to insure immediate and continued compliance with this act and rules and regulations pursuant thereto.

**SECTION 18. ENFORCEMENT; PROCE-
DURE; REMEDIES; PROCEEDINGS FOR
INJUNCTION.**

The following remedies shall be available for violation for this chapter:

(1) Judicial remedies:

(a) The commission may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant and aquatic life caused by any violation; and

(b) The commission may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$5,000 per offense, provided, that the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

(c) It shall not be a defense to or ground for dismissal of these judicial remedies for damages and civil penalties that the commission has failed to exhaust all administrative remedies, has failed to serve a notice of violation or has failed to hold an administrative hearing prior to the institution of a civil action.

(2) Administrative remedies:

(a) The environmental director may institute administrative proceedings for abatement and for restoration or other correction by service of a citation to cease and order for restoration as provided in section 14.

(b) The environmental director may institute administrative proceedings to establish liability and to recover damages by written request to the commission setting forth the provision of law, rule, regulation, permit, certification or order alleged to be violated and a summary of the facts alleged to constitute a violation thereof. The request shall be served upon the alleged violator by personal service or certified mail or by posting a copy in a conspicuous place on the premises of the violation, and shall include a notice of the time and place when the request will be heard by the commission. After a hearing the violator may be ordered by the commission to pay a specified sum as damages for any injury to the air, waters, or property, including animal, plant, or aquatic life caused by any violation. Judgment upon the amount of damages may be entered in any court having jurisdiction thereof and may be enforced as any other judgment. Parties to an administrative proceeding for damages shall be afforded all rights of discovery

permitted by the Florida rules of civil procedure, and appropriate orders may be issued to effectuate the purposes of discovery.

(3) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law or this act.

(4) Every order of the commission is legally enforceable, binding and reviewable only in accordance with the Administrative Procedure Act, chapter 120, Part III, Florida Statutes, 1961.

(5) The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this

chapter or any rule, regulation, permit, certification, or order, to enjoin any violation specified in section 16 or section 17(1), and to seek injunctive relief to protect or restore the air, waters, and property, including animal, plant and aquatic life from injury caused or threatened by any violation.

(6) All the judicial and administrative remedies in this section and section 14, as amended, are independent and cumulative except that the judicial and administrative remedies to recover damages are alternative and mutually exclusive.

SECTION 19. ADDITIONAL CIVIL LIABILITY; ASSESSMENT OF DAMAGES; JOINT AND SEVERAL LIABILITY; POLLUTION RECOVERY FUND.

(1) Whoever causes air, water or noise pollution or damage to the animal, or plant life of Hillsborough County, or other damage to said air or waters is liable to the county for such damages and the reasonable costs and expenses of the county or commission incurred in tracing the source of the pollution or damage and in restoring the air or waters or plant or animal communities to their former condition.

(2) Upon the request of the environmental director or any proper county officer or agency or the alleged violator, the commission may consider and assess these damages. If the amount so assessed is not paid within a reasonable time as prescribed by the commission, the commission may institute civil action in the appropriate court for a judicial determination of liability and damages.

(3) Nothing herein shall give the commission the right to bring an action on behalf of any private person. Nothing herein shall prohibit the commission from proceeding forthwith to obtain a judicial determination of the liability and damages. No finding, written report or recommendation of the commission made pursuant to this section shall be admissible in evidence in any action.

(4) Whenever two or more persons cause air, water or noise pollution in violation of this chapter or any rule, regulation or order of the commission, or otherwise violate this act, so that

the damage is indivisible, each violator shall be jointly and severally liable for such damage and for the reasonable cost and expenses incurred in tracing the source of discharge or damage, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including the animal, plant, and aquatic life to their former condition; provided, however, that if said damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage attributable to his violation.

(5) There is hereby created a pollution recovery fund which is to be supervised and used by the commission to restore polluted areas of the county, as defined by the commission, to the condition they were in before pollution occurred, to mitigate the effects of pollution, or to otherwise enhance pollution control activities within the county. The fund shall consist of all moneys, excluding costs and expenses, recovered by the commission or director in an action against any person who has polluted or engaged in activity in violation of this act or any activity tending to pollute the air, soil, or water of the county. The fund moneys shall be disbursed first to pay all amounts necessary to restore or mitigate the respective polluted areas which were the subjects of commission action, where such restoration or mitigation could not be obtained from the violator. Any moneys remaining in the fund shall then be used by the commission, as it sees fit, to pay for any work needed to restore or mitigate areas which require more money than the commission was able to obtain by court action or otherwise to restore or mitigate areas in which the commission brought enforcement action but was unable to recover any moneys from the alleged violators, or to otherwise enhance pollution control activities within the county. An amount up to 10 percent of the average annual balance of the fund may be disbursed for monitoring past restoration or mitigation. An amount up to 50 percent of the annually collected funds may be disbursed to the commission's Artificial Reef Program.

SECTION 20. APPROPRIATIONS.

The board of county commissioners of Hillsborough County shall annually appropriate sufficient moneys as they shall deem appropriate to carry out the purposes of this act. In making such appropriations and in expending such funds, the board of county commissioners shall not be limited by the provisions of section 7 of chapter 22323, Laws of Florida, 1943, section 1 of chapter 57-1391, Laws of Florida, and section 1 of chapter 63-1391, Laws of Florida. The appropriation, budgeting and expenditure of such funds is hereby declared to be for a public purpose. The commission may also accept any grant or donation for the purposes of this law.

SECTION 21. CONSTRUCTION OF ACT.

The provisions of this act shall be liberally construed in order to effectively carry out the purposes of this act in the interest of public health, safety and general welfare; provided the provisions of this act are not intended and shall not be construed as superseding or conflicting with any statutory provisions relating to, or rules and regulations promulgated by, the Department of Health and Rehabilitative Services, and the Department of Environmental Regulation, but shall be construed as implementing and assisting the enforcement thereof.

SECTION 22. CONSOLIDATION OF GOVERNMENTS.

In the event of the consolidation of governments of the City of Tampa and Hillsborough County, all powers, functions, duties, responsibilities, obligations and properties of the commission shall be transferred to and vested in the legislative branch of such consolidated government automatically by operation of law.

SECTION 23. SEVERABILITY.

It is declared to be the legislative intent that, if any section, subsection, sentence, clause or provision of this act is held invalid, the remainder of the act shall not be affected.

SECTION 24. Chapter 67-1504, Laws of Florida; chapter 69-1149, Laws of Florida;

chapter 71-681, Laws of Florida; chapter 72-563, Laws of Florida; and chapter 73-496, Laws of Florida; are hereby repealed.

SECTION 25. This act shall take effect upon becoming a law.

Editor's Notes:

1) In accordance with a 13th Judicial Circuit Court ruling in Case No. 04-11404 on 2/25/05 the Act was amended as reflected by the strikethrough formatting below:

Section 3 (21) "Noise pollution" means the presence of noise in excessive or unnecessary amount or of such duration, wave frequency, or intensity as to be injurious to human or animal life or property; ~~or which unreasonably interferes with the comfortable enjoyment of life or property;~~*or other conduct of business.

2) The Department of Environmental Regulation was reorganized and is known as the Department of Environmental Protection.