

INTERNATIONAL JOINT COMMISSION
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Lone Tree Council Statement
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Good evening, my name is Terry Miller and I am chairman of a grassroots environmental organization called the Lone Tree Council. It is a non-profit, all voluntary organization that has members primarily in the tri-county area (Bay City, Saginaw, Midland) of the Saginaw River and bay watershed. Since 1978, we have defended wetlands, pursued clean up of toxics, supported strong environmental legislation and funding, opposed industry or development that either posed a threat to fragile environments or was sited too near to human neighborhoods, and worked towards the remediation of the Saginaw River and bay.

As you know our watershed includes twenty-two counties in part or whole, the largest in the state of Michigan. Regrettably, the Saginaw River and Bay also have the distinction of being one of the Areas of Concern (AOC) identified by the International Joint Commission (IJC). Of the fourteen beneficial uses of water identified by the IJC, twelve are impaired in the Saginaw River and bay.

As I understand the purpose of the IJC's meetings, four questions are being raised. In short: What are the local issues? Is the Agreement effective. Does the Agreement deal with everything it should? How should the public be involved in the review and implementation.

I am afraid I only had time to reflect on the first three questions, beginning with the second.

Is the Agreement effective?

A little story, first. I was thirty-three when I first answered the summons to become an activist. Consumers Power, a regional utility, was building a nuclear facility in Midland, in a floodplain. The reactor containment structure was cracked and sinking, and the regulatory community seemed impotent to stop the facility, a cost plus project being driven by one of the largest utilities in the region. In fact, a federal Nuclear Regulatory Commission inspector was publicly quoted as calling the containment building "A pile of rubble held together with reinforcing rods." While that project was successfully defeated, and the containment structures converted to natural gas, it left me with a bitter taste, and a conviction that citizens had to play a far larger role in protecting themselves and their environment. It was about the same time, 1987, that we learned that the IJC had identified the Saginaw River and bay as an area of concern.

I am now 59, and although I will never quit, I am getting very tired of fighting the same battles, over and over – often with new opponents, but the same business greed, the same desire for short term profit over long term sustainability; the same governmental apathy or actually antipathy towards environmental protection or restoration. And the new ideological grassroots, that sees private property as inviolate, with politicians and citizens committed to defending its personal and private use regardless of the impact on the greater public; blind to the concept of public trust.

As to whether the Agreement is working? I think you know the answer to that question. Despite very fine words, and I applaud the language in the document – it has failed. There is little evidence that the federal government in the U.S. is committed to “restoring water quality” (I confess that I know less about the commitment of the government of Canada); that business and industry are responding to “legacy” contamination; and that citizens are better educated to the impact of wetlands on water quality and government more prepared to protect them.

The IJC’s own 2003 report on the progress of the cleanup of toxic sediment in the Great Lakes was illuminating. As the *Detroit Free Press* opined, “the United States and Canada both have a lot to be embarrassed about....” After a 1987 agreement to clean toxic sediment from 42 locations, just two, both in Canada, have been taken off the list. Michigan couldn’t even clarify who was in charge. While Michigan’s regulatory agencies view local groups as being responsible for implementing Remedial Action Plans (RAPs) frequently those groups have no money, no staff and no time to coordinate and advocate for their watersheds – I know that is the case for the Partnership the lead group in the RAP process locally, it has had no funding for years.

But forget for moment the so called “legacy contamination”, what about real time pollution. At least in the case of the U.S. we are going backwards. A 2003 report by the Associated Press found that three-quarters of the nation’s largest 6,500 industrial and sewer plants violated their permits with little fear of punishment. The result for the Great Lakes, according to state and federal agencies, is a six-year increase in toxic water pollution.

And there is more bad news. The U.S. effort to control toxic releases and protect aquatic life and wildlife in the Great Lakes, the Great Lakes Initiative (GLI) was evaluated in 2005 by the U.S. General Accountability Office (GAO). The GAO report noted that the U.S. EPA has placed much of the burden for implementing on the states, and the GLI only looks at point sources, despite the general recognition that air deposition and agriculture runoff produce more pollution. Even in the area of point sources, the EPA has given such latitude to the states that it allows variances that permit manufacturers to release pollutants at levels far above GLI’s standards. Moreover, despite a Congressional request for a mercury control strategy in 1990, no strategy is forthcoming.

Mercury, the toxic metal, released from coal-burning utility plants (16 of the top 25 sources to Lake Michigan are coal-burning plants, according to a 1999 National Oceanic and Atmosphere Administration data) plagues both the Great Lakes and Michigan’s inland lakes, where fish consumption advisories exist in every local. This represents a clear and ongoing threat that demands a solution.

But one of the clearest threats to the Great Lakes isn’t in the area of emissions or releases, but their desirability in a thirsty world. Demand for Great Lakes waters are at an all time high, and despite most Great Lakes’ states having water diversion laws, they are varied, and in many cases insufficient. Michigan itself has yet to pass any legislation protecting the Great Lakes despite its central location in the Great Lakes. Everyone wants a piece of the commons, and if we don’t continually monitor and restrict access, there will be little water to fight over. I may be wrong, but I don’t believe this important issue is presently being addressed by the IJC.

What are the local issues?

I would like to return to the first question now, what are the local issues? We have a very substantial Remedial Action Plan for the Saginaw River Watershed. It documents the turbidity, the excessive sedimentation, the failure of the benthic community, fish advisories, and the general loss of aesthetic appeal of our river system. But that's not what I want to present tonight.

I want to mention four issues that represent new threats (or old threats that remain to be addressed). They are 1) the loss of wetlands, particularly emergent coastal wetlands; 2) the continued dumping of partially treated sewage; 3) the failure to address newly discovered dioxin sources; and 4) a mismanaged effort to site a spoils site on the Saginaw River. If similar problems are occurring in the remaining 40 Areas of Concern, you have a Herculean job before you.

Loss of Emergent Wetlands

A unique feature of the Great Lakes region is the coastal marshes and lake plain surrounding the Saginaw Bay. The 18,000 acres of coastal wetlands associated with the Bay are rich and productive and make up one of the largest remaining freshwater coastal systems in the nation. Over 30 plant and animal species on the federal threatened and endangered list make their home in the 22-county watershed. Saginaw Bay and its watershed is an important resource base for commercial fishing, tourism and recreation, along with being a major agricultural and industrial area.

The Saginaw Bay watershed historically contained some of Michigan's most extensive wetlands, providing spring and fall stopover points for tremendous flocks of migrating birds and nesting habitat for large numbers of waterfowl. Settlement has led to the loss and degradation of more than 50% of these wetlands. The once extensive natural communities of plants and animals are today found only as disconnected remnants primarily associated with state and federal wildlife areas. Restoration and enhancement of wetlands and associated grasslands is needed to promote waterfowl breeding. Protection, restoration, and enhancement of wetland habitat with good food resources is needed to provide high-quality migration habitat for waterfowl.

Low water levels have seen the return of some of these wetlands. However, this has not given rise to celebration. Many beachfront property owners, accustomed to high water levels and sandy beaches resent the intrusion of vegetation, and accompanying insects, amphibians, reptiles, and waterfowl that form a wetland ecosystem. Many have bulldozed, plowed, and applied herbicides to the emergent wetlands. Some have even planted crops in the exposed bottomland. These actions are in violation of the public good served by coastal wetlands, and recognized as violations of both federal and state wetland protection statutes.

Shoreline property owners have formed a powerful, grassroots lobby, however, and have aggressively claimed the right to destroy these ecological wonders. The result has been 2003 Michigan legislation that resulted in liberalization of beach "grooming" making it easier for owners of Great Lakes shoreline property to remove "weeds" and debris from bottomland. The IJC needs to weigh in on this issue, and provide education and support to protect these valuable resources.

Dumping of Partially Treated Sewage

My teenage son recently received an Ipod, that amazing device, so tiny, capable of storing so much information, an icon of the communication revolution. And yet, in the ecosystem we are so dependent upon, like 14th century medieval villages we continue to treat our rivers as sewers. It is incredibly discouraging to read in local newspapers, after even minor rain falls, that hundreds of thousands of gallons of raw or partially treated human sewage has been dumped in the Saginaw River and ultimately the bay, the source of our drinking water. The river has regular emersion advisories throughout the summer months, and even as condos rise on its banks, tall ships are invited to great celebration, and the river roars with competing speed boats, the municipal governments aren't able to obtain the funding to develop retention basins. This is a problem that can be corrected, it does not require space age technology, it requires enforcement and resources.

Still, we recognize that the problem is geographically vast, the waters of at least 17 mid-Michigan counties flow into the Saginaw River. As the *Saginaw News* pointed out in an excellent 2004 report, in each county, ditches, creeks and drains flow into the Bad, Cass, Flint, Shiawassee and Tittabawassee rivers that feed the Saginaw River.

The free floating anger on this issue was recently captured when a sports fisherman contacted us to help with an effort to address the problem through a petition to Michigan's governor. In less than a month he had collected 600 signatures, on the ice, in bait shops, the anger was palpable.

Failure to Address Newly Discovered Dioxin

The decade of the ninety's saw concerted federal and state effort to address the PCB problem in the Saginaw River. It resulted in an historic \$28 million settlement with General Motors that in part saw the removal of thousands of yards of PCB contaminated sediment in the river. We thought we were on the way to recovery.

In 2002, however, we discovered from documents obtained from the DEQ through the Freedom of Information Act (FOIA) that the entire length of the Tittabawassee River downstream from the Dow Chemical Company was contaminated with dioxin levels 80 times the state action level. The Tittabawassee, of course, flows into the Saginaw River and subsequent testing has discovered levels as high as 19,000 ppt.

It has been nearly four years since the state regulators became aware of the problem and not a foot of sediment or soils have been remediated. In many ways this problem is a microcosm of the national inaction on serious environmental contamination.

The responsible party, the Dow Chemical Company, has run an effective campaign of "manufacturing uncertainty" as the *American Journal of Public Health* has described it. The Company denies that dioxin is toxic, and that the unwanted chemical is responsible only for a skin rash called chloracne. This despite testimony from state and federal toxicologists, and hundreds of laboratory and real-life studies that implicate dioxin in cancer, reproductive and developmental illnesses. And a 15-year study that concluded that dioxin in the Great Lakes was responsible for the disappearance of lake trout.

The Company has donated \$26,000 to the Saginaw County Health Department, salvaged funding for the Saginaw Civic Center, renaming it the DowEvent center, and spread thousands of dollars in highly visible charitable contributions in Saginaw and Bay City. Meanwhile, Republican legislators from Midland, as well as Midland activists, attacked the MDEQ as too aggressive, and threatened funding.

This Campaign has resulted in efforts to go behind closed doors with the administrations of two Michigan governors. In the waning days of the Engler administration, the DEQ director, Russell Harding, went behind closed doors in an effort to raise the State's dioxin action level, thus removing cleanup requirements in Midland. That failed. In the Granholm administration, after Republican threats to cut funding, the Lt. Governor was assigned the task of negotiation and the Company and DEQ representatives went behind closed doors for 7 months. The Framework that emerged abrogated months of DEQ staff efforts to get the Company to do Scopes of Work leading to remediation, and required the Company to undertake exposure reduction at selected homes where contamination exceeded 1000 ppt., not the State's 90 ppt.

The DEQ and Dow Chemical Company now communicate with the public over joint letterheads, and jointly host meetings. Whether this approach will lead to remediation of the toxic sediment remains to be seen – we are very skeptical.

Mismanaged Spoils Site

Efforts to find a spoils site for Saginaw River navigational dredgings have been difficult. The existing site, the Confined Disposal Facility at the mouth of the river is very full, and a distance from the Upper Saginaw River. The two attempts that were made were rejected after a number of environmental and cost considerations were made.

A recent third effort is being pursued, but at the cost of prime farm lands, the overriding of neighborhood and township opposition, the ignoring of EPA and DEQ staff concerns, and avoidance of the processes set up by both federal and local governments.

It promises to make a bad situation worse.

Saginaw's Public Works director and river businesses want the site, as do many in the environmental community. Unfortunately these spoils are not ordinary sediment, they contain as noted above, high levels of dioxin – they need a hazardous waste landfill. But not near a residential area, within 400 acres of prime farmland, next to the Crow Island State Game Area in a floodplain that was under water in 1986.

In the desire to find a site (and take advantage of federal and state grant monies), everything about the process was expedited.

The order of good site planning was ignored and State permits were obtained before the U.S. Army Corps of Engineers provided a detailed project plan. These permits came from a political decision in Lansing, not a considered decision after careful fieldwork and public comment. Lone Tree has obtained from the Michigan Department of Environmental Quality (MDEQ) through the Freedom of Information Act, eighteen pages of staff criticism of the structure and operation of the project. In addition, the U.S. EPA Region V, sent to the Corps on May 5, 2003 and November 8, 2004, some twelve pages of critical comments including -- it is not an appropriate location for the disposal of sediments contaminated with high concentrations of dioxins.

Many in the public have been told or gotten the impression that the proposed Dredge Materials Disposal Facility (DMDF) will not only enable shipping, but, in fact, remove contaminants from the river and improve the ecology – wrong! In reality, it will make the problems worse – it will be an open slurry pit concentrating the toxics and creating exposure pathways for humans and wildlife, destabilizing the river sediment and sending it downstream to the bay (EPA), and creating a site that will be vulnerable to flooding, erosion and leaching of the contaminants.

Then there are the huge process failures: This is a major federal project – but no Environmental Impact Statement has been completed. This will result in a major discharge of water to the river –but no federal NPDES (National Pollutant Discharge Elimination System) permit (as required by the Clean Water Act) has been secured. And this is a major encroachment into wetlands and floodplain with no local approvals and a total disregard for the reality of flooding.

This promises to be a battle, and a contested case hearing with an Administrative Law judge is on our docket, and the effected townships have already filed in various courts.

Does the Agreement cover everything it should?

No. We don't believe it does, and what it does cover seems to suffer the same fate we deal with regularly. The lesson seems to be: even if environmental laws are in place, treaties duly signed, and processes developed to promote cleanups and insure projects are ecologically sound--- powerful interests, with sufficient political alacrity and money can circumvent them.

Yet after 26 years of working on environmental issues, I can only, perhaps naively, remain an optimist. If the IJC could or would be a force to be reckoned with, its plan would include, at least in respect to U.S. governmental units:

Adequate funding for RAP implementation;

Consistent control of all pollutants both point and non-point;

Elimination of mercury emissions;

Return to zero discharge of persistent, bioaccumulative, toxics; replacing toxic chemicals with clean alternatives;

Clean up of toxic sediment;

Protection of lakes, rivers, streams and wetlands from nearby water withdrawals;

Strict limits on large water exports from the Great Lakes;

Strict limits on the private sale of Great Lakes waters;

Restoring and preserving wetlands, particularly emergent coastal wetlands;

Elimination of the discharge of raw or partially treated sewage;

Including TEQs for dioxin and furans in IJC's list of persistent, bioaccumulative toxics, and because of its dangers to wildlife and human populations, prioritize dioxin remediation efforts;

Monitoring projects with the potential to impact water quality to assure that governmental processes and protections have been followed.

Thank you very much for this opportunity.

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