


11.27.12 # 14

TO: The Honorable Chairman and Members of the  
Board of County Commissioners

FROM: James L. Bennett, County Attorney 

SUBJECT: Authority for the County Attorney to Settle the Administrative Challenge in  
Pinellas County v. Florida Department of Environmental Protection

DATE: November 27, 2012

RECOMMENDATION: I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE THE COUNTY ATTORNEY TO SETTLE THE ABOVE-REFERENCED ADMINISTRATIVE LITIGATION IN ACCORDANCE HERewith.

DISCUSSION: On August 23, 2011, the Board of County Commissioners authorized the County Attorney to initiate litigation contesting the draft MS4 permit promulgated by the Florida Department of Environmental Protection ("DEP"). The draft permit significantly increased the responsibilities of the County, enlarged the County's operating and monitoring requirements, and implemented a new Total Maximum Daily Load ("TMDL") component.

As explained in 2011, the County's major contention with the new MS4 permit is its technical monitoring requirements. It is the County's position that the technical monitoring requirements in the draft permit are not necessary to preserve and maintain water quality standards, and that the monitoring techniques it currently employs adequately satisfy the requirements of the Clean Water Act. The monitoring techniques required in the permit would force the County to rework its current procedures and policies for no apparent benefit.

The County Attorney's Office, working closely with County staff, as well as the expert retained to assist and testify in this permit challenge, has made significant progress in negotiating permit language which addresses the County's concerns. At this point, the DEP and the County have reached an informal agreement in principle that satisfies the County's concerns about the proposed permit language. The agreed upon permit language will allow the County to implement an ambient-style monitoring program, which aligns with the monitoring techniques the County currently employs. Both sides are cooperatively working to finalize the permit language in a timely fashion.

The parties must notify the Administrative Law Judge ("ALJ") as to the status of settlement negotiations on or before December 14<sup>th</sup>. Given the deadline imposed by the ALJ, the County Attorney recommends approval of the settlement of the Administrative Litigation with DEP, subject to finalizing permit language that is satisfactory to County staff, the retained expert, and the County Attorney's Office.

JLB:DWM

H:\USERS\Atykb59\wpdocs\Water Law & Regs\MS4 Permit\Pinellas MS4 Challenge\Memorandums\confidential memo.docx