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# Tidings

The Newsletter of the Friends of Perdido Bay

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Jackie Lane -Editor

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## **We Hope You Are Well. Stay Safe**

These are unprecedented times. I don't think many of us have lived through a pandemic before, especially one where businesses have been closed. We have had lots of time to think, fish, and swim. If only there were fish. If only we could swim. We could live off the resources in our bay, if that were possible. Ester Johnson, a long time advocate for a cleaner bay, said that she and her husband Weldon, moved to Perdido Bay in the 50's so that their family could do just that - live off the bay. As she saw the bay deteriorate, she along with many others, worked to try and clean it up. It has been a disappointing fight. Why? Are we so small that our voices can't be heard? Are we just like gnats irritating the monied powers. Apparently. And we will continue to do so as long as we can. This may have been the plan - wait for us to die and the memory of a bay full of shrimp, crabs and fish (not just catfish) will die with the bay. The future residents will never know how bountiful the bay can be. Perdido Bay is too small to support the effluent from this massive mill without being damaged and we know it. Enjoy the blue sky and thank you for your support!

## **A Poster Child for a Failed Regulatory Program**

In 1986, the Florida Environmental Agency, DER (Department of Environmental Regulation) tried to issue a permit to the paper mill in Cantonment Florida, then owned by Champion International to operate their mill. Several citizens challenged the issuance of that permit, including my husband and myself. We had a sharp learning curve to find out how the regulatory process worked and what environmental rules we could use to challenge that permit. DER had already issued a building permit to Champion to upgrade and convert the mill to 100% bleach paper in 1984. The mill was in bad need of repair after the old owners of the mill, St,Regis, had failed to market the stronger brown paper bags they were making. Plastic bags were all the rage. Champion stepped in as a "white knight", bought the mill from St Regis, and spent millions of dollars in upgrading the mill. Because of Champion's efforts, the mill got a new life. And residents on Perdido Bay

were introduced to a new chemical, dioxin, a toxic, cancer-causing byproduct of bleaching with chlorine. This chemical was probably present before Champion, but converting production to 100% bleach was surely going to increase its concentration. I am sure the paper and chemical industry knew this. But Champion was going to a new technology, oxygen delignification and millions of dollars had already been spent in the upgrade. Champion management was shocked by our challenge to their permit. So were state regulators who were trying to issue the permit. After all, they had given Champion permission to spend millions of dollars. They knew there were environmental problems. There had been lawsuits in the past. But state officials ignored the problems. The governor was Bob Graham. His environmental secretary was Victoria Tschinkel.

Since 1986, the mill in Cantonment Florida has not really had a true permit. It has always been a permit with a Consent Order, meaning the paper mill never could meet the federal and state environmental laws. We always pointed out the damages and laws they were breaking. They always had to do some corrective action, outlined in the Consent Order. But unfortunately the corrective actions never worked. The problems which the mill was causing, were misidentified. Production at the mill increased; processes changed. These types of permits have gone on and on. Sometimes extending for years and years - from 1994 to 2004. Then from 2015 to 2020. Permits are only supposed to last 5 years and then expire. They never expired. And the chemicals in the effluent have killed life in Perdido Bay with no fines and very little recourse of the residents to stop the destruction. Meanwhile residents have been subject to all types of chemicals in the water, and a declining population of wildlife. It is not a pretty picture. My summation of environmental regulation on Perdido Bay - a failure. I suspect it has been like this on many waterbodies, but without citizen oversight.

There have also been lawsuits. This is another possibility for trying to hold industry accountable for the damages they cause while making millions of dollars in profits. In a recent article in *American Scientist* (March -April, "How Property Rights Can Fight Pollution"), authors argue that litigating damages to individual's property rights could be a solution to the pollution problem. The authors recognize the failure of a governmental regulatory system. And in fact, if you consider your property on the bay, you will see that your property's value has been damaged by International Paper's pollution of your bay. But in recent years, the declining value of waterfront property has been masked by global warming and rising sea levels, not so much by pollution. Hurricanes always help to change people's perception of an idyllic, waterfront existence. Hurricane and flood insurance doesn't help. But it is nice to go swimming when it is hot or grab your fishing pole and wade out and catch a redfish for dinner. I enjoy it, or used to.

We have tried lawsuits on Perdido Bay, and I can't say I would recommend them either. The first lawsuit was filed in 1992 in a Baldwin County Court. It was a class action with the class comprising over 1000 properties on Perdido Bay. It was settled in 1996 with everyone getting a few \$1000. The attorneys got over 2 million and nothing happened. Dioxin was still being poured into the bay and the bay was as bad as ever. Champion went to a different bleaching process but different forms of dioxin were still being emitted.

In 2005, the second lawsuit was filed "as a class-action" in Escambia County Circuit Court by Steve Medina, a lawyer working for the Florida law firm of Levin,

Papantonio. This lawsuit turned out worse than the first one. The lawyers representing people on Perdido Bay “lost”. The class was never certified as a “class” and “our” lawyers gave up all types of rights. For one thing, the lawyers supposedly representing people on Perdido Bay, said that all the sludges, laden with dioxins and heavy metals from Hurricane Ivan that had deposited on our beaches, were not from the papermill. International Paper had no responsibility for these toxic sludges. We had no rights to sue for damages. It was a travesty. Ramsey Beach Homeowners, the residents closest to the outfall from Tee Lake and Elevenmile Creek, gave up all rights to sue the paper mill. It was without a doubt a fatal blow for our side - one which we couldn’t do anything about. I often thought that there had been a conspiracy between “our” lawyers and the paper mill. But I would never have been able to prove it, so there was nothing I could do. Soon after the law suit was filed, International Paper decided to convert the mill to making brown cardboard. Again this added life to the mill. But, the moral of this story is - lawsuits are not the answer either, especially if there is a conspiracy between the lawyers and the polluters.

### **Site Specific Alternative Criteria**

The Consent Order under which the paper mill is now operating (by extension), gave International Paper the option of applying for alternative criteria in the discharge wetlands if they could not meet the Class III standards. The state of Florida, in its body of rules, has a rule which allows a discharger to change the state standards if they can show that the new (usually lowered) standards will not hurt the immediate and adjoining environments. Of course, nobody but the state of Florida, EPA and IP’s paid biologists, believed that IP could meet the standards in the wetlands. Our experts certainly did not. This was 11 years ago. And sure enough, IP can’t meet the state standards in the wetlands. We reasoned, if IP could not meet the standards in Elevenmile Creek, how could they meet the standards in a wetland where the water was barely flowing without doing the wetland harm. The effluent, after all, is toxic. But that was the sham under which IP was allowed to operate and **expand production** and make a bunch more money.

Now that IP can’t meet the state standards for pH, specific conductivity (salt) , and dissolved oxygen in the wetlands after seven years of trying, they are applying to the state of Florida for lowered standards. But IP has to show that they are not doing the wetland or the adjoining water bodies harm. If you want to see how you can twist numbers and statistics to show what you want them to show, you will have to read the scientific report which accompanies the Petition. Important if you are writing the petition - don’t mention any of the bad details. The bad details are contained in Nutter’s 2019 annual report on the IP’s wetlands. (This report was not included in the Petition to change the standards).

The 2019 Annual Report on the International Paper Wetlands which was done by Nutter and Associates (consultants for IP) clearly states in the conclusions that the vegetation in IP’s wetlands shows large declines in trees and native scrub species after application of the effluent. The black titi (a small scrub tree) was replaced by cattails, a nuisance species, in 73% of the area tested. There was an overall decline of 70% of the trees in the experimental wetlands since IP started dumping. This report and type of data definitely shows harm. No report has mentioned what happened to the 964 acres out of 1300 acres of high quality wetland which had been present before IP began applying effluent. I can only imagine - it is flooded with cattails.

This harm to the vegetation which had been reported over the years in these annual Nutter reports should not have been a surprise. Champion International had small experimental wetlands at the mill in the late 1990's. Their consultant was CH2MHill, who reported the same results - the effluent caused vegetation to die in the experimental wetland plots. We presented this data at both administrative hearings which we went to in 2004 and again in 2008. In the 2004 administrative hearing, it made a difference; in the 2008 administrative hearing it didn't. What could have changed?

In the end, we will see if the state of Florida grants this petition to change the water quality standards in the wetlands. Based on the data which Friends of Perdido Bay presented to them, DEP should not lower the standards. But even if DEP grants the site specific criteria, this is NOT a permit for IP. I believe that this whole exercise is just a way of stalling a final decision on the IP permit. The way the rule is written, DEP is given 60 days to make a decision on whether to grant IP's petition for alternative criteria or ask for more information. Then there is another 60 days. In other words, DEP can deem IP's petition "incomplete" and keep asking for more information. This is a 120 day cycle. Maybe we will all die of covid-19, some other pandemic or natural causes before it is all over. I think that is the plan.

**Does Anybody Care?**

Last summer I noticed that my skin was stinging after swimming. I bought a handheld digital pH meter. While the pH meter is not top of the line, it has calibration solutions, and I started taking pH readings at my beach and other locations around the bay.

What I found blew my mind. I found pH readings over 8 at my beach. PH should be about 7 or below. The Perdido River, which provides about 70% of the water for Perdido Bay measures 6.3 at Ruby's Fish Camp, and even lower pH further up. The freshwater in this area is acidic. The pH readings I took in the lower bay at Perdido Pass and in Wolfe's Bay were also very alkaline - all readings were over 8. What really caught my attention were the extremely alkaline readings I was getting in Elevenmile Creek, above Kingsfield Road bridge. One was 8.8. IP was dumping their sodium hydroxide directly into Elevenmile Creek. They do not have a permit to discharge their wastes into Elevenmile. This was illegal dumping. When I notified DEP and Escambia County, no one seems to care. **Please let us know if you have any adverse effects from swimming in Perdido Bay this summer.**

**Membership and Renewals**

Tidings is published six times a year by Friends of Perdido Bay and is mailed to members. To keep up with the latest news of happenings on Perdido Bay, become a member or renew your membership. For present members, your date for renewal is printed on your mailing label.

Membership is \$20.00 per **year per voting member**. To join or renew, fill out the coupon to the right and mail with your check to the address on the front.

Friends is a not-for-profit corporation and all contributions are tax-deductible. Funds received are all used for projects to improve Perdido Bay. No money is paid to the Board of Directors, all of whom volunteer their time and effort.

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