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Tidings

The Newsletter of the Friends of Perdido Bay

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WELCOME TO ANOTHER YEAR

Friends of Perdido Bay begins a new year with great expectations of a cleaner bay this year. As the years have gone by, we have seen the bay deteriorate to the point that few of us will swim. In days long gone, Perdido Bay was a bay full of life. Crabs, shrimp, mullet, croakers redfish, and speckled trout were abundant. Many people lived off the bounty in the bay. In the fall, shrimp boats could be seen shrimping north of the 98 bridge. In the summers, families would spend everyday playing and relaxing in the warm waters of the bay. Neighbors and family would sit in the bay and talk. I liked to swim in the evening and watch the beautiful sunsets from the water. Perdido Bay was a priceless asset. Today, as we see our monetary assets vanish, perhaps we will once again be able to enjoy the assets which were given to us by God. Perdido Bay is an asset which should never have been used as a waste treatment pond for a paper mill.

If you have special memories of Perdido Bay, send a few of these to the Lillian newspaper as letters to the editor. We know many people remember, as we do, what Perdido bay was like and can be like again. "The Lillian" is always looking for news and letters to the editor, so send them a few short sentences about how nice Perdido bay was.

ADMINISTRATIVE HEARING WAS POSTPONED

In the last newsletter in December, we had announced that we were going to an administrative hearing on IP's plan to discharge their effluent to a wetland surrounding Perdido Bay. The hearing was supposed to begin January 14, 2009. The preparation for these hearings is very demanding. The week before Christmas we were busy talking to our experts, getting information about the wetland discharge to our experts, reading documents, etc. Then on Christmas eve, the attorney for the Florida DEP called and asked if we would object to a continuance (postponement) of the hearing. We said we would not object. IP did not object either. Right now the hearing has been rescheduled for May 4, 2009, however this will probably change as well since we have a conflict with this date.

The reason which DEP's attorney gave for asking for a postponement was to wait for a clarification of the rule which is being used to give IP the permit. This rule is called the wetlands exemption rule because the rule exempts a discharger from having to meet any water quality standards if they are discharging the effluent to wetlands. Our attorney, Marcy LaHart, filed a "rule challenge" arguing that: 1) DEP was not authorized by the legislature to pass such a rule granting exemption from state standards, and 2) the rule which was passed was vague and did not give enough guidance to be consistent every time the rule was used.

About 15 years ago, the Florida legislature passed laws to make sure state agencies did not overstep their authority. Lawmakers wanted to make sure that agency rules, such as the wetland exemption rule, conformed with the intent of the Legislature. The legislature required that a law be enacted before the state agency could develop a rule, or that there, at least, be a law which covered the agency rule. Our attorney basically said in her filing that there is no state law which allows DEP to give a blanket exemption from having to meet any state water quality standards.

The "rule challenge" was filed with the Division of Administrative Hearings and a hearing officer has been assigned. The same Judge who is presiding over our challenge of the IP permit, is also presiding over the "rule challenge". He will decide the merits of our attorney's arguments in the rule challenge. If the judge rules for us in the "rule challenge", there will be no administrative hearing on whether or not IP has met the requirements of the rule because the rule would no longer be legally effective. So, right now we are waiting on the results of the rule challenge. For the most part, legal arguments, not expert testimony, will determine the outcome of the rule challenge.

SOME INTERESTING TESTIMONY

We had been looking forward to presenting the testimony of our witnesses. Some were going to be the same as in the previous hearing, which we won. However, several were new witnesses. One of these witnesses is a professor from University of South Florida, Dr. Mark Rains. Dr. Rains is a ecohydrologist who specializes in hydrological controls on ecosystems. We sent him aerial photographs of the Rainwater wetlands and he identified from the aerials that there were or had been free flowing streams (freshwater) in the wetlands. The significance of this information is that IP must meet freshwater water quality standards in these small streams. These small streams are not wetlands and no exemption can be given for these streams. If IP can not meet water quality standards in Eleven Mile Creek, a much large creek than the small streams in the wetlands, then IP can certainly not meet water quality standards in the small streams. At the first hearing, IP went out of its way to call an obvious stream in the wetlands, a "fire-break". At that time, we did not have an expert to adequately counter IP assertions. We have now.

There are more interesting tidbits about the streams. DEP biologists had done a biological survey on one of the freshwater streams in the Rainwater Tract about 2004. There was a report written on this stream, Wicker Creek. When DEP higher-ups realized that there was a report which would likely sink the permit for the wetlands, they ordered this report buried. Well, we have this report and the deposition of the biologist who did the report.

IP also did its part to obliterate freshwater streams in the wetlands. While DEP biologists were doing the survey of Wicker Creek, they noted that IP had damned up the stream to build

logging roads. This is a violation of both DEP and Corps of Engineer rules. The Corps was notified about the violation, but turned a blind eye to this violation. This is another example of how the paper mill has been given free reign.

Dr. Rains had worked at Cornell University and was familiar with IP's wetland violations at its Ticonderoga, New York mill. The IP mill in Ticonderoga, NY discharges to Lake Champlain where it has covered the lake bottom with a huge layer of sludge. Prior to discharging directly to the lake, IP had discharged to a wetland which then discharged to the lake. IP was fined by the EPA for filling this wetland with its solids. IP had to do remediation of the wetland, but the filling was termed "unintentional". So how are the local Rainwater wetlands not going to be filled with solids similar to the Ticonderoga wetlands? If IP is allowed to discharge an average of 11,000 pounds per day of solids or a daily maximum of 27,000 pounds per day, won't these solids soon fill up the low lying areas of the wetlands or Tee and Wicker Lakes? I certainly think so, and so do many experts. How can EPA allow this filling here in Pensacola, but fine IP in New York for doing the same thing? Dr. Rains said that in his opinion, IP would need a dredge and fill permit for filling the wetlands.

SOME HELP FROM ALABAMA SCIENTISTS

This time around, we were able to enlist the help of several Alabama scientists. They work close by and many know Perdido Bay pretty well. When we were scheduled to go to a hearing this January, I gave several of these scientists a call. Dr. George Crozier, who had been director of the Dauphin Island Marine Lab, retired and then came back when the new director died, was one scientist who offered to help. During our discussions about Perdido Bay, I learned some interesting information. Dr. Crozier and the Dauphin Island Marine Lab sit at the end of Mobile Bay. Much of the research which is done at Dauphin Island is done on Mobile Bay. Mobile Bay, at one time, had two paper mills discharging into it. I asked Dr. Crozier if Mobile Bay had experienced the same chronic low dissolved oxygen due to the organic matter from the paper mills. He said no. He said Mobile Bay is big, wide and shallow and a very large flow of freshwater enters the bay from the Mobile and Tensaw Rivers. Because Mobile Bay is so wide and shallow, winds can easily stir up the water all the way to the bottom. The paper mill solids which did settle out in Mobile Bay would be stirred up. This stirring would help in the decomposition.

Perdido Bay, on the other hand, is a relatively deep, narrow bay which has a low influx of fresh water. Paper mill solids which settle out in Perdido Bay are not stirred up by the wind. The solids sit on the bottom just waiting for that first molecule of oxygen so that they can decompose. To make matters worse, the salt water which enters from the Gulf is heavier than freshwater and the bay tends to become layered - lighter freshwater on top and heavier salt water on bottom. This layering helps to seal in the bottom water which loses all its oxygen quickly. The layering is not disturbed by winds because the bay is narrow and deep. Add to this is the lack of sufficient flushing by the Perdido River and the back and forth effect of the tides and the pollution from the paper mill is not carried out of the bay effectively. It just collects in Perdido Bay. He said a paper mill should never have been allowed to discharge into this bay; it has no capacity to handle this waste. Finally, a scientist who speaks the truth! For so long, we have dealt with the lies from the paper mill scientists and lack of scientific experts who knew the bay. Curiously, a University of West Florida researcher said Perdido bay was one of the cleanest bays around.

SCIENCE FAIR WINNERS

For the past 20 years or so, Friends of Perdido Bay has sponsored two prizes at the science fair in Pensacola. We give a \$50.00 award and certificate to a Junior Winner and a Senior Winner in the category “Solutions to Pollution”. Over the years we have seen the research emphasis change depending on what the media stresses as the current environmental problem. Lately energy and global warming are the two “hot” topics. Our junior high winner this year was Taylor Davis for his project “French-fried” School Fuel: Making Biodiesel From School Cafeteria Waste Oil. The senior high winner was Allie Hybart for her project “Save the Trees”. While we no longer judge science fair projects, we understand this year had some especially good projects and a good turn-out. This is encouraging because some of these students may decide to continue with science in college and end up really contributing a solution to pollution.

CREDITS FOR TREES

Because trees remove carbon dioxide from the atmosphere which helps reduce global warming, there is an emphasis on saving trees. We understand from attending the Alabama Pecan Growers Conference this fall, that there are powerful interests pushing to give tree growers (pine, pecan, etc) carbon credits for their trees. Carbon credits would not only help save trees but also save tree growers who at this time must be worried about finding a market for their trees. With housing and building in the dumps and paper companies reeling from slumping world markets, tree growers would like to find some return for their investment.

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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