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A Sell Out? Friends of Perdido Bay Was Never Part of Settlement

Recently, I read an article which said that, “it was too bad that Friends of Perdido Bay had settled a lawsuit with International Paper in 2007” . Friends of Perdido Bay was never part of the lawsuit settled in 2007 or any other year. “Friends” never settled with International Paper or agreed not to sue International Paper. Any such agreement would be disastrous.

There was however a “settlement of a lawsuit” but it involved selected people around Perdido Bay. I was not one of them. Friends of Perdido Bay was not involved. We have reported on this lawsuit in various, past issues of this newsletter. Here is a brief history of that “lawsuit settled in 2007”.

The lawsuit actually began in 2000 when Linda Young and her attorney, Steve Medina, got Ester Johnson to be a plaintiff in a suit filed in Circuit Court in Escambia County. The case number was 00-495-CA-01. The suit started as a citizen’s suit to try and get fines from Champion for violations of environmental rules. I was granted intervener status in this suit so that I received all legal filings. Champion, the predecessor to International Paper, was selling the company to International Paper at the time the lawsuit was filed. We have learned that lawsuits can take years to reach resolution and much can happen in between. This was the case with this lawsuit. This lawsuit went from a small, one attorney case to a huge lawsuit involving Bobby Kennedy, Levin-Papantonio, and a group of local attorneys on the plaintiffs side and the BIG law firm of Jones-Day on International Paper’s side. Lots of paper was generated and lots of money was spent by both sides. In 2005 , the plaintiffs’ attorneys decided to turn the case into a “class action”, claiming property damage due to IP’s pollution. Steve Medina was still the main attorney. Ester Johnson was still one of the plaintiffs, but others were also chosen as “class representatives”. Elizabeth Davidson, John Elliot, Thornton Garth, Vicki Morrison, Ramsey Beach Homeowners Association, Inc, Thomas Roberts, Jeannie Taylor and Kurt Wurzbach were the “new class members”. I was still an intervener. Ramsey Beach Homeowners Association had Paul Schneider as their representative. The

Motion for Class Certification was filed on June 30, 2005. IP's attorneys objected. Therein ensued a flurry of legal work. A special master had to be hired to look into objections by IP's attorneys that certain documents which they were supposed to hand over were "privileged" information. A hearing was held in 2006 on the Motion for Class Certification. The Judge was Circuit Court Judge Michael Jones. Judge Jones did not grant the "Class certification". Basically, the Judge said the class was too diverse.

After class certification was turned down, I was cut me out of all discussions. I had been very disappointed about many of the filings and statement which our attorneys made. The next thing I knew the lawsuit had been dismissed with prejudice in both the circuit court and in the First District Court of Appeals. The date was about 2008. "With prejudice" means that the issues could not be raised again. The original purpose of the lawsuit was to collect fines for environmental violations. In the end, nine years later, who could say if fines were ever collected. I was not aware of the terms of the settlement.

Recently, I decided to call one of the class representatives to find out what the terms of the settlement were. Paul Schneider from Ramsey Beach Homeowners, relayed this information to me. Ramsey Beach received \$10,000 for settling with International Paper. They agreed to never sue IP again. IP's attorneys also agreed to pay the legal expenses of the plaintiff's attorneys. So IP got pretty much what it wanted - immunity from future lawsuits with Ramsey Beach Homeowners. It should be noted that Ramsey Beach residents voted to give Friends of Perdido Bay \$5,000 for our legal fight to try and block the permit which was subsequently issued to IP. But Friends of Perdido Bay did not in any way "settle" with IP. I am unaware of what the other "class representatives" got or what they agreed to.

This whole lawsuit left a very bad impression with me. In 2008, I am sure that the people who live at Ramsey Beach, which is right next to the IP discharge site, never realized how badly their properties would be polluted once IP went to a wetland discharge. IP did not begin discharging into the wetlands until 2012. IP increased production at that time as well. I know at least one person who has sold their property and left. They told me they have never seen the bay so bad. The odor was terrible. The IP attorneys and maybe even the plaintiff's attorneys had to know how bad the pollution at Ramsey Beach would be once IP went to the wetland discharge.

The immunity from lawsuits was similar to the story in the late 1940's on Elevenmile Creek, the creek into which the paper mill discharged until going to wetland discharge in 2012. The St. Regis Company, who were the owners of the paper mill at that time, went and bought perpetual pollution easements from the landowners along Elevenmile Creek. At the time of the sale of the pollution easements, St Regis was only manufacturing 900 tons of pulp a day. There was no knowledge of dioxins and other nasty chemicals. While St. Regis didn't do much in the way of treatment at this time(this would come in 1971and beyond), I am sure the landowners never realized how bad it could get. My husband used to tell the story of a restaurant located on Elevenmile Creek which served chicken dinners on a porch overlooking the Creek. The creek was a crystal clear, spring-fed creek. Once St Regis' effluent started to pollute the creek, the restaurant didn't last long.

Today, Elevenmile Creek no longer carries the major part of the paper mill effluent. It is not a crystal clear creek however, as it once was. The creek still receives

the storm water from the paper mill, which can be a substantial, especially in heavy rains. Last year, at this time, after the 26" rainfall in 24 hours, many homes along Elevenmile Creek were flooded with untreated paper mill effluent which overflowed the paper mill ponds. I think a lawsuit is still pending in that case.

A Polluting Fuel

On April 15, 2015, the EPA has mandated that old, polluting power plants which generate electricity using coal must begin to modernize or be phased out. The EPA has established criteria for air pollution which many of the older, coal generating power plants can not meet unless they modernize. This EPA order has been challenged by the power generating group, of which the Southern Company (the parent of our local Gulf Power) is a big player. The power generating group claims that the EPA has not considered costs as mandated by Congress. The case is now before the Supreme Court of the U.S.

The most obvious reason for EPA's more stringent power generating rules is to cut back on the use of coal, a very polluting fuel. Not only does coal generate more carbon dioxide per Btu of energy generated than other fuels, but there are also other pollutants spewed into the air. Mercury is one of them. Mercury settles to the ground near power plants and has contaminated the water and fish. Nearly every fish in the local waters (including Perdido Bay) has consumption advisories due to mercury contamination. I am not sure people are aware of these advisories because there are few warning signs. According to FL Fish and Game, King Mackerel which are caught in the Gulf, are so contaminated with mercury that you are not supposed to eat them. Period. I think about people whose kids have autism worrying about mercury in vaccines when they are probably breathing mercury. Other heavy metals such as lead and arsenic are also found in coal but are not as volatile.

Not all coals are the same, bituminous coal emits less CO₂ per million Btu of energy (205.7) than anthracite coal (228.6 pounds of CO₂ emitted per million Btu). This data comes from the U.S. Energy Information Administration website

(<http://www.eia.gov/tools/faqs/faq.cfm>). This is an excellent website for energy questions. The fuel which emits the least amount of CO₂ per million Btu's burnt is natural gas (117 pounds of CO₂). Natural gas has very few contaminants and leaves no ash.

The energy producers are right about price. Coal has been cheap, because it is plentiful. Natural gas has fluctuated in price from about \$2.00/1000 cubic feet in 1982 to \$7.00/1000 cubic feet in 2008. Today, it is low again. This is a big difference if you are running a power company. Of course, you pass this extra cost onto the consumer, especially if you are in a non-competitive power market.

Back to Perdido Bay. The paper mill generates most of the power which it uses in its industrial operations rather than buying it from Gulf Power. The St. Regis Company used natural gas for its operations, but when Champion took over, it converted the 4 or 5 power generators to using coal mixed with wood products as its fuel.

I believe IP gets its coal from the Southern Company and its woods products come from a variety of sources -local tree trimmers, the lumber mill in Molino, and its own debarking operations. This is perhaps the worst of the fuel options. While burning wood products, called biomass energy, is considered renewable energy, biomass energy is more polluting than coal (See <http://www.energyjustice.net/biomass>). It is not quite as polluting as burning trash for energy. Interestingly, there are incentives for using “renewable energy”, just as there were tax incentives for using “alternative fuels” like black liquor, which the paper industry uses to recapture their cooking chemicals. Having friends in Congress is important.

It is both the air pollutants from the coal/biomass mixture and the pollutants from the ash generated that are showing up in Perdido Bay. Of course there is mercury, which is pretty high in Perdido Bay, but also certain forms of dioxins and furans, heavy metals such as arsenic, lead, zinc, cadmium, and barium are also present. It is interesting about the ash. St. Regis did not have this problem because it used natural gas. When Champion took over, it must have miscalculated the amount of ash which was going to be generated. At first the ash just stacked up and I remember seeing aerial photos of a huge ash pile stacked in their industrial yard. But fortunately, the Escambia County Landfill (a public landfill) came to their rescue. A deal was worked out whereby Champion would use the landfill gas and in exchange the landfill would take the boiler ash as "beneficial reuse" (according to IP's latest permit application). The boiler ash does contain many heavy metals, including mercury. Champion and then IP never did use the gas from the landfill but fortunately Gulf Power stepped up and took it a few years ago to much fanfare.

IP's practice of sluicing the ash out of their boilers and into their treatment ponds (they have a little ash settling pond) is how ash products end up in Perdido Bay.

Last Fall (2014), I took a sample of sediment from Tee Lakes looking for dioxins, furans and PCB's. I wanted to compare the present levels of these toxins with past sampling I had done in Perdido Bay sediments in 2004. The "bad" and very toxic form of dioxin, 2378-TCDD was lower in the 2014 sample, but other forms of dioxins and furans were still higher than is good. One particular form of dioxin, OCDD, was present at a concentration of 1470 parts per trillion.

This dioxin is not nearly as toxic as the 2378-TCDD, but it was still high. This form of dioxin is created from the burning of wood (biomass energy). In the 2004 samples and in the 2014 samples, a profile of 3 PCB's appeared. These PCB's were higher than all others and were present in the same relative proportions. What did that mean? I really couldn't say. I began to look at the literature. There was a paper published in 2012 by UWF researchers about the PCB profiles in Escambia Bay, FL. To my amazement, the same three PCB's were high in Escambia Bay sediments and had the same profiles. The researchers attributed the PCB's in Escambia Bay to a 1969 spill of Aroclor by Monsanto. To my knowledge, we have had no Aroclor spills in Perdido Bay. PCB's are so bad in Escambia Bay that mullet have become badly contaminated (consumption advisory). It looks like there might be a common source, and it is not Aroclor.

HAPPY EARTH DAY

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 \$10.00 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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