

January 27, 1999

Memorandum

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TO: Palm Beach County NPDES Permittees  
FROM: Alan D. Wertepny, P.E.  
SUBJECT: Minutes of NPDES Steering Committee Meeting Held On January 20, 1999  
(Our Ref. No. 98029.01)

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- I. Attendees / Introductions – The attached sheet provides a listing of those present at the January 20, 1999 NPDES meeting (approximately 27 of the 40 NPDES permittees were represented). Members present included: Laurent Van Cott (President), John Bonde (Vice President), Randall Krejcarek (Secretary), Allen Trefry (Member), and Brian Sullivan (Member). The Committee approved the minutes of the December 17, 1998 meeting.
- II. Announcement of New Committee Member – Ken Ferry (Committee Vice President) has relocated to the Midwest and will no longer serve on the Steering Committee. Brian Sullivan will replace Ken's vacant position as a Steering Committee Member.
- III. Monitoring Equipment Sale – Tracy Robb has contacted the manufacturer of the sampling equipment and they valued the equipment to be worth approximately \$1,500.00 to \$2,000.00 for each unit. The City of West Palm Beach (CWPB) has made a bid of \$3000.00 for two of the four automatic monitoring stations (including accessories). Tracy Robb recommended that the Committee accept the City of West Palm Beach proposal and advertise the two remaining stations. The steering committee unanimously decided to sell two of the four pieces of equipment to West Palm Beach and advertise the other two in the Palm Beach Post. Tracy Robb will coordinate the transactions.
- IV. Update on Water Quality Monitoring Program – Brian Gentry gave an update on the program. The first ambient water quality monitoring event was completed in September 1998 and the second event was started earlier this month, along with the initial sediment samples. The data from the first monitoring event showed no elevated levels of pesticides or petroleum in the ambient water column. The sediment samples did reveal metals within the sediments, but when compared to the clean soil criteria, the samples appeared to be within allowable tolerance.
- V. Inspectors Training Seminar – Laurent Van Cott asked the Steering Committee members if they would object to making copies of the FDEP inspector training tapes for their review and comments. There are several useful subjects on these tapes and others that do not apply to the scope in our NPDES group permit. To meet the groups permit requirements, we are to provide training for our inspectors, which does not necessarily have to be the FDEP state certification course. After the other members of the Steering Committee have had an opportunity to review the tapes, a decision can be made on the type of training the group will offer. When the state takes over the NPDES permit enforcement, the state may require that all municipal inspectors take the state certification course.
- VI. High-Risk Facilities – Only 8 of 27 co-permittees have provided a response containing their inventory of high-risk facilities. A response was due by January 4, 1999. Anne Capelli with Mock, Roos & Associates, Inc., will be contacting representatives from each of the remaining 19 co-permittees to obtain their inventory and address any questions. Please note that your inventory should identify the name of the facility, the address, your entity's municipal separate storm sewer system (MS4) the facility drains into, and the name of any agency conducting any inspections (such as Palm Beach County Department of Environmental Resources Management for the wellfield protection ordinance). If during

the inventory process you identify a high-risk facility discharging into another co-permittees MS4 (i.e. Palm Beach County or Florida Department of Transportation), please provide that listing to Mock•Roos so that it may be added to the appropriate co-permittees inventory.

- VII. NPDES Construction Permit – The discussion of the NPDES industrial (construction) permit was a continuation of the December meeting discussion. Laurent Van Cott introduced Leonard Rubin, Esq., with Caldwell & Pacetti, P.A. Mr. Rubin specializes in municipal law and has reviewed the NPDES requirement for implementation by the group. Leonard Rubin discussed the liabilities associated with the acceptance and/or approval of the Pollution Prevention Plan (PPP) submitted by the site operators. As a general rule, the doctrine of sovereign immunity shields a governmental entity from liability for activities relating to purely governmental functions instituted for the public welfare, such as the enactment of, or failure to enact, laws or regulations or the issuance of, or refusal to issue, licenses or permits. In *Trianon Park Condominium Association v. City of Hialeah*, the leading case on sovereign immunity, the Florida Supreme Court found that a municipality could not be held liable for the negligent actions of its building inspectors in enforcing the provisions of a building code enacted pursuant to the municipality's police powers. The principles of sovereign immunity only apply, however, where the governmental entity has the legal authority to regulate the activity for which permits or licenses are issued. Notwithstanding the foregoing, the Committee members and the members of the audience were concerned that a municipality, district or agency could expose itself to liability if it were to approve the PPP submitted by the site operator rather than merely ensure the existence of a PPP, as required by the NPDES Permit. Concerns were also raised as to the method by which a governmental entity could require a site operator to correct any errant discharges into the MS4. After much discussion and in accordance with the advise of counsel, the Committee members decided to take a "minimalist approach" to this issue so as to reduce the potential for liability. The municipality, agency or district would not approve the PPP; rather, it would merely acknowledge receipt of the plan and of the certifications set forth therein. The site operator would retain full responsibility for administering the PPP, and the permittees would focus solely on any discharges into the MS4. In the event of such discharge, the site operator would bear the cost of any correction or cleanup, which would be enforced by the issuance of a Notice of Violation or the withholding of additional approvals or certificates of occupancy. The committee members will address inspection issues at a later date.
- VIII. Meeting Schedule - The next Steering Committee meeting is scheduled for Wednesday, February 17, 1999 at 9:00 a.m. at the offices of Northern Palm Beach County Improvement District. Activities to be discussed at this meeting include a budget report, the annual report, and the 2<sup>nd</sup> year individual reports.

We believe that these minutes accurately reflect the discussions and decisions of this meeting; however, the writer will welcome additions and/or corrections in writing within seven days of the date of these minutes. Should you have any questions, please call me at extension 231.

TBE/ADW:kmm

Enclosure

Copies: Peter L. Pimentel  
Tracy C. Robb  
Kenneth W. Edwards, Esq.  
Anne Capelli  
All Attendees