

## **Resignation Statement of Bruce Boler EPA leaving Southwest Florida**

In 1999, the Estero Bay Agency For Bay Management (ABM) began sending letters to the U.S. Environmental Protection Agency (EPA) requesting the assignment of an EPA representative to Southwest Florida (Lee and Collier counties). The ABM, a private/public partnership formed to protect the Estero Bay watershed, was concerned hundreds of permit applications with impacts to thousands of acres of wetlands were being processed by the U.S. Army Corps of Engineers (COE) each year, even in the midst of an ongoing Environmental Impact Statement (EIS).

EPA had no permanent position to assign to this region; however, EPA signed an agreement with the U.S. Fish and Wildlife Service (FWS) whereby EPA would fund a FWS position that would work for EPA. I was hired to fill this 3 to 4 year position in January 2001.

Within the first year, I reviewed permit applications proposing impacts to over 2500 acres of wetlands. I wrote letters [signed by EPA's Regional Administrator (RA)] recommending denial of many of these projects based on the fact that they would contribute pollutants to waters recognized as either degraded or of outstanding quality, e.g., Outstanding Florida Waters. Importantly, the COE needs EPA's removal of objection to issue a permit when there is an objection letter signed by EPA's RA.

Developers were upset with EPA and complained vehemently to the State and the COE that we did not have the authority to raise these objections. The State, COE, and bevy of lawyers hired by developers assailed EPA's regional office, complaining of my actions. Dr. John Hall, Chief of the Regulatory Section of the COE in Jacksonville began referring to me as a "loose cannon" in numerous e-mails to public and private entities.

The question of EPA's authority came to a head in a joint meeting between the COE, EPA, and the State in late 2001 at the COE office in Jacksonville. Dr. Hall started the meeting by slamming a 2-foot long, replica cannon down on the center of the conference table, apparently to dramatize his "loose cannon" references to me. However, at that meeting both the COE and EPA lawyers expressed their opinion that EPA did have the authority to raise our objections.

EPA objections were based on over 25 years of scientific research on the effectiveness of the state's presumptive water quality criteria for stormwater discharges. The research found that Florida's stormwater regulations removed only 15 to 40 percent of nutrients (nitrogen and phosphorus). Nutrient runoff from farm fields and residential developments are the cause of most of the water quality problems in Southwest Florida. EPA agreed to remove their objections, if projects would agree to remove 100% of nutrients generated by their developments. The state was upset with EPA's position, arguing that EPA was "picking" on them, since other states have even less protective regulations.

The firestorm over EPA's letters intensified with the presidential election of George W. Bush. President Bush appointed Jimmy Palmer, a lawyer and republican from Mississippi, to be the new regional administrator (RA) for EPA. Mr. Palmer informed staff that EPA would not oppose state positions, so if the state had no water quality problems with a project then neither would EPA. He subsequently refused to sign some letters I sent to him.

In early 2002, a few developers began working with EPA to meet what EPA referred to as the Water Quality Initiative—no net increase in nutrient discharges over pre-development conditions. The first applicant to willingly agree to meet the WQI was the Southwest Florida International Airport (Lee County Port Authority). Soon after, Lee County signed a memorandum of agreement (MOA) whereby EPA would remove objections to road projects, as long as Lee County provided increased water quality treatment in basins where these projects would be built. This included the Ten Mile Canal filter marsh and proposed filter marshes in Briarcliff and Island Park.

Agreements between Lee County and EPA and problems with their own projects spawned the formation of the Water Enhancement and Restoration Coalition (WERC), a partnership composed primarily of local developers. Following the MOA with Lee County and formation of WERC, the Bonita Bay Group signed an MOA with EPA committing them to reduce their pollutant discharges at their Shadow Wood Preserve project. As other developers began committing to greater water quality protection, the State and the COE became concerned. In late 2002, Dr. Hall requested a formal meeting between our agencies to address what he felt were “unworkable” aspects of the WQI.

On March 21 & 22 of 2003, FDEP, COE, and EPA met in Orlando and after some initial ego stroking, the agencies agreed to continue the WQI in Southwest Florida and expand it to the entire state. The expansion would depend on the completion of work by Dr. Harvey Harper, Environmental Research & Design, Inc.

Dr. Harper was hired by WERC in the fall of 2002 to conduct an assessment of Lee and Collier counties. The chairman of WERC, Rick Barber, was also the consultant for one of the projects, Mirasol, that EPA had recommended denial based on its potential impacts on water quality. In EPA's evaluation of the 1762-acre project (over 1500 acres of wetlands), EPA did not allow Mr. Barber to use the existing wetlands as pollutant sources, as wetlands function to reduce pollutant runoff from surrounding uplands. However, the WERC-funded report by Harper opposed the EPA position. Harper used data from water quality samples in wetlands, yet collected next to roads and bridges where surrounding developments discharge, to come up with a single pollutant-loading rate for all wetlands in Southwest Florida. Thus, the WERC report found that wetlands are only pollutant generators, not “nature's kidneys” as identified in the scientific literature.

In July 2003, the State, COE, and EPA, over my strong objections, agreed to adopt this WERC-funded water quality evaluation. Astonishingly, earlier this summer the state and COE had agreed with me that wetlands should not be considered as pollutant sources for

purposes of the WQI, because wetlands remove pollutants from surrounding uplands. At that time, I supported my argument with work from the Tampa Bay National Estuary Program where over 25 scientists determined that wetlands in the Tampa Bay watershed remove pollutants at a similar rate to what is produced within wetlands—no positive loading rate. I had been using this science in my reviews of developments in this region, until WERC hired Dr. Harper. I have not found any scientists who agree with Harper that loading rates of wetlands can be determined from a single grab sample collected at a ditch, road or bridge in a wetland.

Ultimately, the politics in Southwest Florida have proven to be stronger than the science, as the WERC evaluation has been adopted by the agencies and is being used now to push through many projects that EPA had opposed. I have worked assiduously in the last three years to develop an evaluation that would discourage development in wetlands (no pollutant source) and provide a means to sustain the unique quality of life that this region offers with its abundant aquatic resources. I fear that my efforts may have, inadvertently, strengthened the very forces that are intent on developing these resources.

R. Bruce Boler