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Tidings The Newsletter of the Friends of Perdido Bay

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Jackie Lane - Editor

Come to Friends' General Meeting and Fund-raiser

On April 23, 2009, Friends of Perdido Bay will be having a general meeting and an auction/fund-raiser. The meeting will be held at the **Lillian Community Club** and will start at **7:00 PM**. At the meeting, we will quickly bring people up to date on the fight to save Perdido Bay and then the auction will begin. We will have a real live auctioneer and over 30 items to auction off. Some of the items are: dinners at Mimi's, rounds of golf at Lost Key, rounds of golf at Perdido Bay Country Club, a weekend at KOA, dinners at the Point Restaurant, prints by Guy Harvey (signed and unsigned), a Rip Tide Deep Sea fishing rod, and more. The merchants on Perdido Key and Orange Beach have been very generous. All proceeds will help fund our fight to save Perdido Bay.

Latest News on the Administrative Hearing

Last Spring (2008) the Florida Department of Environmental Protection (DEP) had a public hearing on DEP's second attempt to give IP a permit to discharge to wetlands along Perdido Bay. As you may remember, DEP's first attempt to give IP this permit was defeated at an administrative hearing in 2006 and 2007. DEP claimed that IP had provided more information and this was the reason for allowing a second try. (We believe that this second try should have been barred by a doctrine called *res judicata*, but it wasn't). At a public hearing in May 2008, Friends of Perdido Bay and others voiced opposition to this plan once again. The reasons we gave were the same reasons which we had used to defeat the first plan. But DEP went right ahead and gave notice of its intent to issue the permit. Once again, Friends of Perdido Bay challenged the permit. An administrative hearing was scheduled for January 2009. On Christmas eve, 2008, the DEP attorney called us and asked if we would mind postponing the hearing date. Although we were ready to go to a hearing in January 2009, we said O.K. to the postponement.

The reason DEP asked for this postponement was to settle the question raised by our attorney about the validity of the state rule which is being used to give IP this permit. As we told you in the last issue of the "Tidings", our attorney, Marcy LaHart has challenged the rule as not conforming to state legislative intent. Well, the question about whether the rule is valid or not is still not settled. There have been various motions going back and forth and the DEP has asked for several delays. It looks to me as if DEP realizes that our attorney's claims are valid and at this point, is reassessing its position as far as the permit is concerned. There have been several

discussions about whether or not DEP is going to withdraw the permit to allow IP to discharge to the wetlands with the exemptions. The wetland exemption rule would be replaced with “Site Specific Alternative Criteria” in the wetland. Getting alternative criteria in the wetland was the goal of the current plan, but 9 years after the permit had been issued. It doesn’t look, to me, like there is much chance IP can meet the requirements of the alternative criteria rule either. The alternative criteria rule does not allow standards for dissolved oxygen, biological integrity, and several other standards to be altered from the current water quality standards. So IP would be out of luck there. Also, if DEP alters the permit, the whole permitting process will have to begin again.

While DEP is reassessing its position on the permit and wants more time, IP is sticking to its original plan of using the wetland exemption rule. It appears there is a difference of opinion between DEP and IP. Of course it is understandable that IP would want to stick with the original wetland plan. They spent lots of money in design and scientific studies to try and support the plan. David Struhs, who is currently IP’s Vice President for Environmental Affairs, was DEP Secretary under Jeb Bush. I am sure he spent lots of political capital arranging for the success of the wetland plan. The “public/private partnership” by which Mr. Struhs arranged to have the pipeline to the wetlands built with public money via a grant to Emerald Coast Utilities Authority took some arm twisting. So it must be hard to give up a plan which has been in the works almost 11 years now.

Friends of Perdido Bay never thought the plan for the overland discharge to Perdido Bay via a three day flow through the wetlands was a good idea. We had proposed to the old owners of the mill, Champion International, that constructing a treatment wetland of 1200 acres would be a good and relatively inexpensive way to further treat their effluent. A constructed wetland treatment is a lot different than the current, proposed plan. One big difference is that IP would have to meet standards after the effluent goes through the wetlands. So the wetlands would have to be maintained to meet those standards. Remember their effluent has lots of fine solids and organic material which uses up oxygen. Champion actually built a pilot treatment wetland and invited Friends of Perdido Bay Board to tour the wetland. The pilot treatment wetlands worked fine. But International Paper apparently did not want to pay for constructing and maintaining a wetland treatment system, especially if the effluent coming out of the wetlands would have to meet state standards. After IP had designed their wetland discharge for the Rainwater Tract, they invited me to view the property and outlined their plan to me. I told IP at the time (about 2003) that I did not think their plan was very good. I told them I would oppose the plan despite the vehement objections of IP’s old Vice President for the Environment, Tom Jorling. Then Joanne McKeithan, IP’s PR person, came and talked to my husband and me about the plan. We told her we did not like the plan. The Board of Friends of Perdido Bay did not like the wetland plan. We believe there are much better alternatives. We hope one of those better alternatives will be chosen by IP soon.

Willing to Work Together

_____ With the possibility that a new and better plan will emerge, Friends of Perdido Bay Board has sent a letter to IP’s manager for health, safety and the environment at the mill offering cooperation with IP if the “new” plan in our opinion, will significantly improve the discharge and bring IP into compliance with state laws. Friends of Perdido Bay was founded with the intent of working with the paper mill while at the same time improving the water quality of Perdido Bay. For some reason, we thought that this would have come about much more quickly. In 1988, a spokesperson for the paper mill, Vicki Tschinkel, told us that the paper mill was going to clean up, but that they just needed some time to figure out what to do. Three years was the time frame the paper mill, then owned by

Champion, proposed. We all knew what the problem was. The DEP biologists who at that time were actively sampling Perdido Bay, told us that it was the organic material from the paper mill which was suffocating life in the bay. In 1991, a large study by ADEM and DEP found the same thing. The large ADEM/DEP study was looking for pollution from tributaries into Perdido Bay. The only abnormally high source of pollution entering Perdido Bay came from 11-Mile Creek (the paper mill). Perdido River was relatively clean. In 1992, the paper mill announced that a study by Dr. Robert Livingston found that the pollution entering Perdido Bay came from the Gulf of Mexico. This study was funded by Champion. At this point, we realized that their promise to “clean-up” was going to be broken. From this, I learned that industry funded studies are not independent. Government funded studies are more independent, but the government is broke and can’t afford to fund independent studies. So, as a result of a dishonest study and other factors discussed below we are still waiting for the clean-up. I am sure the paper mill has been waiting for us to go away.

Players are Too Big

Over the years we have tried lawsuits, administrative hearings, blocking permits, and as much PR as we can generate to try and get the paper mill to clean up. After all, this is our property which is being degraded by the discharges from the paper mill! This is our bay which is too polluted for water contact sports. So far, we are still waiting. Some have told us that the paper mill will shut down before it cleans up. Well that is too bad because we hate to see American jobs lost, not only in the paper industry but also in the timber and chemical industry. We thought that the problem would be solved when the permit for the paper mill expired in 1994. A new permit would be issued with much stricter standards. There was no new permit issued in 1994 or 1995 or beyond. IP is operating on a state permit which expired in 1994 and a federal permit (EPA) which expired in 1988. There was an EPA permit which was set to expire in 1995, but that permit was withdrawn and replaced with an old federal permit issued to St. Regis in 1983. The St Regis permit has fewer restrictions. So how can a business operate on an expired permit for 15 or 20 years? Most small businesses have to operate within the rules and get a permit every five years. After all this time, the answer is obvious.

INFLUENCE.

In one of our attempted lawsuits where Robert Kennedy of NRDC, Levin-Papantonio and several big law firms were the plaintiffs (that is us) attorneys, I was an Intervenor. At one point there were settlement discussions in this lawsuit and I decided I needed an attorney. I thought I had one lined up, but then all the sudden - silence. Eventually I was able to re-contact the attorney who told me the “Players were too Big” for the law firm to participate. Too Big? Who could these players be? Well, I got several clues from looking on the internet.

In 1989, Berkshire Hathaway who is headed by Warren Buffet, bought 300,000 shares of a new Champion preferred stock series for \$300 million. It was said that he bought this stock to stop a hostile takeover by another paper company. Mr. Buffet makes friendly investments in companies whose management he supports. In 1995 Mr. Buffet sold 8% of these shares for \$387 million. Not a bad profit. Another large investor in Champion stock was the Loews Corporation, a New York Company headed by Laurence Tisch. Besides Champion stock, the Tisch family owns wholly or in part; CBS, Lorillard Tobacco a subsidiary of the Carolina Group, CNA Financial property and casualty insurance, Loews Hotels, offshore oil and gas drilling rigs, Texas Gas Transmission Pipeline system, Bolova Watches and the New York Giants football team. In 1990, Loews bought a 7.92 % stake (7.36 million shares) in Champion for \$27.35 a common share. In 1995, Loews sold 5 million shares at \$52.45 a share. Another nice profit. Both Mr. Buffet and Mr. Tisch are big contributors to the Democratic party.

Why would these big democratic financiers be so interested in a paper company. Was it to help cover up a huge mistake made by a Democratic governor of Florida - Governor Bob Graham? In 1982, the paper mill in Cantonment, then owned by the St. Regis Company was in terrible shape and about to close. Everything was run down. The mill needed millions of dollars in renovations. The primary

product of the mill was brown paper bags which were no longer used in grocery stores. Brown bags had been replaced with plastic bags. In stepped Champion International. They agreed to take over the St Regis Company and modernize the Cantonment mill. They stepped in as “a white knight” and spent millions in the renovation of the mill. The governor of Florida at the time was Bob Graham who had been elected in 1980. His Secretary of the Department of Environmental Protection (Regulation) was Vicki Tschinkel. His Assistant Secretary was Terry Cole. I have always assumed that there must have been many promises made to Champion for them to spend so much money on a mill which had a terrible location. The mill was located on a tiny stream and a small bay which did not flush. Champion was aware of these problems when they agreed to upgrade the mill. The mistake came in allowing Champion to convert the mill to bleached paper and increase production.

About 1982, dioxin was discovered in the effluent from mills making bleached paper. Studies done at the Champion mill in 1987 and 1988 (these studies came to our attention in mid to late 1990's) showed large amounts of dioxin in mullet, catfish, turtles and sediments from Eleven mile Creek and Perdido Bay. Conversion from using elemental chlorine to chlorine dioxide lowered the dangerous form of dioxin to levels which are not detectable. According to a Champion spokesperson whom I used to talk with frequently, Champion was considered a “good guy”. They went around the country promoting the conversion of paper mills using elemental chlorine to chlorine dioxide. Many large environmental groups, including Greenpeace, and NRDC, also pressured mills using elemental chlorine to convert to chlorine dioxide or become chlorine free. In 1995, the Champion mill in Cantonment finally converted from elemental chlorine to chlorine dioxide. They had been operating for 10 years using elemental chlorine and producing dioxin. Our families had been swimming in the bay polluted by that effluent nearly daily in the summers and no one told us how dangerous it was. What is worse was the dioxin emitted in the air. The Champion spokesperson to whom I used to talk, told me that the dioxin and chloroform emitted to the air by the bleaching process was greater than the dioxin emitted in the water. I know that there are people in Cantonment Florida who have died or are dying from cancer because of the mistake in allowing Champion to convert to the mill to bleached paper. You never hear of lawsuits in the air contamination. I believe that settlements are privately reached and the publicity never reaches the news or attention of the media. It is a tragedy. Is this the price people paid for jobs?

After Vicki Tschinkel left the DEP, she worked as a consultant to Champion and IP trying to advise them on how to get a permit. She promoted the wetland plan now being challenged. Terry Cole is currently IP’s attorney. Let’s hope mistakes are not made again and a better idea will emerge.

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