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Tidings

The Newsletter of the Friends of Perdido Bay

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HOPE YOU ARE WELL!

Between Covid 19 and Hurricanes Sally and Delta, this has been some summer! Hurricane Sally's winds were not as bad as Hurricane Ivan's in 2004, but the rainfall was worse. As a result, we had some storm surge, but also had a lot of water coming into Perdido Bay from Perdido River and the other streams. So the flooding of low lying properties around Perdido Bay was the worst I have seen (even worse than Ivan). I took pictures of waves breaking over the top of my bank which I just had surveyed at 10.5 feet above sea level in the Upper Bay. This is not a comforting sight. As a result of Hurricane Sally sitting offshore for hours to the west of us, the winds pounded the north facing beaches for hours. Beach erosion was inevitable unless you had riprap or rocks with a soil fabric shield behind. And even then, if your rock wall or sea wall was not high enough, you were still going to get erosion behind the barrier. I don't know what the answer is. I did notice around my waterfront, that the exposed beach area that did the best was the area protected by dense vegetation. Bamboo plants and their roots seemed to hold the beach very well. One drawback, you can't see over the plants. Not much view there.

But in spite of everything, including the mosquitoes, we live on a beautiful bay which we should cherish. As I look out at a beautiful sunset or across the bay at the uninhabited Lillian Swamp (with its mosquitoes), I don't think we could live in a more beautiful place. Now, for making the Bay a safe place to swim and fish, and not a dump for papermill sludges, we will continue to work on this.

THE FIGHT OVER CONSENT ORDER 19-1453

In my humble opinion, the legal fight is looking good. If the purpose of Consent Order was just to fine International Paper for the 19 times it did not pass the toxicity test since 2012, I would say "great". But the Consent Order does way more than this. For one thing, it gives a pathway for IP's future plans for Perdido Bay. And these future plans do not look good.

To begin, the DEP (could stand for -"Don't expect protection") is using the wrong Florida statute in trying to keep IP's permit from expiring. IP's permit should have expired

in 2015. But IP made a “timely” application for a new permit in 2014. Statute 120.60(4) is the statute that Florida uses to issue licences. According to this statute, if you made a timely application for a permit, your licence does not expire until DEP acts on this application. DEP has not yet acted on IP’s 2014 application. BUT, IP does not have a licence but has an NPDES permit. This is more than just a licence from the state of Florida. NPDES stands for National Pollution Discharge Elimination System and it is a federal permit to operate. Florida was granted authority to issue the federal permit (the NPDES permit) in 1995. The Florida legislature enacted a special statute so that they could have this authority to issue the federal NPDES permit. That statute is 403.0885 F.S.. This statute has no provision for extending permits if the state environmental agency does not act. This is the statute which DEP should be using to determine whether IP has a permit or not. Or maybe, DEP is saying that IP has a state permit per F.S.120.60(4), but no federal permit per 403.0885. Whatever, the Florida DEP is totally negligent in its duty to protect Florida’s environment.

The second problem with this Consent Order, it does not require that IP protect Perdido Bay and come into compliance with all of Florida’s laws and statutes in Perdido Bay. The last Consent Order which was issued in 2009, did require that IP meet the standards in Perdido Bay. This Consent Order does not. Of course, IP did not meet the standards anyhow, which is why they do not have a permit. This Consent Order only addresses IP’s failure to meet the toxicity tests and not how these toxicity failures relate to toxicity in Perdido Bay. But fortunately, I believe we have a good judge in this administrative case. From his rulings, he understands that Perdido Bay may be adversely affected by the toxicity from IP . This is what I have to argue at the hearing. I am very hopeful.

If you want to follow the proceedings in this case, go to the DOAH website. The address for DOAH, which stands for Division of Administrative Hearings, is: <https://www.doah.state.fl.us/ALJ/>. Once you are on the website, type in the case number at the top. Case Number is 20-3305. This brings up the case. Then on the left side, choose Docket from the list. This should bring up all the papers which have been filed in PDF format. Click on those if you want to read what has been going on. The hearing is scheduled for November 9 and 10, 2020. However, because of the trouble I am having scheduling depositions due to Hurricane Sally, I might have to ask for an extension.

INTERNATIONAL PAPER DOES NOT MEET STANDARDS AND DOES NOT HAVE A VALID PERMIT

This message is for the politicians reading this newsletter and this should be all the local, state and federal politicians from this area. It has been reported to us that IP continues to operate because they meet all standards. **WRONG**. IP does not meet standards. Their 6,000 to 8,000 pounds a day of solids which they dump into Perdido Bay certainly is going to cause harm. These solids are toxic. In order to get a permit, IP has to affirmatively demonstrate that they will not cause harm to the adjacent waters. They simply can not do this. They are causing damage to life in Perdido Bay. How do we know this? We hired a consulting firm to do a biological investigation at two stations in Upper Perdido Bay in 2018. What they found was alarming. Very little life. How do we know it is not something else? There is only one main discharger into Perdido Bay - International

Paper. Even though IP has tried to blame ECUA for causing the toxicity, ECUA is just a small discharge (5 million gallons a day) compared to IP's 30 million gallons a day. It is like the elephant joke - when you are the biggest elephant in the room, it is hard to hide. The water which goes into Perdido Bay (especially the Upper Bay) comes from the Perdido River, a Florida Outstanding Water. It is relatively low in nutrients. Upon entering Perdido Bay it is almost immediately polluted by the IP discharge. It is gross. The 6,000 to 8,000 pounds of solids a day contain carbonaceous, oxygen consuming material and nitrogen. This carbonaceous material in the sludges can be measured as chemical oxygen demand (COD). The 40,000 to 50,000 pounds a day of chemical oxygen demand from IP is certain to cause a little bay which does not flush well, to be low in oxygen, especially on the bottom. The environmental agencies have ignored these sludges and their impact. This latest Consent Order does nothing to correct this massive discharge of solids

MORE NUTRIENT FANTASY

For 17 years, Dr. Robert Livingston sampled Perdido Bay and chronicled its decline over those years. Rather than blame the decline on IP's chemicals, he blamed the decline on blooms of a toxic algae, *Heterosigma*. We never believed that it was blooms of this toxic algae killing our bay. There were never any obvious fish kills which would indicate toxic algae blooms. I would have suspected that Dr. Livingston made up this story about toxic algae, except I have a friend who is a toxic algae expert. She told me that Dr. Livingston had sent samples of this toxic algae to another expert to identify. So I had to accept that this *Heterosigma* was real. So over the 17 year period, this algae "bloomed" and provided a reason for the decline in life in Perdido Bay. Excessive nutrients were blamed for causing these convenient blooms. To prevent the deterioration of Perdido Bay, nutrient control was promoted to stop the bloom of toxic algae. Dr. Livingston recommended nutrient limits for the paper mill which were very high, especially total nitrogen. Remember IP's sludges contain high amounts of total nitrogen. Toward the end of Dr. Livingston's study, 2005 to 2007, IP did achieve the limits Dr. Livingston set. But the bay continued to decline. Dr. Livingston stopped studying the bay in 2007. IP continued to do plankton analysis. There were no more toxic algae blooms after Dr. Livingston stopped studying the bay. The bay continued to decline. Therefore toxic algae must not have been the cause of the bay's decline, and controlling nutrients did not really prevent deterioration of the bay.

Perdido Bay was not the only bay where blooms of toxic algae were blamed for deteriorating water quality. In an estuary of North Carolina and in the Chesapeake Bay, blooms of a toxic algae, *Pfiesteria*, bloomed and caused a sensation in the late 1990's. This toxic algae, which had not been seen before, not only killed massive quantities of fish but also made people sick with a strange malaise. Excessive nutrients were blamed for causing the outbreak of this strange algae. A book was written, *And the Waters Turned To Blood*, describing how the algae was discovered and the sensation it made, especially in Washington. The media hyped the dangers of this algae and pretty soon, the politicians in Washington, began allocating money for studying these toxic algae blooms. It was a windfall for the scientists studying hazardous algae blooms (HABS).

In the end, more stringent nutrient rules were enacted. Most states had weak nutrient rules which were hard to enforce. Because of the hype from toxic algae, Florida and other states developed “site specific nutrient criteria”. These are actual numbers for Total Nitrogen and Total Phosphorus which can be measured and used for compliance purposes. Congress allocated the money for studies, but the rules were set by the Courts in court cases filed by environmental groups. While nutrient control was necessary, the blooms of *Pfiesteria* were suspect, especially later.

Perdido Bay did not make out so well in this “site specific nutrient criteria”. The Livingston studies were used to set the levels of total nitrogen and total phosphorus in the segments of Perdido Bay. The Upper Bay has one of the highest allowable levels of Total Nitrogen in the state of Florida. Why? Livingston recommended these high limits to accommodate the nitrogen in the paper mill sludges.

As with *Heterosigma* in Perdido Bay, *Pfiesteria* disappeared. The scientist who discovered *Pfiesteria*, wrote a paper in 2012, describing how the resting cysts of this organism had been scoured out of the sediments by hurricanes in 2007, and thus caused it to take a break from killing fish. I contacted a researcher in the Chesapeake Bay this summer to find out the status of *Pfiesteria*. He said nobody has heard anything about it for years, and people are suspecting it was a hoax. Interesting!

DIANE KRUMEL WILL HELP

We hope. She is running as a Democrat for the Florida State House District 2 against Alex Andrade. She has approached us to let us know that she will help us on Perdido Bay, perhaps by making it impossible for polluters like IP to continue to operate illegally without a permit while polluting . Alex Andrade and other local politicians, like the two County Commissioners who represent us on the Florida side, keep denying that there is anything wrong with Perdido Bay. Diane Krumel saved Pensacola Beach from being privatized several years ago. We hope see can help us!

<p>Membership and Renewals</p> <p>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.</p> <p>Membership is \$20.00 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.</p> <p>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.</p>	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> New <input type="checkbox"/> Renewal </div> <div style="width: 50%;"> Amt. Enclosed \$ _____ </div> </div> <hr/> <p>Name</p> <hr/> <p>Address</p> <hr/> <p>Phone (_____) _____</p> <p>e-mail _____</p>
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