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## Tidings   The Newsletter of the Friends of Perdido Bay

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Jackie Lane -Editor

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### **Thank you for Donations**

Our requests for donations has yielded a nice response from many of you. The donations range from \$30 to \$300. If you feel moved or if you need a donation for a tax write-off in 2008, we will always accept larger donations. Friends of Perdido Bay is a not-for -profit organization, so any donations may be deducted from your 2008 income tax. Generally we do not send out receipts for donations under \$250.

### **Flora-Bama Fund Raiser - November 23, 2008**

The famous fun spot on Perdido Key, the Flora-Bama, has offered to host a Sunday afternoon fund-raiser for Friends of Perdido Bay. There will be music, food and a live auction. We will be sending out more information about the fund raiser. If you have anything of value over \$30 and would like to donate it for the auction, we would be glad to accept the donation. We have many members in our group who could donate a service such as a service check on an automobile or air conditioner, a beauty treatment, a week at a condo, or something even more imaginative.

### **Dates for Administrative Hearing Set**

In the last newsletter we explained that Friends of Perdido Bay and several individuals had challenged the proposed permit for International Paper to discharge to wetlands. This challenge basically stops the issuance of this permit until an administrative law judge has heard evidence concerning issues which Friends of Perdido Bay has raised. The issues which Friends of Perdido Bay has raised concern how IP has not provided "reasonable assurances" that Florida environmental rules and statutes will not be violated if the permit is granted.

After hearing the evidence, the judge issues a recommended order recommending either acceptance or denial of the permit. The Secretary of DEP then reviews the recommended order for consistency with Florida's environmental statutes and rules and issues a Final Order.

Whoever loses will no doubt appeal the Final Order. The whole process could take several years.

As you may remember, Friends of Perdido Bay went to an administrative hearing on the previous attempt to issue a permit to International Paper. We prevailed at the hearing. The judge recommended denial of the permit and DEP upheld the denial. The denial is now under appeal by

International Paper, which turned around and made a new application for essentially the same permit. They added a bit more information and the Florida DEP issued a new proposed permit which is nearly identical to the permit which was denied. This is the permit which we are now challenging. At this point, we are still fighting about what the issues will be. International Paper is saying that many issues have already been litigated in the first hearing and should not be raised again. We have said that all issues have already been tried at the first hearing and the whole case should be dismissed. We believe that legally we are correct. The judge has not agreed with our arguments and is allowing IP to limit the issues in this case. Whatever the issues end up to be, we will go to trial and prevail. We simply do not see how IP can argue that an effluent as dirty as the one which they propose to discharge will not harm the wetlands, tidal lakes, and the adjacent waters of Perdido Bay.

As of now, the hearing dates are as follows: January 14 through 16 and 20 through 23, 2009. The hearing will take place in Pensacola and hopefully in a room large enough to accommodate spectators. Once we find out where the location will be, we will try and notify all of you. Our website has a link to the hearing proceedings at the bottom of the main web page. All legal filings in this case are put on the Division of Administrative Hearing web site, so you can follow the legal proceedings. It's interesting and educational, if tedious, reading.

### **It May be Worse than This**

As I was preparing data to support arguments, I had to read through some testimony from the first hearing. I discovered that IP had never testified that they would meet the limits for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) which are found in the proposed permit. Rather, IP gave assurances through testimony of witnesses at the hearing that they would meet much higher limits.

There are two sets of permit limits which the EPA and the states use to control the carbonaceous (dead and decaying) material and suspended solids in wastewater effluents from paper mills - "technical based limits" and "water quality based effluent limits" (WQBEL). Technical based limits (also called Best Available Technology) are determined by looking at the upper 20% of the best performing paper mills in the country and developing limits based on what those mills are putting out. Water quality based limits are limits which are supposedly protective of the water body into which the paper mill is discharging. That is, the effluents do not cause or contribute to violations in water quality standards, especially dissolved oxygen.

The manner in which technical based limits are determined is not conducive to promoting advances in the treatment technologies of the paper industry. No paper company wants to be a "rat fink" and cause all other paper mills to have to spend money installing more effective treatment systems. Rather technical based limits are simply a way of leveling the economic playing field when it comes to treating your wastes. Technical limits are based on production of the mill and not on the waterbody into which the mill is discharging. So if you are a mill discharging into the Mississippi River, your technical limits for BOD will be the same as a mill on Perdido Bay or Eleven Mile Creek. Obviously discharges into the Mississippi River will get much more dilution and cause far less environmental impact than a similar sized mill discharging into Perdido Bay. Thus technical based limits are environmentally blind.

*Water quality based effluent limits* are determined by doing a study on the water into which the mill discharges. Usually a computer model is used to predict what the dissolved oxygen will be with the mill discharges and without the discharge. The modeling which was done on Eleven Mile Creek (the creek into which IP discharges) showed that in order to meet the

dissolved oxygen standard in the Creek, the mill would have to lower their BOD discharge to 300 pounds per day. Now the mill is limited to 4,500 pounds of BOD per day. In order to justify a permit for Eleven mile Creek, IP would have to lower their BOD by 10 fold. This would be quite expensive.

Right now IP is supposedly meeting the BOD limit of 4,500 pounds per day and a Total suspended solids of 11,600 pounds per day. According to DEP these limits are water quality based limits and are protective of Perdido Bay. We have contested these limits as not being protective. The model of dissolved oxygen in Perdido Bay which was done by Tom Gallagher in the early 1990's showed that the sediments in Perdido Bay use up most of the oxygen. Compared to the sediments, IP's discharge contributes a small fraction to the low dissolved oxygen in the bay according to IP's model. But what causes the high oxygen demand in the sediments? Gallagher said "not IP". When asked at the hearing what happened to the 11,000 pounds per day of solids which IP released, Gallagher said they did not settle to the bottom of the bay. They went into the Gulf, they evaporated, but they did not settle into the bottom of the bay. If you pay a consultant, you expect him to provide data supporting your side. An "independent consultant" is really an oxymoron.

As I read it at the first hearing, IP only testified that they would meet the technical based limits, not the water quality based limits. This means that the daily average BOD would go from 4,500 pounds per day to 15,943 pounds per day - a three fold increase. The total suspended solids would go from a daily average of 11,600 pounds per day to 33,413 pounds per day. This would be a horrendous increase.

### **A History of Deceit**

In a recent surfing trip on the internet, I ran across an internet site which made me know that we are not alone in our pollution fight against the giant paper maker, IP. The site, [www.lesspollution.org/ip\\_history.html](http://www.lesspollution.org/ip_history.html), details the history of pollution into Lake Champlain from the IP mill in Ticonderoga, New York. The state of Vermont has long complained about the pollution on their side of the lake from the mill which is located in New York. In one incident, New York gave IP permission to burn old tires in spite of the fact that Vermont officials found mercury levels rose 200% and zinc levels rose 500% in the fly ash from the burning of tires. With complaints from Vermont citizens, this practice of burning tires was stopped. But as one reads through the list of spills and fines you can see a pattern of disregard for the environment. Yes, spills do happen at mills, but IP's arrogance toward these mistakes is obvious.

In the early 1970's when the organic wastes discharged by paper mills were considered environmentally damaging by the EPA (EPA has since down played this environmental damage from sludge), the state of Vermont found that the Ticonderoga mill had discharged a 300-acre mass of sludge 20 feet thick in places on the bottom of Lake Champlain. IP denied the claim. Later as EPA's focus switched to toxic chemicals and air pollution, IP was found to be under-reporting its chloroform emissions. In 1987, IP reported chloroform emissions of 4,700 pounds. The actual emissions were 47,000 pounds. In 1992, a worker testifying before a Senate Subcommittee on Labor said that the chlorine and chlorine dioxide spills were so common at the New York mill that even the complaint officer was gassed during inspection.

An interesting tidbit of information from the history, concerned an IP mill in Jay Maine which discharges into the Androscoggin River. This mill is now owned by another company, Verso. In 1991, IP was fined \$2.2 M for among other things, making false statements to federal and state regulators. The mill told EPA it had only one outfall into the Androscoggin River but actually had two. They only reported the discharges from one outfall.

The reason this insight into IP's corporate culture interested me is because I have wondered why Perdido Bay looks so bad, but the discharges which IP reports to DEP haven't

changed. I am not alone in wondering about what is going on. In a recent summary of his 15 year study on Perdido Bay, Dr. Livingston said that after initially high numbers of infauna, fishes, and invertebrates in the early years (1988-1990), there has been a steady decline in the numbers of animals in most parts of the bay through time (Livingston,2007). He also said that the upper bay has suffered more than the lower bay. “Infauna (animals which live in the bottom), invertebrate and fish numbers and species richness in various parts of the bay plummeted to levels never seen before in the 16-year sampling period” (Page 81, Livingston ,2007). This is not news to those of us who use and watch the bay. It is in terrible shape.

Originally, Livingston hypothesized that high nutrients put out by the paper mill were causing blooms of toxic phytoplankton and it was these blooms which were harming life in the bay. But there are some cracks in this theory. For one thing, toxic algae blooms usually cause fish kills. There were toxic blooms according to Livingston, but there were no fish kills. Another problem was that phytoplankton blooms are usually associated with high chlorophyll (green plant pigment) in the water. This didn't happen either. Also Livingston wrote in 2000 that since October 1999, the paper mill had significantly reduced its discharges of nutrients (ammonia and orthophosphate). But the blooms continued and so did the deterioration of the bay. This has led Dr. Livingston to proposed another source of pollution into the Upper Bay. Could that source of pollution be another unreported discharge point? It has happened before at the Maine mill when IP owned it.

Another troubling aspect of IP's mill operations is the fate of the landfill leachate. IP removes a large amount of settleable solids in the first part of its treatment operation. According to DEP records, fluid is squeezed from these solids and the solids are taken to a landfill west of the mill on Muscogee Road. The solids are dumped into a large open pit lined with clay. Since the pit is open, rain water will accumulate in the pit along with any fluid left in the solids. This is called landfill leachate. According to IP, they siphon off this leachate several times a week and take the leachate back to the mill in a tanker truck. The leachate is dumped into their treatment ponds. IP once showed me the tanker truck; it was not running. It was a very old rusty tanker truck. I never believed IP trucked the leachate back to the mill's treatment ponds. Rather, I think IP has a pipeline to transport this leachate. Leachate pipelines are common in the paper industry. But to where is the leachate piped? The closest body of water would be the Perdido River. I wonder! It is part of IP's corporate culture.

### 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 rightand 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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