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Tidings The Newsletter of the Friends of Perdido Bay

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Jackie Lane -Editor

BACK IN COURT

For seven days at the end of June and in July, Friends of Perdido Bay once again challenged International Paper's attempts to pipe their effluent into wetlands surrounding Perdido Bay. IP's argument was that the wetlands would help filter their effluent and make it cleaner before it discharged to Perdido Bay. IP also said that they were going to meet all standards at their point of discharge through technology improvements. They said the same thing 30 years ago.

Friends of Perdido Bay does not think that it's a good idea to destroy tidal lakes which are currently very productive. Why not just stay in 11-Mile Creek? We worry that once IP is out of the creek, it would be just too easy for the paper mill to increase their production and pollution without much trouble. Even though IP claims to have improved their effluent since they have converted the mill to brown paper 1 ½ years ago, there is no improvement in Perdido Bay or Eleven Mile Creek. Something is wrong, but our environmental agencies seem to be ignoring it. Without enforcement by our environmental agencies, polluters can get away with anything. IP knows this. So we just don't believe any claims by IP that they will fix problems in the wetlands should they happen. We have had enough paper mill promises.

After our administrative hearing, we are optimistic that the judge will once again deny the permit. The permit was denied a first time in September 2007 after 11 days of hearings. This time the issues upon which the hearing was based were narrowed considerably from the first hearing. On June 2, 2009 (20 days before the hearing), the judge issued an order limiting the issues in the hearing to the effect IP's effluent would have on the wetlands including Tee and Wicker Lakes. This was a surprise to both ourselves and to IP. IP thought that all they had to do was collect a few more samples and they would get their permit. But the judge said that they would have to show that their effluent would not harm the wetland. Some of the most damaging testimony against IP came from Dr. Kevin White, civil engineering professor from University of South Alabama. He testified that IP's effluent would consume more oxygen than what was available in the small tidal lakes adjacent to Perdido Bay. This would result in much less life in these lakes which Dr. Livingston, who testified for IP, said were very productive. Don Ray, a biologist at DEP, who once again showed his courage, testified that Eleven Mile Creek (the

current discharge creek for IP) was still as bad as ever. He testified that there had been no improvement in the life in the creek compared to 20 years ago, in spite of IP's claims that they have cleaned up their effluent.

It will be at least 6 to 8 months before a final decision is reached. We must write "proposed recommended orders" once the hearing transcripts become available. Then the judge writes a "recommended order". Up to 90 days after the recommended order, the Florida's DEP issues a Final Order. Whoever loses is sure to appeal, so final judgement on this could take a very long time.

The down side of this is that legal fights are not free. We have sought pro bono help and help from large environmental organizations without success. Attorneys and expert witnesses must be paid. Our attorney, Marcy LaHart has tried to cut her fees to a minimum. She and a legal assistant, paid for by the bar association, stayed at our house while they were here in Pensacola. In spite of the cost cutting, Friends of Perdido Bay is in debt . We estimate the hearing will end up costing about \$45,000. We are again seeking donations to help defray the costs. So if you value a clean bay, please help. Send donations to Friends of Perdido Bay at the address listed at the top of the newsletter.

OUR HEROS

In 1987 at the first administrative hearing on Perdido Bay, the Perdido Bay Environmental Association used the testimony of three DEP biologists to substantiate their claims that the paper mill was violating state standards in Eleven Mile Creek. This eventually led to withdrawal of the permit and replacement with a Temporary Operating Permit and Consent Order. The Consent Order ordered the paper mill to be in compliance with all state standards by the end of 1994. Today, the temporary operating permit and consent order are still the documents in effect. The paper mill is operating on a temporary operating permit and consent order which expired in 1994 and they still haven't followed the "compliance schedule" of the Consent Order. The paper mill is still out of compliance with state rules.

Because of their testimony at that first administrative hearing, the three biologists were given a reprimand and relieved of any authority. They were not fired but they were never promoted. In short, their testimony at that hearing ruined their careers. Those biologist continued to tell the truth about the condition of Perdido Bay and paid a dear price. Today two of those biologists have retired and a third is about to retire, at much lower retirement pay than if they had not told the truth. If Perdido Bay ever gets cleaned up, and even if it doesn't, we all have to thank those biologists. Without their help, the truth about the damage the paper mill has caused might still go on being debated. So they have our thanks.

HIGH EXPECTATIONS

During the years when Jeb Bush was governor of Florida and George Bush was president, we learned not to expect that the environmental agencies would be enforcing government rules. The environment doesn't really rank very high on the Republican agenda, especially now that we are in a world-wide economy. Our manufacturing sector has shrunk dramatically because labor is cheaper overseas and environmental rules in other countries are lax - at least this is the mantra which you often hear. However, in many cases, paper mills overseas are gaining ground, not because rules are more lax, but rather because mills in other countries are newer and more efficient.

However we have a new President who seems to care about the environment, even though his climate bill is being watered down as we write. He also said that he would base his

environmental decisions on good science rather than politics. We are all for that. So we are going to see if he will come through for the environment. As Dr. Livingston has documented for the past 16 years, Perdido Bay has continued to decline. We have had no help from any environmental agency, they have just allowed the degradation to happen. It is time to write the EPA and let them know we need their help. Tell them about the condition of the bay - Do you see people shrimping in the bay? No. What has happened to life in the bay? Write **USEPA; Region 4; Sam Nunn Atlanta Federal Center; 61 Forsyth Street, S.W.; Atlanta, GA 30303-8960**. Tell EPA that they need to find out why the bay has declined.

If you want to file an environmental complaint on line, go to:
www.epa.gov/compliance/complaints/.

THAT IS SOME REBATE

While the financial institutions are getting their TARPS, and the auto industry is getting loans, the paper industry has its own bailout which doesn't have to be repaid. Make no mistake - selling paper products is not producing a lot of profit these days. However profits of the paper manufactures are coming from another source - alternative-fuel tax rebates. In 2005, Congress passed a transportation bill which included a variety of tax credits for alternative fuels and fuel mixtures. There was a \$0.50 per gallon credit for the use of fuel mixtures which included combining "alternative fuel" with a "taxable fuel" such as diesel or gasoline. It was a bill made in heaven, or congress, for the paper industry. For years, the paper industry has burned their black liquor (a mixture of cooking chemicals and left over organic material from pulping) mixed with diesel. It is common practice in the industry for recycling cooking chemicals and producing some power - rebate or no rebate.

In Fall 2008, IP decided that they qualified for this rebate and applied. On March 24, 2009, IP received its first check from the U.S. Treasury for a one-month period, November through December, 2008, - a whopping \$71.6 million dollars. Analysts project that the tax credit will expire at the end of 2009 by which time IP is projected to have made \$1.27 billion. Other paper companies are also taking advantage of this windfall. So while making paper remains rather unprofitable, the tax rebates have given paper companies positive earnings. You might wonder why congress does not end this windfall rebate now. Too many industry friends in congress?

In order to receive these tax rebates the mill must continue making paper to produce the "black liquor". This has produced a disconnect between supply and demand which has caused paper prices to drop. Have you bought a ream of paper lately? The prices are really, really cheap. This tax rebate is upsetting other countries which make paper. Canada is a big producer of paper but is not giving its pulp and paper industry an alternative fuel rebate. The cheap paper prices are hurting Canada's paper producers. So Canada is trying to find some way to help its paper producers.

In the mean time, maybe you and I can think of an ingenious way to mix alternative fuel with taxable fuel. At \$ 0.50 per gallon it is worth it. Do you wonder why the U.S. Treasury has a deficit?

NUTRIENTS

Few people who follow environmental problems doubt that excessive nutrients in the water are causing huge amounts of environmental and economic damage. Remember the large amounts of algae that we saw during the 1990's on our beaches. Dr. Robert Livingston attributed

the problems in Perdido Bay to nutrients. Dr. Livingston wrote a book about Perdido Bay and the damage caused by excessive nutrients.

I don't think that any of us would argue that nutrients were excessive in Perdido Bay during the 1990's. The question is, "why were they excessive"? The Perdido River, the main source of water for Perdido Bay, is considered a clean river with low nutrients. An argument may be made for areas such as Wolfe Bay in lower Perdido Bay to be getting too much nutrients from agriculture in Baldwin County. Dr. Livingston did identify the paper mill as a major source of nutrients and recommended nutrient limits for the paper mill based on his data from years 1988 and 1989 when supposedly Perdido Bay was healthy. The nutrients which Dr. Livingston identified as "excessive" were soluble nitrogen and total phosphorus. Limits for these two constituents are contained in the proposed IP permit. Nutrients that Dr. Livingston ignored were carbon and total organic nitrogen. Once released, carbonaceous compounds which paper mills discharge are by far and away the biggest producers of environmental harm. Carbonaceous compounds (fine wood fibers, alcohols, complex organic molecules) use up oxygen in the environment as they continue to be degraded by bacteria. In paper mill treatment, nitrogen and phosphorus are added to the treatment ponds to maintain the growth of bacteria so that the carbon compounds will be broken down as fast as possible. So the main source of nutrients to Perdido Bay was the paper mill.

Our question was, why couldn't the paper mill just stop putting in so much nutrients which ended up in Perdido Bay? The growth of algae which we saw on our beaches in the 1990's could have easily been curtailed. I recently saw a graph of the paper mill's yearly input of total phosphorus to Perdido Bay during the 1990's. It was nearly a perfect bell-shaped curve, peaking in 1995. I wonder whether Dr. Livingston and the paper mill were doing an experiment to demonstrate the harmful effect of excessive nutrients. Dr. Livingston would then write his book and be a proponent of nutrient control, all the while being helped by Champion Paper Company.

After IP took control of the mill, algae blooms stopped. Curiously, all grass beds died too, including the large grass bed at Grassy Point in Upper Perdido Bay. That grass bed had been there for at least 30 years until it disappeared in 2000. IP is very nearly meeting the nutrient limits set in the proposed permit, but there doesn't appear to be any improvement in Perdido Bay nor has the grass returned. Why? I asked Dr. Livingston this question. He said the bay has lost its "resilience." Should EPA step in and investigate this matter? It certainly appears odd to me.

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