

# **CONTINUING DERELICTION OF DUTY:**

## **How Michigan's Environmental Agency Defies the Law and the Public**

**February 8, 2001**

**Clean Water Action  
Detroitters Working for Environmental Justice  
Ecology Center  
Environmental Health Watch  
Friends of the Detroit River  
Groundwork for a Just World  
Guild Law Center/Sugar Law Center  
Hamtramck Environmental Action Team (HEAT)  
Lake Michigan Federation  
League of Conservation Voters Education Fund  
Lone Tree Council  
Michigan Environmental Council  
Michigan Environmental Justice Coalition  
Michigan Land Use Institute  
Northern Michigan Environmental Action Council  
No WASTE  
Public Interest Research Group in Michigan (PIRGIM)  
RECAP  
Sierra Club, Mackinac Chapter  
Sisters of St. Joseph Office of Peace and Justice**

“Here is your country. Do not let anyone take its glory away from you. Do not let selfish men or greedy interests skin your country of its beauty, its riches or its romance. The world and the future and your very children shall judge you according to the way you deal with this sacred trust.”

-- Theodore Roosevelt

## **Executive Summary**

In this report, Michigan environmental groups update and expand on the critique of the state Department of Environmental Quality's failure to protect the environment, first outlined in our October 2000 report, *Dereliction of Duty*. We highlight both policies and specific communities harmed by DEQ management's failure to abide by the law and good public policy. We again stress our support for the many DEQ staff at the middle and lower levels of the agency who strive valiantly to pursue the public interest in spite of management's dereliction of duty.

### **Polluted Policies**

- Money collected from polluters is plummeting.
- Michigan is becoming a trash magnet.
- The DEQ Director uses inappropriately inflammatory rhetoric invoking the Waco tragedy against EPA after the federal agency steps in to protect the environment in the face of DEQ recalcitrance.
- An EPA review of Michigan's wetlands program identifies serious deficiencies.

### **Goring Communities to Benefit Special Interests**

- Romulus: DEQ overrules a state board to issue a hazardous waste injection permit.
- Northport: A judge finds DEQ's interpretation of wetland law "absurd."
- Rockwood: A landfill gets a slap on the wrist from DEQ.
- Ludington: DEQ defines a wetland out of existence so it can be developed.
- Hamtramck: Instead of cracking down on toxic mercury reductions from a medical waste incinerator, DEQ rewrites a permit to allow the emissions.
- Charlevoix: DEQ reverses course and grants a wetland development permit on Lake Charlevoix in a delicate, rare habitat.
- Cadillac: DEQ refuses to use its authority to control emissions from a tire burning facility.
- Antrim County: Local officials step in when DEQ won't protect local wetlands under state law.
- Grosse Ile: DEQ defines a wetland out of existence, allowing development in the face of scientific findings to the contrary.

## **INTRODUCTION**

In October 2000, 14 Michigan environmental groups released a report detailing the failure of the five-year-old Michigan Department of Environmental Quality to do its job. Entitled *Dereliction of Duty: How the Department of Environmental Quality Endangers Michigan's Environment and Public Health*, the document reported on more than a dozen communities plagued by DEQ decisions that favored polluters and developers over the public interest. It also outlined numerous DEQ policy decisions that thwart the strong public clamor in this state for environmental protection and vigorous enforcement of environmental laws.

Although the report received considerable attention – including a pre-emptive press strike by DEQ Director Russell Harding, who blasted it without having read the final version – the document did not, unfortunately, correct DEQ's ways. In ensuing months, DEQ has expanded its attack on Michigan communities and the environmental laws designed to protect them. This continuing dereliction of duty must be brought to the attention of the public.

The groups participating in this report serve notice on DEQ officials that we will not go away. We will continue to shed light on the secretive process by which the agency colludes with private parties to destroy wetlands, pollute the air and water, increase imports of waste, and undo laws and regulations which continue to enjoy overwhelming support from Michigan citizens. Our campaign will continue until the DEQ is reformed or abolished and replaced with an agency that *will* protect the public interest – until citizens can again count on state government to protect them and their future from pollution, impairment, and destruction of natural resources.

**We have a positive vision of environmental protection in Michigan that the DEQ or its successor agency can serve. In this vision, the agency adheres to the law, issues permits designed to reduce further the pollution of air and water, boldly but fairly enforces against violations of the law, and vigorously promotes prevention of pollution. Working through processes which respect and welcome public participation, the agency assures not just maintenance of environmental quality, but strives to restore and enhance the state's legacy of wetlands, sand dunes, lakes and rivers, healthy air and protection of children.**

It is in fulfillment of this vision that we detail the latest episodes of the DEQ's dereliction of duty.

## **POLLUTED POLICIES**

### ***Lax Enforcement***

*Figures show money collected from polluters through court action has plummeted.*

In spite of repeated claims by DEQ officials that it adequately enforces environmental laws, statistics say otherwise. From a peak of \$10.455 million in judgments and settlements paid to the state in 1994 for natural resources cases, the total has fallen by more than 50% to \$4.961 million in 1999.

In the area generally of greatest concern to public health and most costly to taxpayers – cleanup of chemical contamination sites – case referrals by the DEQ to the Department of Attorney General fell from 103 in 1993 and 62 in 1994 to 15 in 1999. Dollars awarded by courts in chemical contamination cases fell from \$16.86 million in 1995 to \$4.41 million in 1999.

### ***Trash Magnet***

*The Governor and DEQ Director fail to speak up against a doubling of waste imports from Toronto to Michigan.*

Despite their claims to the contrary, Michigan Governor John Engler and DEQ Director Russell Harding have made it possible for the state's waste industry to attract increased imports of out-of-state trash. In late October, metropolitan Toronto announced plans to double shipments of its garbage to two Michigan landfills, totaling more than 200 trucks per day. Toronto abandoned alternative plans this fall to send its garbage to a northern Ontario mine and rejected an aggressive recycling and diversion plan in favor of exports to Michigan.

"A *Toronto Star* headline read 'Michigan a welcoming host for Toronto's transient trash.' Anyone reading the Toronto newspapers will get the false impression that Michigan citizens relish the prospect of being a dumping ground for out of state waste," said Mary Beth Doyle of the Ecology Center. "When New York City proposed to send its waste to Virginia for disposal, its Governor rose up in arms and blasted the idea. Meanwhile, our Governor has said nothing about the Toronto proposal."

The state's position is in favor of "free flow" of garbage. While Engler and DEQ officials say they support federal legislation to permit states to limit the interstate shipment of waste, they have consistently supported eliminating the authority of Michigan counties to limit imports of waste, have opposed state legislation which would require out of state trash to meet Michigan's health-based standards, and have smothered opposition to the expansion of Michigan landfills. The influence of Michigan's waste industry, including its political giving to candidates and office holders, is one reason for the state's position, environmental groups charged.

DEQ Director Harding protested that the state has unsuccessfully tried to limit out-of-state garbage. "Governor John Engler and I have personally taken Michigan's case to Washington," said Harding. "But Michigan can't do it alone. Until we get leadership from the White House and action by Congress, the hands of Michigan and

other states are tied. To claim that Michigan isn't doing enough is not only blatantly wrong, it illustrates a tragic misunderstanding of the entire waste importation issue.”

Environmental groups strongly disagreed. Actions they have demanded of Engler and the DEQ include:

- Immediately send a letter to Toronto officials urging them to rethink the export of trash to Michigan, and insisting that Toronto immediately implement maximum waste reduction and recycling programs.
- Institute immediate and frequent inspections of trash entering Michigan from Canada and other states to assure that hazardous waste is not concealed or embedded in the imports.
- Immediately deny a proposal to dramatically increase imports of hazardous waste to Michigan for disposal in an underground injection well in Romulus. A state panel recommended last spring that the DEQ deny the permit for the well.
- Make passage of state legislation barring shipments of waste from states with less stringent disposal standards a priority in the Legislature.
- Take a leadership role in making top priority the passage of federal legislation giving states the right to restrict waste imports in the 2001-2002 session of Congress.
- Revive Michigan's faltering solid waste reduction and recycling program, largely abandoned by DEQ since 1996, when \$27 million in recycling funds were diverted to other purposes.
- Respect the authority of county governments to limit imports.
- The group also demanded that Engler cease accepting political contributions from PACs representing the waste industry.

To date, the Engler Administration has acted on *none* of these demands. “Both the governments of Michigan and Toronto need to understand that the people of Michigan are not in favor of receiving out-of-state garbage,” said Jeff Surfus of NO WASTE and Clean Water Action. “We are going to do what is necessary to convince our government to take action, and then we'll see what happens in Toronto.”

**For more info: Jeff Surfus, NOWASTE 734-436-1984 or Mike Garfield, Ecology Center, 734-761-3186, ext 104.**

### ***Breeding Disrespect for the Law***

*The DEQ Director compares EPA environmental inspectors to federal agents who stormed the Waco, Texas complex of a cult leader in 1993.*

The state and U.S. EPA have sparred for several years over the state's refusal to issue permits for concentrated animal feeding operations, or CAFOs. In the fall of 2000, DEQ Director Harding escalated the rhetoric by publicly attacking EPA inspectors of Michigan CAFOs, accusing them of “Waco-like” tactics. EPA officials told Michigan

environmental groups that Harding's comments prompted concern about the safety of EPA staff.

Quoted in the Michigan Farm Bureau publication *Agri-Notes and News*, Harding said: "EPA realizes that they do not have the legal authority to force Michigan to issue NPDES permits for facilities that are not designed to discharge. So the federal government has chosen to come into this state in a Waco-like manner to trample over the state's rights...That's simply unacceptable."

Harding's statement is shaky legally. All other states in EPA Region V have agreed to issue NPDES permits under the federal Clean Water Act for CAFOs.

But the statement is even more reprehensible in its blatant allusions to an incident that cost the lives of dozens of civilians and several federal officials. Harding apparently saw nothing wrong with it. His spokesperson, Ken Silfven, defended the remarks. "Waco is generally regarded as a prime example of federal intrusion onto private property."

Apparently Michigan's DEQ Director thinks Clean Water Act protections for the public health and welfare "trample" private property rights.

### ***A Deficient Wetlands Program***

In 1984, Michigan became the first state in the nation to receive delegated authority to issue federal wetlands permits under Section 404 of the Clean Water Act. This was based on the state's 1980 wetlands law, which on paper is tougher than Section 404.

In 1998, the U.S. Environmental Protection Agency's Region V office in Chicago began its first review of the Michigan wetland program since 1984. While EPA said the review was routine, it followed closely on the heels of a report issued by a nonprofit organization, Public Employees for Environmental Responsibility (PEER), which detailed rampant abuse of the program by DEQ's top management.

EPA began meetings with DEQ officials and constituent groups in 1998 and has been promising to publish its draft findings in the Federal Register for public comment. Haggling between DEQ and EPA has delayed publication. Still, more than two years after the review began, EPA staff have confirmed they identified deficiencies in the way specific wetlands permits have been handled, in administrative law judge rulings that are inconsistent with state and federal law, and in the state law itself. They have specifically questioned the state's failure to move ahead with designation of 353 isolated, critical wetlands that provide important biological and scenic resources. Such designation would force developers of the sites to seek wetland permits rather than being able to alter or destroy the wetlands without oversight.

The question in February 2001 is whether changes in the EPA Administrator's Office will affect or further delay publication of the agency's findings, and reform of the state's faltering wetlands protection program.

## **GORING COMMUNITIES TO SUPPORT SPECIAL INTERESTS**

### ***Dumping on Romulus to Support Campaign Contributors***

*DEQ goes through a charade of public testimony before carrying out its intention of siting a deep well for the injection of hazardous wastes in a highly populated community near Detroit Metro Airport.*

In 1991, Governor Engler abolished a number of environmental boards and commissions, sparking public outcry and litigation. While Engler's executive order did not abolish the Site Review Board, created by the Legislature to take public testimony and make decisions on proposed hazardous waste facilities, he did neuter it by changing its powers from decision-making to advisory only. Under the Engler order, the DEQ retains final authority to site hazardous waste disposal facilities, and can overrule the Site Review Board (SRB).

Environmental Disposal Systems, Inc. (EDS), became the first company to test the new hazardous waste decision-making process when it proposed to treat up to 400,000 gallons per day of hazardous wastes containing toxic chemicals and heavy metals for injection into a well 4,000 feet below Romulus. The SRB held nearly six months of public meetings in Romulus during the fall of 1999 and winter of 2000, deciding by a 5-3 vote to urge DEQ to reject the application. The majority of the SRB cited nine reasons why the application should be denied, including:

- An unsuitable location with insufficient access and congested transportation routes, increasing the risk of dangerous accidents;
- The lack of a demonstrated need for the waste disposal capacity supplied by the facility;
- Concerns regarding the integrity of EDS and its ability to manage the facility safely.

Waiting over eight months after the SRB ruling, and until after the November 2000 election, DEQ Director Harding proposed issuing the EDS permit, saying, "The DEQ does not agree with the SRB recommendation to deny the construction permit because the SRB did not provide any legitimate reason for denial that cannot be mitigated by a special condition in the construction permit."

But there may well be another reason for the Harding recommendation. Environmental groups found that proponents of the hazardous waste deep injection well have contributed more than \$20,000 to Governor Engler and Republican candidates.

“DEQ Director Harding has already made Michigan a magnet for out-of-state trash. Now he wants to make us a magnet for hazardous waste as well. The Great Lakes State is fast becoming the ‘Great Wastes State,’” said Mary Beth Doyle of the Ecology Center.

“It's clear that special interest campaign contributors have an open door to top Michigan decision-makers. The Governor and his lieutenants have been successful in disregarding what is in the best interest of the citizens of Romulus and the state,” said Kathy Aterno, Michigan Director, Clean Water Action.

A search of state campaign finance records shows:

- Michael Timmis, who has a financial interest in the proposed EDS facility, contributed the maximum \$6800 to Engler's 1998 re-election campaign. Timmis also contributed over \$9000 to other Republican candidates in the 1998 election cycle. Timmis also served as an honorary chairman of Engler's June 23, 1997 “Governor's Gala” fundraiser.

- Nancy Timmis, listed at the same home address as Michael Timmis, gave Engler \$3400 in 1997 and \$4400 to other Republican candidates.

- Members of a law firm that also has a financial interest in the EDS project, Beier Howlett, gave Engler \$2600 in 1997 and over \$1000 to other Republican candidates.

- Douglas Wicklund, president of EDS, gave \$1,100 to Engler's campaign committee in May of 1999.

- Anthony Soave, whose City Management Company has a financial interest in the facility, contributed \$500 to Engler's committee in 1998.

Michigan Environmental Council has obtained documents showing that Beier Howlett, Timmis and Inman, and City Management stand to reap hundreds of thousands of dollars in profits if EDS receives its deep well injection permit.

With his 1991 change in the way hazardous waste facilities are sited in Michigan, Engler has put up disposal permits for auction to campaign contributors.

Contact: R.P. Lilly, 734-753-4320, Mary Beth Doyle, Ecology Center, 734-663-2400.

### ***Judge Slams DEQ's Interpretation of Wetlands Law***

*A northern Michigan judge reverses a DEQ decision, saying the wetlands act “would be effectively gutted” if the agency's interpretation were to prevail.*

DEQ Director Harding appoints administrative law judges who hear appeals of DEQ permit decisions. Most appeals are brought by persons wishing to develop wetlands or other sensitive areas who are unhappy with staff recommendations that would limit their plans. Those unhappy applicants have consistently found allies in the Harding-appointed law judges, who frequently overturn established precedent to allow development in and destruction of sensitive areas.

But when Leelanau County Circuit Court Judge Philip E. Rodgers last fall took a look at one of the decisions rendered by a DEQ administrative law judge, he saw things differently.

The case involved a 1998 permit application to fill wetlands to build a house, garage, driveway and holding tanks on a piece of waterfront property on Northport Bay. The applicant did not own the affected property, but had an agreement to buy it contingent on obtaining a permit to construct a house. In November of 1998, the MDEQ Land and Water Management Division denied the speculative landowner's permit application to place nearly 625 cubic yards (equivalent to over 60 dump truck loads) of fill upon the wetland property. In an extremely strongly-worded four page letter, the MDEQ found that "the project will have a significant adverse impact on the natural resources associated with Grand Traverse Bay," citing this wetland complex's important functions in water storage, runoff filtration, wildlife habitat, and other ecological values. The MDEQ concluded in part that "the proposed project is not in the public interest...and is not dependent upon being located in a wetland, and feasible and prudent alternative(s) exist."

Then, in a startling reversal three months later, the same MDEQ staffer approved a "modified" reapplication based solely on the inclusion of a stick figure drawing of a shack on stilts – suggesting the construction of a residence on pilings vis a vis a Gilligan's Island architectural design. Some citizens concerned about the development believe that MDEQ staffers even penned the new wetland permit for the applicant.

Concerned citizens challenged the staff issuance of the permit, but in January 2000 the DEQ administrative law judge ruled against them. He said the availability of other waterfront property on which to build the house and other structures was not a feasible and prudent alternative, calling this notion "absurd" because "other real property is always available where the activity could be accomplished." The law judge said the law only requires that feasible and prudent alternatives be available on the same site.

The administrative law judge also said there would be no adverse impact even though the property was the only remaining undeveloped wetland on Northport Bay and added that the project was a wetland-dependent activity because "[i]f the entire parcel is wetland, as is the situation in this case, the activity must occur in the wetland."

Judge Rodgers rebuked the DEQ administrative law judge on virtually all grounds. First, he pointed out DEQ has considered off-site alternatives in the past, and that since the applicant in this case had not yet purchased the property, it was plainly

possible to consider other building sites. Second, he found the law judge had ignored testimony by every witness at a hearing that the activity would have an adverse impact, and Rodgers called this “an error of law.”

Third and most important, Rodgers rejected the administrative law judge’s contention that the project was “dependent on being located in the wetland,” a standard in state law that must be met before a permit can be issued. Judge Rodgers said:

“The DEQ’s construction of ‘dependent on being located in the wetland’ is clearly wrong and another construction is plainly required. To accept the DEQ’s construction would result in any property that is entirely wetlands being exempt from meaningful regulation. The Wetlands Act would be effectively gutted...in no sense of the ordinary meaning of the word ‘dependent’ is any residential or commercial construction activity ‘dependent on being located in a wetland.’”

Judge Rodgers concluded: “The Tribunal’s decision was tainted by clear errors of law. The magnitude of these errors would strip the wetlands regulations of their legislatively intended meaning and subordinate the primacy of Michigan’s environmental law...” On December 5, 2000, he reversed the administrative law judge ruling and ordered DEQ to reconsider its decision.

Contact: Steve Mattson, 231-386-5272.

### ***Landfill Violations Don’t Bring Enforcement***

*A state legislator’s complaints about nuisance conditions at a local landfill bring a confirmation from DEQ – but no enforcement action.*

Acting at the request of constituents, State Representative George Mans asked DEQ staff to look into debris blown from the Rockwood Landfill eastward into a state game area and wetland preserve in 1999. As a result of the complaint, DEQ Waste Management Division assured Mans that it would enforce the law and bring a halt to the windblown debris.

On November 27, 2000, Mans again wrote DEQ at the request of constituents to say:

“This week-end I was contacted by sportsman’s organizations and individuals to witness the utter failure of the MDEQ to monitor, correct and punish those found to be in violation of our state law...I am asking that MDEQ take charge of the clean-up of the state game area, including debris that has blown all the way to the Huron River Estuary and not leave it to the MDNR to foot the bill for clean-up as was the case in the previous violation.”

On December 6, 2000, DEQ Waste Management Division Chief Jim Sygo wrote Mans back to confirm that his staff observed plastic in the trees at the game area and “a very large amount of similar debris on the ground within the Facility-owned permanent fence, and some debris at the Game Area parking lot on Roberts Road. They discussed the blowing debris issue with Mr. Keith Fisher, DNR, who confirmed that a large amount of debris was blown over the fence by high winds on Wednesday, November 22, 2000, and that most of the debris had been picked up by landfill personnel. He stated that the new landfill operator has made much improvement with managing blowing debris...” Sygo concluded, “...[T]he Facility response to the wind-blown debris that left the Facility on November 22, 2000, does not require enforcement action at this time.” Yet DEQ itself had issued a formal letter of warning to the facility in April 2000.

Apparently promises of future performance are enough to persuade DEQ management that landfill operators should not be punished for past mistakes.

Contact: Rep. George Mans, 517-373-0845.

### ***When Wetlands Aren't 'Regulated Wetlands'***

*DEQ refuses to consider expert information that would require the agency to protect wetlands that will be developed for a Ludington area golf course and housing development.*

Rebecca Fox, whose parents are residents of Hamlin Township just north of the City of Ludington, was concerned when the DEQ proposed issuing a permit for a golf course and housing development that would affect approximately 200 acres of wetlands and upland forest adjacent to the west and south sides of her parents' land. The site is along the north side of Lincoln River, about 2.5 miles west of Ludington State Park.

Fox retained a consulting firm, Huron Ecologic, to perform an independent review of the proposed construction site. The firm's verdict: roughly 1/4 of the site consists of regulated wetland contiguous with the Lincoln River. The applicant, using a narrower interpretation of “regulated wetlands” with the approval of the DEQ, determined that much of this area is not regulated by state law, removing a significant portion of the site from the state's permit oversight. The owner has started clearing parts of the site for the golf course.

“The primary values of these wetlands would relate to groundwater recharge, surface and groundwater quality, and wildlife habitat,” says Fox's consultant. “The soils are quite sandy, so it is likely that these wetlands interface rather directly with groundwater, at least a shallow aquifer. This would be critical in maintaining groundwater quality and recharge, not only for human consumption, but because it maintains a stable hydrology for the Lincoln River watershed. The impacts of wetland filling on this site to the stability of the hydrology might be insignificant, but the cumulative impact of such activities has destroyed many watersheds. The best quality

streams that support trout and other higher quality aquatic life, are maintained by groundwater input, being cold and clean.”

Huron Ecologic submitted its findings to the DEQ in early December of 2000. Since then, the DEQ has offered the applicant a modified permit, based on the DEQ's own minor concerns, but has not taken into consideration any of the additional regulated wetland identified by Huron Ecologic. The applicant has until the end of January to either accept or reject the modified permit offered by DEQ.

Although Fox and the consultant are asking the US Army Corps of Engineers to take jurisdiction over the wetland, it appears the DEQ's failure to protect the site could jeopardize important wetlands. The Corps says its jurisdiction under the Clean Water Act does not extend to the site, falling just about 500 feet short of the west boundary of the site.

Unless DEQ reverses its position, more valuable wetlands could be lost this year.

Contact: Rebecca Fox, e-mail: rebfox@netzero.net.

### ***Fouling Hamtramck's Air With Toxins***

*After nearly a decade of failing to meet air toxin permit limits the MDEQ brings the Hamtramck medical waste incinerator into compliance, not by enforcing the rules of the permit, but by grossly weakening the emission standards.*

The people of Hamtramck have long protested Michigan's only commercial medical waste incinerator operating in their community. This predominantly low-income community is home to a large percentage of recent immigrants. In addition to the Hamtramck medical waste incinerator, the area suffered from the emissions of two other major incinerators, auto plants, and other pollution sources. However, its most immediate problem appeared to be the City Medical Waste incinerator. The 25-ton per day burner first drew opposition from angry neighbors complaining about thick black smoke and the issue soon escalated to a community wide awareness of the technical, legal and health aspects of the privately owned incinerator. It had repeatedly failed stack emission tests, received hundreds of violations, and had caught fire. Wayne County Air Management Field Inspector Lee Murchison said, "There is doubt if this facility will ever be able to achieve and maintain compliance with their permit conditions, it is an indictment of this division that it is still operating."

Despite this history, Wayne County, which was authorized by the State of Michigan to issue and enforce air emission permits within the county, allowed the incinerator to operate. Although Wayne County, under a contractual agreement with the state, received money to enforce the permits it issued, the county did nothing about the incinerator's violations and appeared unlikely to do anything in the future.

Local activists had to make a decision. Although DEQ usually did not interfere with Wayne County's permitting and enforcement decisions, the state had asserted that, in extreme situations, it would exercise direct oversight. "We knew it was a risk to ask Russ Harding to get involved, to exercise state oversight, but we never in our worst nightmare thought it could be this bad," said Rob Cedar of the Hamtramck Environmental Action Team (HEAT).

Mercury was the worst problem. For the first 4 years the incinerator operators never even tested for mercury. Then bowing to public pressure, they did some testing but the facility usually failed. The facts were so clear that the community was certain the state would have to take action.

After acknowledging Wayne County's weak enforcement and failure to assure compliance, Harding's DEQ placed all enforcement action on hold. Then DEQ took more than two years to negotiate a mercury reduction and testing agreement with the owners of the incinerator. To the horror of the community, the DEQ then chose to bring the facility into compliance not by enforcing the permit, but by weakening the standard. DEQ actually took the last failed test results and set the limit 10% above it. Then, as if to add insult, the DEQ gave the permit enforcement back to the county.

Now, more than a year later the incinerator has failed to demonstrate compliance with even the weaker standard and has yet to document the mandated mercury reduction plan. Yet it continues to burn medical waste, thanks to DEQ. "Asking the MDEQ to help was like asking Mrs. O'Leary's cow for a light," said Cedar.

Contact: Rob Cedar, HEAT, [rob313@aol.com](mailto:rob313@aol.com) or 313-365-4722.

### ***Another Wetland Sacrificed In Defiance of Law***

*DEQ inexplicably reverses itself and allows development in the face of strong science to the contrary.*

Picture a pristine coastal fen, the last such remaining undeveloped area along a historic stretch of sandy beach on Lake Charlevoix. Allow your mind to drift back to a simpler time when this beach was the boyhood playground of Ernest Hemingway and setting for many of his Nick Adams tales. In August of 1999 a Georgia man, who had purchased this wetland property for \$36,000 in 1980 and has been twice denied wetland permits from the Army Corps of Engineers, sought wetland dredge and fill approval from the DEQ to construct a shoreline home complete with garage, septic and water systems. The plan included the removal of muck soils from the proposed drive and garage areas and the placement of over 260 cubic yards of fill to adjoining "upland" portions of the shoreline property as identified by the applicant's wetland consultant. In May of 1999 the MDEQ flatly denied the permit, finding that "the proposed project will have significant adverse impact on the natural resources associated with Lake Charlevoix...and the activity proposed is not dependent upon being located in a wetland."

Adjoining property owners, concerned about the level of the DEQ's resolve in this permit denial, retained an experienced environmental attorney and wetland expert to evaluate the wetland's natural condition and setting, and take an independent look at the wetland fill and home construction proposal. Following an ecological assessment, the citizen group provided a report to the DEQ documenting the high ecological and hydrologic value of the wetland area. Through this study, it was found the Little Traverse Conservancy and area botanists had inventoried plants at this and surrounding wetlands dating back to 1980. Even with the loss of plant species diversity through surrounding past development and associated habitat destruction, a study undertaken by an independent botanist during the spring and summer of 2000 rated the threatened wetland as "biologically significant from a statewide perspective, [with] the potential to be ecologically rare."

Inexplicably, in August of 2000 the DEQ did a complete reversal and granted a "modified" wetland permit that was essentially unchanged from the original proposal, but recognized that no upland areas existed in the proposed construction area as asserted by the applicant's consultant. Through this reversal, the DEQ approved a plan to construct the shoreline home on "stilts" even if the only way to get construction materials to pilings upon which the home would be perched would be to hand carry everything. What's more, the permit as approved did not require any mitigation of wetland losses or anticipated impact to Lake Charlevoix – the DEQ's stated reasons for denying the proposal a little more than a year earlier.

Concerned residents filed for a contested case hearing and have appealed to the U.S. Army Corps of Engineers to intervene and/or require an Environmental Impact Statement relative to this matter. Federal review and litigation are ongoing at this time of this writing. Perhaps through privately funded litigation, if nothing else, the DEQ's reasons for this schizophrenic decision will see the light of day.

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### ***Northern Michigan's Air: A Sacrifice Zone?***

*DEQ Director Russell Harding has apparently decided that he can best reduce Michigan's waste tire stocks by providing northern Michigan energy companies with a new source of fuel -- issuing tire burning permits to the plants without requiring them to install "scrubbers," the industry's basic pollution prevention equipment.*

Cadillac Renewable Energy and a CMS Energy power plant in Grayling are the two latest wood chip-burning plants in northern Michigan to apply for permission to add tires to their fuel mix. The DEQ has since 1993 issued permits to three other wood chip plants in McBain (Wexford County), Hillman (Montmorency County), and Lincoln (Alpena County) to burn a total of 45,920 tons of tires. Add the Cadillac and Grayling plants, plus a requested increase at Hillman, and the total comes to 102,495 tons. This is

on top of 3.655 million tires currently permitted to be burned each year in Southeast Michigan at the City of Wyandotte Power Plant and Holman Cement in Dundee. Holnam is also proposing to more than double its tire burning capacity, and a General Motors plant in Detroit is currently burning tires on trial bases.

But citizens in Cadillac have organized to demand that DEQ require scrubbers on the CRE facility. While DEQ has authority to require this equipment, it refuses to do so.

Mary Ann Dolehanty, a unit supervisor in DEQ's Air Quality Division, explained that northern Michigan's air could become much dirtier before it runs afoul of federal air quality standards. It could get as thick as Houston or Los Angeles' air before it exceeded allowable pollution levels.

The federal Clean Air Act does give Michigan considerable power to keep the air as pure as possible. But the agency invested with that authority is not inclined to use it, she said. "It looks as though that (Cadillac) proposal will not include scrubbers. ... The decision will be based on the regulations, and where we can push and where we can't."

That's not good enough for Joyce Petrakovitz and other northern Michigan residents now organizing to change DEQ's position. "We're turning our air, one of this region's most important resources, into a giant air sacrifice zone," she said. "All for the sake of saving the multi-billion dollar utility companies that own these plants a few dollars. I think if more people in northern Michigan knew what was going on, they wouldn't tolerate it."

DEQ's policy of interpreting federal law to benefit companies, not people, is nothing new. The agency has been at war with the Clinton administration for nearly eight years over federal Environmental Protection Agency proposals to make air cleaner. The DEQ filed 10 lawsuits against EPA in recent years to stop new air quality standards that would require big companies to reduce nitrogen oxide emissions, which cause smog. The DEQ also joined many of those same companies in a case pending before the U.S. Supreme Court to argue that EPA and state officials should lower Clean Air Act standards, presently set at levels designed to protect the public health, by factoring in the potential business costs of implementing those standards.

It has become clear, however, that both more tire burning and more tire pollution is on the way. Two of the already-permitted plants now plan to double the amount of tires they burn. That's troubling to residents and scientists because a doubling of tire volumes does not result in a mere doubling of tire pollution loads.

Burning tires along with wood causes a unique combustion chemistry that causes a six-fold increase in acid rain pollutants when a plant burns twice as many tires. That means that the level of acid rain pollutants the DEQ now plans to allow the five plants to produce — 1,000 tons of sulfur dioxide annually — could easily reach 6,000 tons or more every year as DEQ allows the plants to increase the amount of tires they burn without pollution controls.

Total sulfur emissions from northern Michigan tire-burning plants amount to a small portion of the more than 400,000 tons Michigan allows power plants and other industries to emit annually. But critics like Mrs. Petrakovitz point out that tire burning is a new and unnecessary source of pollution in northern Michigan. In addition to sulfur dioxide and nitrogen oxide, tire burning produces many other toxic and hazardous pollutants. Scrubbers can stop most of that pollution from turning into public health and environmental problems, she said.

Mrs. Petrakovitz is not alone. Tom Rozich, a respected fisheries biologist with the state Department of Natural Resources, says new sulfur emissions could increase the acidity of northern Michigan's lakes and streams. That kills fish.

In a memorandum to the DEQ in September 1999, Mr. Rozich wrote: "We in the Fisheries Division have grave concerns over this proposal." New, uncontrolled emissions could hurt area lakes and streams, he explained. An example is Berry Lake, which lies approximately 4.5 miles southeast of the Cadillac plant and is already slightly acidic. "Additional acid rain will be detrimental to the existing fish populations," he wrote.

Lynn Fiedler, a DEQ air quality regulator, also spelled out the environmental protection conflict for her colleagues in a 1999 memorandum. "The rules are designed not to trade a solid waste problem into an air problem," she wrote.

A decade ago, Michigan joined other states in approving legislation to clean up tire dumps and strengthen oversight of scrap tire disposal. The 1991 law also called on the state to flex its regulatory muscle to find and promote alternative uses for scrap tires, such as recycling. Michigan is making progress with cleanup and oversight. But of the roughly 8 million scrap tires it converts to alternative uses each year, it directs less than 2 million into production of retreads, landfill liners, playground equipment, and recycled rubber products.

The state's preferred "alternative use" for waste tires is incineration, which accounts for the remaining 6 million tires the state converts each year. Michigan is already the sixth largest user of so-called "tire derived fuel" in the country, according to the Scrap Tire Management Council, an industry trade group in Washington.

Michigan is poised this year to become the nation's second-largest tire burning state if DEQ approves the tire burning levels that energy plants in northern Michigan have requested. These additions would double the total number of tires Michigan burns to 12 million each year. Illinois, number one, burns 15 million tires a year.

Michigan is becoming a top state for incinerating tires because it is sending the scrap rubber to northern Michigan wood chip plants, which the Clean Air Act does not automatically require to use scrubbers.

Northern Michigan residents want respect from state agencies. “We have clean air,” Mrs. Petrakovitz says. “It’s what makes northern Michigan, northern Michigan. As citizens we need to do everything we can to make sure our air stays clean. It’s absurd that the state agency that’s supposed to do that isn’t, especially when the technology is available at a reasonable cost.”

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### ***Antrim County Forced to Protect Wetlands***

*DEQ’s consistent failure to protect valuable wetlands inspires Antrim County to pursue its own wetland protection ordinance.*

Antrim County, northeast of Traverse City, knows its future rests not on new highways and malls, but on the fate of its natural resources, especially great stretches of soggy ground.

With 25,000 acres of wetlands, 28,000 acres of lakes, 26 miles of Lake Michigan coastline, and the Jordan River — the first protected under the state Natural River Act — Antrim County has some of the wettest, wildest, and most prized real estate in northern lower Michigan. Protecting the county’s clean water, however, is a challenging matter of keeping its all-important wetlands, which soak up rainwater and filter erosion, alive and well.

Antrim County never anticipated, however, that one of its toughest foes would be the very agency charged with safeguarding the state’s natural resources: the DEQ. Environmentalists have long criticized the Engler administration’s DEQ for lax environmental enforcement. But even many of Governor John Engler’s supporters in Antrim County were furious when the DEQ gave its stamp of approval in August 1999, to a pair of landowners trying to build a house on an undisputable wetland. Local officials were powerless to intervene despite a clear violation of the law. The Antrim County Board of Commissioners issued a stinging letter of protest that called DEQ’s permit approval “a violation of the letter and intent” of the state wetlands law.

With its population surging and construction industry booming, Antrim County’s conservation-minded leaders decided to end their reliance on state regulators for wetland protection. They wrote a local law that allows them to step in when DEQ won’t and override the agency’s decisions when its officials refuse to obey state law. In doing so, Antrim’s leaders joined a growing chorus of community officials across the state who say they can no longer rely solely on state government to do the wetland protection job that taxpayers fund and that state laws mandate. Antrim County’s board of commissioners is likely to approve its proposed wetland program this spring, making Antrim the first to have a countywide wetland protection ordinance.

“We’ve heard over and over that the state is protecting our wetlands,” said Pepper Bromelmeyer, an Antrim County planning commissioner. “Well, if we think about that for a moment, we know that’s just not true. Travel for one hour south of here, and the rivers run brown during a rain. Travel two hours south of here, and the rivers run brown all year round. One of the main reasons for this is loss of wetlands.”

Surprisingly, the DEQ notified Antrim County that it welcomed the new wetland ordinance, which it said would give overwhelmed state inspectors desperately needed help in the field. The agency is suffering from staff reductions, poor morale, and top-level decisions to encourage sprawling growth and industrial development by weakening natural resource protections.

There has rarely been a wetland case like the one involving Janet and Vonebar Veit, the one that prompted Antrim County to act.

It all began in 1991, when the couple from Davison spent \$8,000 to buy a lakefront lot on Intermediate Lake in the center of Antrim County’s world-renowned Chain of Lakes. The price was so low because it was impossible to develop the lot to its \$100,000 potential without violating the state’s wetland law.

Efrain Rosalez, Antrim’s soil erosion control officer, told the Veits that under Michigan’s 1979 Wetland Protection Act they needed a permit from the state to fill, drain, or develop the property. The Veits instead built a winding driveway through the wetland. The Department of Natural Resources ruled that the 1991 construction was illegal and ordered the Veits to remove the driveway. But for reasons that are still not clear, the DNR did not enforce the order.

The matter was quiet until the fall of 1998 when the Veits surfaced again with a plan to build a house on the wetland. They applied for and received a wetland permit from the then three-year-old DEQ.

Perhaps no one in Antrim County looks forward to the new ordinance more than Mr. Rosalez. On August 9, 2000, he stood eye to eye with a construction crew intent on putting a pipeline across wetlands near the Veit’s property. The pipeline was part of a septic system that the Veits said they needed to develop their property.

Mr. Rosalez warned the crew that, without a proper soil erosion permit, they were about to break the law. The crew ignored the warning, claiming the work was a wetlands issue, that the state had given its permission, and that local government had no wetlands authority. The crew repeated the claim and kept on working even after a deputy from the Antrim County Sheriff’s Department pulled in to back up Mr. Rosalez.

Finally, hours later, after the Antrim County prosecutor secured a formal order from Circuit Court Judge Philip E. Rodgers, the crew halted construction and has not resumed since. If Antrim County’s proposed wetland ordinance had been in place, Mr. Rosalez would have had a powerful legal tool to assert his authority and prevent the

confrontation altogether. “The idea is to have a stronger say in what happens to wetlands in our county,” he said. “The ordinance will help.”

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### ***Grosse Ile Wetland Redefined Out of Existence?***

*DEQ “determines” a wetland is small enough to be ignored as development on Grosse Ile moves ahead, while independent scientists consistently find it is protected by state law.*

In 1989, consultant Eugene Jaworski surveyed an approximately 11-acre parcel of land west of Park Lane in the upper middle area of Grosse Ile, south of Detroit. Jaworski determined more than 80 percent of the area to be regulated wetland.

In the early 1990s, an environmental consultant surveyed the site again at the request of a developer and made essentially the same findings, concluding that the site was probably unbuildable. As a result, the developer did not purchase the site.

In 1999, however, the owner of the land wanted to sell the land and asked DEQ to determine the wetland boundaries on the site. Employing a contract assistant to do the work, DEQ determined that most of the area – again approximately 80% -- was *not* regulated wetland. A developer bought the property and submitted a proposal to build a housing development on the site to the Grosse Ile Township board. The local planning commission denied the site plan.

In 2000, the Township hired a consultant who concurred in the initial finding that the site was at least 80 percent wetland, based on findings pertaining to hydrology, soil and flora. The consultant determined that the DEQ’s contractor misidentified the flora, including trees, and did only a cursory evaluation of the site.

The Township’s Board of Trustees has now denied the site plan proposal and citizens anticipate a lawsuit based on the DEQ’s “bad science.”

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