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## **Tidings** The Newsletter of the Friends of Perdido Bay

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[www.friendsofperdidobay.com](http://www.friendsofperdidobay.com)

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### **Friends will continue our fight in 2008**

At Friends of Perdido Bay's Board meeting in early February, the Board reaffirmed their commitment to fighting the IP permit. We are going to try and contact some of the bigger environmental groups to see if we can get some help. One big environmental group NRDC (National Research Defense Council) has been sitting on the sidelines watching this permit fight. Both Linda Young of Florida's Clean Water Network and attorney Jessica Langdon of NRDC reviewed the proposed permit which has been denied. Both had comments, but neither one decided to challenge the permit with us. Linda Young did challenge the permit for the paper mill in Perry Florida. Maybe NRDC will change its mind and help us.

### **An Action Plan to Clean Up Perdido Bay**

Some people might wonder why we continue to fight the paper mill when there are other problems out there. Very simple. In the mid-1990's, a group of citizens, business (including the paper mill) representatives and local government officials were organized into a group called the Florida-Alabama Water Resources Coordinating Council (FAWRCC). This group was established by acts from both Florida and Alabama legislatures to identify pollution problems within the Perdido Bay watershed, to organize and promote citizen monitoring, and to create an advisory task force to develop and implement a management plan for the Perdido Basin. Some of the money to organize the group came from the Alabama legislature and some from the EPA. Friends of Perdido Bay had representatives on this council. The FAWRCC met on a regular basis, heard reports by experts and government officials, and reviewed reports. A series of management strategies was developed by the group. The summary of these reports indicated the following: 1. The Perdido Basin and Bay have been negatively impacted by human activities; 2. The most significant problem has been the increase in available nutrients, particularly nitrogen; 3. Champion Paper and non-point sources were the greatest contributors to the increase in nutrients; 4. Toxic pollution was not a severe problem in the basin; and 5. There were other less severe environmental problems throughout the basin.

After meeting for several years and developing these management strategies, the group was not called back into session and the plans were apparently put on the shelf. Then, a new

program was implemented by EPA called Ecosystem Management. More money became available. The Florida Alabama Water Resources Coordinating Council was once again reformed and renamed. The new name was the Perdido Ecosystem Restoration Group (PERG). PERG spent quite a lot of effort into drawing up a mission statement. The Mission Statement (Final version 7/8/97):

*“Establish a long-term and viable citizen/industry/business-based action group with active support and participation by all levels of government to identify, develop and implement well-founded strategies based on the Perdido Basin Management Plan and other reliable scientific studies that will achieve natural resource protection and enhancement and an environmentally sound Perdido Bay ecosystem in every aspect (water quality, habitat, flora and fauna) and to promote the concept of a sustainable community through education, understanding and consensus of all stakeholders.”*

This sounds very good even though it is a run-on sentence. PERG and the Department of Environmental Protection developed management strategies for Perdido Bay which basically were the same management strategies as had been developed by the Florida Alabama Water Resource Coordinating Council. A new management plan was published called the “Perdido Ecosystem Management Strategies” in July 1998. It was basically the same plan as before. This plan was also put on the shelf. The problem with all of these plans is implementation. Who is going to implement these plans? Our environmental agencies? They are the only ones with enforcement power.

In the meantime, industry and business certainly got busy on the government. Florida elected Jeb Bush as governor. He appointed David Struhs, as Secretary of DEP. David Struhs got busy arranging a public-private partnership. The public (ECUA a public utility) would pay to build a 10 mile pipeline to a 1,600 acre piece of property owned by IP. Instead of discharging in to a creek, IP would discharge its effluent onto the property and let it sheet flow across this property to Perdido Bay. IP would pay ECUA for use of the pipeline. By discharging its effluent to land, the paper mill in Cantonment Florida would become a non-point source polluter instead of the only point source polluter in Perdido Bay. The pollution, all 25 million gallons of it, would dribble out through two beautiful lakes into Perdido Bay. The effluent would flood the entire piece of property with at least 0.5" of polluted water. No longer could people look at Eleven mile Creek and see how polluted it was. This action plan had been recommended by their biological consultant, Dr. Livingston and backed by Vicki Tshinkel, an ex-secretary of DEP under Bob Graham. After arranging this plan, David Struhs became IP's Vice-President for Environmental Affairs. In the meantime, management strategies for Perdido Bay sit on the shelf while Friends of Perdido Bay work to implement the first strategy.

### **A Scary Thought**

We have repeatedly heard that IP would like to save more money and turn down the mixers in their treatment ponds. The mixers help aerate the ponds to keep the bacteria growing. The more aeration IP has, the better the treatment system works and the more pollution is removed. These aerators require 2,200 horsepower and are run by electricity, most of which is generated at the mill. To generate electricity, IP has 5 power boilers which burn a mixture of wood products mixed with coal. At IP's quarterly earnings, IP always has the statement that high fuel and wood costs depress its potential earnings. I am sure that there are many shareholders who would like to see IP reduce their energy cost. That means shutting off their mixers. If IP were to get out of Eleven mile Creek, they could reduce the aeration. Reducing aeration would mean that their Biochemical Oxygen Demand (BOD) would go up. Right now the level of BOD which IP discharges, is limited by the oxygen level in the creek. Dissolved oxygen in a fresh water stream

is not supposed to fall below the state standard of 5 mg/liter. But if IP were to send it's effluent to an overland discharge, IP's BOD would not be limited by the flow in the creek. Never mind the small streams on the wetland tract. And in IP's new proposed permit, BOD levels are higher than in the previous permit. DEP justifies this by saying that "BOD levels are no longer limited by flow in the creek". Just how high those BOD levels could go is anybody's guess. With a compliant environmental agency and a discharge which would no longer be visible to the public in Eleven mile Creek, the paper mill would certainly have an easy time increasing their pollution load. This is a scary thought, and one reason we are fighting to keep this permit from happening.

## **Sold Out?**

We had reported earlier that the class action lawsuit which originally had been filed by Steve Medina on behalf of Ester Johnson seven years ago had not been declared a class. The judge said that the class members were not representative of all property owners on Perdido Bay and that the only claim made, negligence, was not a sufficient claim. I thought the judge's ruling was correct. After the ruling, lead attorneys for the Perdido Bay class members, Levin and Company, decided not to proceed further. We thought the whole seven year ordeal was over. Unbeknownst to me, an Intervenor in the lawsuit, Levin attorneys had approached the class members and tried to get them to sign away all rights for any future claims forever. Attorneys for the Levin firm used what I thought were scare tactics, saying that IP was going to sue them if they didn't sign away their rights. The potential class members did finally release IP from any claims for pollution up until the end of December 2008, but not for future damages. Ramsey Beach Homeowners, represented by Paul Snider, received \$10,000, as compensation. I don't know how much the other potential class representatives got.

While I had assumed the lawsuit was over, I heard about the first of December that the Levin firm had appealed the judge's decision to not grant class status to Perdido Bay homeowners to the First District Court of Appeals. Then at the end of December I got two legal documents - a Joint Stipulation to Dismiss both the Circuit Court case and the appellate case with prejudice. With prejudice means that the claims can not be raised again for past damages. Since it was a joint stipulation, both IP's attorneys and Levin attorneys agreed to dismiss the case. Case closed forever. I was shocked. Levin did not need to stipulate to a dismissal, especially with prejudice. It appears to me that there is definitely something wrong here. Did the mighty Levin firm sell Perdido Bay out?

In October, a few months before the stipulated dismissal, the Levin firm had won a \$55.5 million dollar lawsuit against Dupont in a West Virginia zinc smelting case. The case had been filed in 2004. One of the claims against Dupont was that they had created a public and private nuisance. The Levin firm had dropped nuisance claims from the Perdido Bay lawsuit in spite of the fact that I believed the nuisance claims to be the strongest claims. According to lead attorney for Levin in the Dupont case, Mike Papantonio, "The result that we see here is a model (allowing juries to use state laws to address environmental damage) that should be used by environmental lawyers all over America to gain control over renegade corporations". Too bad he did not use some of that know how to help us out on Perdido Bay.

## **Congratulations to Science Fair Winners**

Every year Friends of Perdido Bay sponsors prizes at the Pensacola science fair for best entries in the "Solutions to Pollution" category. This years senior winner was Sarah Razek of Pensacola High School for her project entitled "The effects of sunlight and plants on nitrogen

wastes”. The junior winner was Dylan Dalrymple of Workman Middle School for the project entitled “How rain affects the pH of Bayou Texar”. Congratulations!

### It’s Beginning to Smell

For the past several years we have been hearing horror stories about the Spanish Cove Wastewater Treatment Plant. At one time, we considered the Spanish Cove Wastewater Treatment plant to be a fairly well run plant. It was an oxidation ditch treatment system with a discharge to perk ponds. But that was when Spanish Cove owned the plant. The plant was sold to Baldwin County Water and Sewer, a private company operated by Clarence Burke. Apparently Mr Burke has bought several other wastewater treatment plants and is installing water and sewer lines in many parts of Baldwin County.

There were no problems until the Spanish Cove Wastewater Treatment Plant started to leak and then Mr. Burke raised the price of sewage. Apparently the leaking started in 2004 with heavy rains. A lift station which is below the plant overflowed in a heavy rain. There was toilet paper in the trees. Get the picture. ADEM was called. The health department was called. There was a 10" hole in the manhole, but of course it was not leaking when health officials were there. An ADEM inspector found that the dikes of the perk ponds had eroded. This was a sure sign that the ponds had also been overflowing. There were also log books, which had disappeared and then reappeared, reporting overflows of the ponds. This sewage overflows into Peterson Branch which then goes into Perdido Bay. The ADEM inspector was going to file an enforcement action against Mr. Burke until a BIG Mobile law firm stepped in. So that stopped that. A few people have filed a law suit against Mr. Burke for nuisance. One man, who became critically ill from wading in the overflowing sewage during a storm, also filed a suit. He was helping someone who had gotten stuck. But what is really getting the public’s attention is the doubling of their sewer rates. People are mad. The public is screaming for their politicians to do something. The politicians say there are no laws to regulate private utilities.

So what do you think is going to happen? Perhaps Baldwin County will buy the system from Mr. Burke and set up a public utility authority. But Mr. Burke is not going to sell his cash cow cheaply. Taxpayers will have to pay. But for those people paying high sewer rates, that is O.K. A similar situation occurred here in Escambia County Florida many years ago. A public utility authority was created (ECUA) and bought private, marginal sewer systems. I am sure the private owners who sold their system probably got a good deal. Septic tanks are looking better all the time.

#### 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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