



Illinois Dunesland Preservation Society

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CALL FOR URGENT LEGISLATIVE ACTION!

June 19, 2007

Memo: Governor Rod Blagojevich
Illinois Legislature

Subject: DEFECTIVE Senate Bill 333 Recreation Land Use - Variety
Sponsors John J. Cullerton, Pamela J. Althoff, Senate
Lou Lang, Harry Osterman, House

RE:

- Legislature Passes Bill That Ignores Environmental Protection Act, CERCLA Laws, and Endangered Species/Habitat Protection by Holding Landowners Harmless When Leasing Lands to IDNR, Potentially Exposing the Public to Dangerous Contaminants
- Some Legislators Evidently Deceived by Special Interests When Voting
- Request Governor's Veto

Dunesland discovered on Friday that the Illinois State Legislature has passed a bill that is awaiting Governor Blagojevich's signature. This bill puts the environment, endangered species/habitat, our health and personal finances at further risk. It apparently nullifies parts of the endangered species and environmental protection laws that were designed to protect and enforce.

Senate Bill 333 passed unanimously, although a number of our legislators who should have fought against this bill aimed to help special interests either were conveniently absent or didn't vote. On the surface, it sounds like a simple bill with altruistic intentions, but it really is giving owners of polluted properties a blank check in being held harmless for contamination and damage to habitat and endangered species. Additionally, a hold harmless would let the landowner off the hook for injuries and exposure to the public caused by potential contamination exposure on leased properties.

IDNR does not have the resources to protect careless destruction of endangered species or habitat by visitors on leased properties, since they don't have enough personnel to even properly monitor and protect the lands they already charged to manage and protect. Apparently, this bill was aimed at a particular downstate Midwest Generation property, but has evolved into a Hold Harmless blank check for any property owner who wants to lease land at a nominal cost to IDNR, disregarding the above-mentioned environmental, health and safety, and endangered species regulations.

Currently, this bill:

"Provides that the owner-lessor of land leased to the Department of Natural Resources for a nominal amount **is not liable for injury of any kind to any person who enters the leased land for a recreational use, and owes no duty of ordinary care to keep leased land safe for entry or use by any person for recreational uses or to give any warning of a natural or artificial dangerous condition, use, structure, or activity on the leased land to persons entering for such uses** (and creates exceptions for willful and wanton misconduct, willful and wanton failure by an owner-lessor to guard or warn against a dangerous condition, use, structure, or activity on leased land, and for injury suffered by a person where the owner-lessor of leased land assesses a charge against that person who enters or goes on the leased land for recreational use). Provides that **nothing in the Act shall be construed to create a duty of ordinary care owed by an owner-lessor to any person on the leased land for a recreational use or to establish the basis for liability of an owner-lessor for injury to persons or property, or relieve any person using leased land for recreational uses from any obligation to exercise care in his or her use of the leased land and in his or her activities on the leased land or from the legal consequences of failure to employ such care.** Effective immediately."

This bill should be vetoed by Governor Blagojevich and sent back for additional language which would remove any hold harmless language benefiting a lessor with regard to contamination exposure and damage to the public, the environment, and endangered species/habitat on a property to be leased. This should include contamination that is known or discovered after a lease is signed. Protection laws and proper regulations should apply to the land owner even if it's leased to the state.

On Lake Michigan in Waukegan, IL, Midwest Generation owns a coal-fired power plant which is highly contaminated with asbestos Superfund tailings, as well as deadly microscopic fibers. Most of the material has come from the Johns Manville Asbestos Superfund site adjacent to it. IDNR had leased the fishing pier on that Midwest Generation property, but it has been shuttered and padlocked for several years due to our protests and our 2003 Camplin Report that criticized the extensive asbestos contamination on the shoreline. The Lake Michigan currents have caused the invisible fibers to move southward, contaminating the North Shore and Chicago beaches at least as far south as Chicago's Oak Street Beach with deadly amphibole fibers which are NOT naturally occurring in this area. Some tests show that the fibers found on the beaches are at statistically high levels.

New research data indicates that even low, intermittent levels of amphibole fibers are making people sick with asbestos disease. Government statistics show that Cook and Lake counties along Lake Michigan rate among the highest in the country for asbestos deaths; approximately 30% of those deaths are non-occupational.

This bill allows companies or individuals to let the Illinois Department of Natural Resources use their land and holds those companies harmless for any liability, even if they knew there were contamination and environmental problems with the land that could be dangerous. One example of hidden issues would be the fishing pier in Waukegan, IL that was leased to IDNR and became part of Illinois Beach State Park, the first state dedicated nature preserve in the United States which contains the highest number of endangered species of any other park in the state. It was shut down by Midwest Generation/Commonwealth Edison due to the Protests by Illinois Dunesland Preservation Society in 2004. There must be many more areas of concern on land that could be leased to the state.

Here is an excerpt from one of our newsletters about the Midwest Generation issue:

Camplin Report Holds Use of the Park's Fishing Pier in Abeyance

Dunesland's Health and Safety consultant and asbestos expert *Jeffery Camplin produced the Camplin Report in 2003, identifying many dangerous asbestos-contaminated areas throughout the park's beaches and at the Johns-Manville Superfund site which is adjacent to our park's Nature Preserve. One of the outcomes was the closing of the fishing pier and the parking lot adjacent to the Superfund site and the Midwest Generation power plant, located at the Greenwood Avenue street end. This area is known as Site 2 by the USEPA. Asbestos (some friable) had continually heaved out of the ground and had been identified by Mr. Camplin in his many inspections of the area.

Although the USEPA had stated that the site was cleaned up, it remains closed. During the claimed cleanup, Kakuris visited the site and asked what the smell was. The USEPA discovered that beneath the illegal asbestos debris, there was another landfill comprised of other contamination. The USEPA covered it and left it there. The site apparently is not really clean and remains closed. The USEPA has apparently skewed and manipulated their testing protocols, but now seems to be backing off their claim that it is clear of asbestos and poses no health risks. Mr. Camplin discovered that the USEPA had released a statement cautioning that their own cleanup standards for asbestos did not protect the public from the potential health risks of asbestos.

It is quite interesting to outside observers that State Senator John J. Cullerton, the initial sponsor of Senate Bill 333, praised former IEPA Director Renee Cipriano when she left state government to work for Sonnenschein, Nath, & Rosenthal LLP. It is the same firm for which former IEPA Director, now USEPA Region V Administrator; Mary Gade worked after she also left state government as IEPA director and before she became the new USEPA Region V Administrator.

As IEPA Director, Cipriano recommended that Manville pay a \$145,000 fine in 2004, rather than the \$84 million (http://asbestosbeach.com/uploads/Trillions_letter_12-16-04.pdf) that could have been charged for cumulative violations at that time. In a state budget starved for cash, that is quite a

concession! It has come to our attention that Midwest Generation is a client of Cipriano's law firm, Sonnenschein, Nath, & Rosenthal LLP. Illinois politics is quite interesting, isn't it? But, of course, you would know that better than the beleaguered Illinois taxpayers.

This is from the text of Sonnenschein's press release in 2005 when former IEPA Director Renee Cipriano joined the firm:

"Renee has an excellent reputation in the General Assembly and is well regarded on both sides of the aisle," stated Illinois State Senator John J. Cullerton, majority caucus whip and chairman of the Senate Judiciary Committee. "She will be very effective in representing her clients in Springfield."

"Sonnenschein's depth and breadth of environmental expertise is unrivaled on both the state and national levels. And its public law practice is among the most dynamic and fastest growing in the industry. It is a natural fit for me," explained Cipriano. "I look forward to working with such an impressive group of lawyers, including Mary Gade, one of my predecessors as Illinois EPA director, and Phil Casey, former Illinois Commerce Commission general counsel, who joined the firm a few weeks ago."

For the full text of the October 2005 press release, go to <http://www.sonnenschein.com/news/2005/news48.aspx>

State Representative Karen May, chair of the House Environmental Health committee, attended the Dunesland meeting on Saturday to hear our speaker on the topic of recycling. Because we had just heard about SB333 on Friday, we questioned Karen about it. She said that the issues we raised had never come up in the legislative discussions, but that she had heard something about Midwest Generation in relation to the bill.

We do believe that subterfuge was not the intention of MOST of the legislators. However, it does appear that someone surely knew the ramifications of this bill and was serving Big Business special interest groups.

We call on you to do the right thing to remove the Hold Harmless section of this bill. You must uphold the protections already afforded for regulating environmental contamination, endangered species/habitat, and public health and safety. This bill needs to be vetoed as it now stands. It should be rewritten to cover the issues we have raised.

Sincerely,

Paul A. Kakuris

Paul A. Kakuris, President

c. USEPA Region V Director Mary Gade
IEPA Director Doug P. Scott

* For further information about asbestos on the Illinois shoreline, go to www.asbestosbeach.com. Dunesland's asbestos expert Jeffery C. Camplin, CSP, CPEA, is a nationally recognized environmental/health and safety engineer. Mr. Camplin has served as a volunteer consultant for the Illinois Dunesland Preservation Society since 2002. He is active in the American Society of Safety Engineers, serving a second term as the administrator of their 2,000 member Environmental Practice Specialty. In 2005, Mr. Camplin received the Society's Outstanding Volunteer Service Award. He authored Dunesland's 2003 Camplin Report (http://asbestosbeach.com/uploads/Camplin_Asbestos_Report_-_June_2003.pdf), exposing the asbestos dangers on the Illinois shoreline. The release of that detailed report forced the creation of the Illinois Attorney General's Asbestos Task Force Report which is a "cooked," scientifically corrupted document, co-authored by some of the same agency officials that facilitated the contamination of the Illinois shoreline.