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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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### **WELCOME TO ANOTHER YEAR**

We hope you had a good holiday. For those people who live in Alabama, January 7<sup>th</sup> must have been particularly happy. Alabama won the BSC national championship. Maybe this year we will see some progress in our attempts to clean-up Perdido Bay. There is a lot going on and we are trying to stay on top of all issues which can impact Perdido Bay. We will try and keep you informed so you don't wake up some morning to find your bay has been officially designated "a dump" which right now it is. Perdido Bay is a treatment pond for the paper mill. Friends of Perdido Bay is trying to change this. So stay with us, and see what happens. And "thank you" for your support.

### **NO NEWS YET**

As of the writing of this news letter, we have still not heard anything from the Judge on the outcome of our hearing on IP's second attempt to get a permit for their discharge to wetlands. We think this is a good sign since at least we have not lost. After the Judge issues his proposed recommended order then the Florida Department of Environmental Protection still has to issue the Final Order. This usually takes about three months after the Judge issues his Recommended Order. The Final Order can be appealed. IP has appealed the Final Order to Dismiss the permit in the first administrative hearing, but the Appellate Court has not ruled on IP's appeal. So IP's permit is still in limbo as it has been since it officially expired in 1994. We are still accepting donations to pay our legal bills.

### **TOO COLD FOR MULLET**

The recent cold snap killed mullet in northern part of Perdido Bay. On Sunday, January 10<sup>th</sup>, I pick up about two dozen 8-10" mullet off our beach. Normally fish go into deeper waters when the temperature drops. The waters of the bayous may not have been deep enough to protect these mullet and they succumbed to the cold. We also had frozen foam on our beach, pictures of

which I will post on our internet site. The mullet will go for good use. I picked them up and planted them in the garden. They will fertilize the next crop of peas.

Generally when bay water drops below 70 °F, much of the bacteriological and photosynthetic activity slows down or ceases. This is the reason the water tends to be clearer in the winter. Blooms of bacteria and one-celled algae are one of the main reasons for turbidity in water. These blooms generally cease when the water temperature drops below 70°F. And the water temperature in Perdido Bay is currently 47° F . Too cold for blooms.

### **PERMANENTLY POLLUTED**

Florida DEP over the past 10 years and longer, has been trying very hard to legalize pollution so that waters which are today polluted will not have to be cleaned up and will be able to accept more pollution. Currently Florida is attempting to change the environmental rule which designates how the water body can be used. By changing the designated use of a water body, the water quality standards which dischargers must meet will be lowered. The “designated-use” rule which is currently being drafted has language which will clearly allow environmental standards for Perdido Bay to be lowered. One of the current provisions in the draft rule says that if a natural water body was significantly altered (dredged) before 1975, it would be eligible for downgrading to a lower classification. This would mean that the water quality standards required for that body of water would be lowered.

Perdido Bay clearly falls in this category. Dr. Livingston who was the paper mill’s consultant for Perdido Bay since 1988, has continually insisted that the biggest problem in the bay was the dredging of the Perdido Pass which allowed more salt water to enter Perdido Bay. Salt water is heavier and sits on the bottom of the bay while the freshwater from the Perdido River rides on the top of the salt water. This layering of freshwater on top of salt water is called stratification. Stratification helps to block the exchange of oxygen and other substances between the top and the bottom of a water body. Usually this results in low dissolved oxygen in the deeper water.

Stratification is not unique to Perdido Bay. Most estuaries become stratified during some times of the year. Water bodies can also become stratified due to layering of warmer water on top of colder water. This happens in deep lakes and in the ocean. Before the Perdido Pass was dredged, Perdido Bay was not a totally fresh water bay. Saltwater from the Gulf of Mexico entered the bay through both the mouth and the Intracoastal Waterway. At any rate, I don’t think filling in Perdido Pass is an option. The Charter boats and marinas down in Orange Beach may object.

Most estuaries in Florida that I am familiar with, have been significantly altered before 1975, i.e., dredged. Estuaries by their nature tend to become shallower and shallower. Many estuaries are ports, and maritime channels must be maintained to a certain depth. Just look at the estuaries in this area. Mobile Bay, Perdido Bay, Pensacola Bay, Choctahatchee Bay (Destin harbor), and Apalachicola Bay have all been dredged (significantly altered). Does this mean that all these bays can be downgraded by environmental agencies to a lower designated-use category? What is worse, the new rule allows DEP unbridled discretion as to what bays they are going to downgrade. And who is going to trust the discretion of Florida’s DEP? Not me. We intend to fight this rule. It is nothing more than another attempt to weaken the Clean Water Act.

## **Big Plans?**

In mid-December 2009, the Florida DEP notified us that DEP was considering modifying the permit for the Bayou Marcus Wastewater Treatment Plant to allow more flow to go to the northern portion of the wetlands surrounding the plant. The Bayou Marcus wastewater treatment plant discharges to wetlands along Blue Angel Parkway and Alekai Drine in Escambia County Florida. There are wetlands north of the wastewater plant and south of the plant. They discharge to northern Perdido Bay and Bayou Marcus Creek. Since the inception of the original project approximately 10-years ago, the Bayou Marcus plant has operated very well. The wetland north of the plant was permitted for 5.3 MGD and the southern wetlands for 2.9 MGD. Friends of Perdido Bay considered this project to be very good and we gave Emerald Coast Utilities Authority (ECUA) and the DEP permit writer an award. However 10 years later we might be having a change of heart.

The new, modified permit allows an increase in the effluent which is discharged to the northern wetlands to 7.35 MGD for a total of 10 MGD. We suspect this is just the beginning of an expansion of the wastewater plant. The studies which ECUA did on the proposed, expanded discharge showed that there would be a net increase in nutrients, nitrogen and phosphates, to Perdido Bay. Perdido Bay which is officially designated “impaired” because of too much nutrients, certainly does not need more. The DEP permit writer to whom we have been talking said that there would be no net increase in nutrients to Perdido Bay because while ECUA would increase the flow they would decrease the concentration of the nutrients discharged to the wetland. However, DEP has a rule which limits the amount of water which can be applied to wetlands regardless of nutrient concentration. A wetland discharge is fine as long as the wetlands are not overloaded with effluent. The more effluent you apply to a wetland, the less “polishing” occurs, and the effluent becomes more harmful to the receiving waters. The Florida rule says that 2" per week is the maximum which can be applied. With the proposed increase, ECUA will be discharging 3" per week. An ECUA spokesperson said they could discharge up to 6" per week. This is way too much and is contrary to the Florida rule.

The proposed increase has us wondering if we should have said “OK” to this project in the beginning. This may be an example of “if you give them an inch, they will take a mile”. ECUA personnel who originally planned this project have left and the new personnel may have changed their focus. The proposed increase will not only impact the waters of Perdido Bay but also the residents who live near the wetlands. We have asked DEP for a public hearing on this project. We will let everyone know when the public hearing will be.

**We will let you know when the public hearing will be on this proposed increase.**

## **A BIG FIGHT**

If you are a Florida resident, you may have noticed letters to the editor from Florida’s Agriculture Commissioner or the CEO of TaxWatch about the impending disaster which may be caused by new federal regulations to Florida’s nutrient rule. If the EPA goes ahead and imposes numerical limits on nitrogen and phosphorus in Florida, it will be a big deal.

This all started back in 1998 and maybe earlier, when the EPA came out with a document entitled “the Clean Water Action Plan” and a 1998 report entitled “National Strategy for the Development of Regional Nutrient Criteria”. These documents argued that the nutrients of nitrogen and phosphorus were a significant problem to the nation and that the lack of a numerical

limit for nitrogen and phosphorus made it extremely difficult to regulate nutrient contamination. EPA was supposed to develop a numerical limit by 2003. This did not happen.

Currently Florida has a "Narrative nutrient rule" which uses an "imbalance" of aquatic flora and fauna as the criteria for too much nutrients. Faced with an EPA mandate, Florida has been trying to develop its own numerical nutrient rule. But developing a rule as contentious as a nutrient rule has been a painful process. For the past five years, Florida has been holding public meetings around the state trying to finalize their rule. In the proposed Florida rule, there were different levels of nutrients depending on the geographic area of the state. In north Florida, the latest proposed limits were 0.069 parts per million (ppm) for phosphorus and 0.86 ppm for nitrogen. These numbers are much lower than the limits recommended for tertiary treatment which are 1.0 ppm for phosphorus and 3 ppm for nitrogen.

Because EPA did not set the nutrient limits in 2003, five environmental groups (Florida Wildlife Federation, Sierra Club, Earthjustice) filed a lawsuit against EPA in 2008. EPA resisted the lawsuit at first but then in January 14, 2009, EPA issued a formal determination that numerical nutrient criteria are necessary for Florida (and only Florida). The plaintiffs and EPA have agreed in a Consent Decree that EPA would propose nutrient standards for lakes and flowing streams by January 14, 2010 and for coastal waters by 2011. Just issued are the nutrient limits for lakes and flowing streams. The limits for rivers and streams in the Panhandle are: 0.043 ppm for total phosphorus and 0.824 ppm for total nitrogen. These limits will be adopted in the fall of 2010

There has been plenty of heavy opposition to this Consent Decree. Major agricultural groups and utilities, Florida Pulp and Paper Association, Florida's Attorney General, Florida Stormwater Association, and many counties are opposing the Consent Decree. They are saying that the new rules will cost the state between \$24.4 billion and \$50.7 billion. However on January 11, 2010, a Federal Judge rejected their objections and said the deadline in the Consent Decree should be followed. The Judge said that Florida has had plenty of time to develop its own state standards. Environmental attorneys are looking at the case in Florida as a precedent.

I contacted Steve Woods who is the operator of the Bayou Marcus Wastewater Treatment Plant. He said the nutrient limits which Florida is proposing for nitrogen (0.824 ppm) would be nearly impossible to meet without installing expensive membrane technology. The phosphorus limits could be met by adding more alum to precipitate out the phosphorus. The new lower limits would generate a lot more sludge which would have to be disposed of somewhere. These limits would also generate a lot more business for companies that manufacture wastewater treatment equipment. We will see what happens, but if the limits go into effect, they will impact both the paper mill and Bayou Marcus Wastewater plants.

### 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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