

# *The Clean Water Action Council of Northeast Wisconsin*

SPRING 2011

## **CWAC Fights for Environmental Justice in Northeast Wisconsin**

### **Notices Served to Enforce Federal Clean Air Act**

In June, 2010, on behalf of CWAC, McGillivray, Westerberg, & Bender LLC served notice of intent to file a civil lawsuit against Appleton Coated LLC for repeated violations of the federal Clean Air Act at their mill in Combined Locks. This plant releases numerous air pollutants including sulfur oxides, nitrogen oxides, carbon dioxide, carbon monoxide, mercury, particulate matter, hydrogen chloride, and others. These pollutants contribute to processes and conditions harmful to human health including air pollution and contamination of surface water.

In December, 2010, on behalf of CWAC, McGillivray, Westerberg, & Bender served notice of intent to file a civil lawsuit against the Western Lime Corporation for violations of the federal Clean Air Act occurring at the Green Bay and Eden plants. The company's lime kilns release numerous air pollutants including sulfur oxides, nitrogen oxides, carbon dioxide, carbon monoxide, particulate matter, calcium oxide, and others. Both of these plants are located in close proximity to residential areas where violations may negatively impact human health.

The chief claims in each of these Clean Air Act enforcement actions are based upon violations of the plants' opacity limits. Opacity is a measurement of the amount of light that is reflected by the smoke plume; where there is high opacity, there are likely high levels of particulate matter in the plume. To protect public health and the environment, citizens and organizations like CWAC are authorized to file "citizen suits" in federal district court to abate these violations. While we hope to work with each company towards a successful resolution of our suits, CWAC may be forced to file suit in order to bring these polluters into compliance with the law, and is grateful to McGillivray Westerberg & Bender LLC, a public interest environmental and civil rights law firm based in Madison, for representing us in these matters.

### **CWAC Responds to DNR Supreme Court Appeal**

In May, 2010, the Midwest Environmental Advocates agreed to represent CWAC to respond to the Wisconsin Department of Natural Resources appeal to the Wisconsin Supreme Court. The DNR is appealing the April 13, 2010 Court of Appeals' conclusion that the DNR has authority to determine whether state issued water pollution permits comply with federal law. Betsy Lawton, of MEA, reported that the issues had been fully briefed and oral arguments were presented to the Wisconsin Supreme Court on November 3, 2010. We are still awaiting a decision from the Court on this important water quality issue. If the Supreme Court reverses the Court of Appeals' decision citizens will be without a voice to challenge DNR's decision to issue a permit to pollute Wisconsin water that is less stringent than uniform national Clean Water Act requirements. This case will likely have a dramatic impact on many other environmental cases in Wisconsin, including the currently pending challenge to Rosendale Dairy's water pollution permit, as well as how wastewater permits are implemented in the future.

**Please turn to "Appeal" page 2**

## Remembering Dale Druckrey

by Curt Andersen

Dale Druckrey was a long-time member of Clean Water Action Council. His recent death in a fire at his home in Shawano was a terrible shock to all of us who had become fast friends and true fans of Dale's insight and gentlemanly demeanor.

Dale had been a very active member of Clean Water Action Council since its inception. He always made sure that we saw the conservation point of view. He kept us all at the top of our form, forcing us to make our cases clearer.

Dale tantalized us with stories about the red squirrels living in his house that were eating more of his popcorn than he did. He once horrified Becky Katers by telling her that he thought he might have gotten frostbitten toes when sleeping in his truck on a very cold night. Dale was a true fiscal conservative. He lived very simply and left a small footprint as he made his way through life.

Dale was a salt-of-the-Earth, decent man of many talents. He was not afraid of hard work and he was always generous to Clean Water Action Council as we struggled to fight huge corporations.

To say that Dale will be missed is an understatement. He was a friend. It goes way beyond missing someone when you are that close.

### Appeal—from page 1

Lawton further stated that CWAC can certainly highlight its partial victory in the Court of Appeals decision which found that the submission of public comments is not a prerequisite to obtaining review of the terms of a water pollution permit. The DNR did not appeal this portion of the Court of Appeals' decision which is extremely important to public participation, as DNR has increasingly been denying the public an opportunity to challenge water pollution permits if the challengers had not submitted comments the DNR deemed "sufficient" to preserve their rights to challenge the terms of the permit. DNR can no longer use this excuse to deny individuals an opportunity to air their concerns before an Administrative Law Judge.

For updates on this case and to read the briefs, go to [www.midwestadvocates.org](http://www.midwestadvocates.org). There, you will also find an article detailing the efforts of former CWAC Executive Director Rebecca Katers to lead the fight against toxic dumping in the Fox River over several decades.

### Other Major Accomplishments of Clean Water Action Council During 2010

- February 4—The District Court entered its order and judgment approving the Consent Decree in the Clean Water Action Council of N.E. Wisconsin v. Utica Energy, a federal Clean Water Act Citizen suit. The Decree requires Utica to pay a total of \$110,000, including \$50,000 to the City of Oshkosh and Winnebago County for stream restoration, pollution prevention projects, and more along Sawyer Creek.
- March 25 "Back to the Future" membership meeting held, priorities identified, and committees created.
- May 22 Dance for Clean Water raised \$1800 and provided a great social and networking opportunity.
- June Paid final legal expenses of \$1250 to Midwest Environmental Advocates for Fox River lawsuits.
- December Paid accounting costs of \$850 for 2008 and 2009 tax returns.

### Avoid Coal Tar Sealant for Your Driveway

Chemicals found in a cancer-causing substance used to seal pavement, parking lots and driveways across the U.S. are showing up at alarming levels as dust in homes. A new study shows this is prompting concerns about the potential health effects of long term exposure.

The substance is coal tar sealant; a waste product of steel manufacturing used to protect pavement and asphalt against cracking and water damage, and to impart a nice dark sheen. It is applied most heavily east of the Rockies, but is used in all 50 states. Scientists with the *U.S. Geological Survey* say the sealant—**one of two types commonly used in the US**—doesn't stay put. It slowly wears off and is tracked into homes on shoes of residents. The USGS study, which found high levels of chemicals used in the sealant in household dust, marks the first time

Please turn to "Coal Tar Sealant" page 4

## Clean Water Action Council Goals for 2011

- Publish a quarterly newsletter to inform the membership of area environmental concerns and networking opportunities.
- Alert the membership of emergency environmental concerns where immediate action is needed.
- Be a party to citizen environmental lawsuits as the need arises.
- Present at least four educational programs regarding local environmental concerns to groups such as schools and neighborhood organizations.
- Support the work of the five committees.
- Conduct a membership drive for membership renewals and recruitment of new members to support the 2011 goals by providing active volunteers and financial support.
- Conduct at least one fundraising/social event to further support 2011 goals.

### Membership Meeting and Dance Saturday, May 21

The annual membership meeting will be held at the Rendezvous, E 896 Cty. TK N, between Green Bay and Luxemburg at 6:00, with the dance at 7:30. Last year's event was a great success. There will be food to purchase at the meeting and during the dance, a silent art auction, and great music for the dance. Please consider ordering a block of tickets to sell to friends and signing up to bring a bake sale item. Please see the enclosed order form on page 4 for more details.

**PLEASE HELP! WE NEED YOUR MEMBERSHIP RENEWAL!**

### Membership Form

Date \_\_\_\_\_

- \$20 Individual     \$30 Family (*this amount would really help*)  
 \$50 Sustaining     \$100 Donor     Other \$ \_\_\_\_\_  
 \$5 for mailing newsletter please or provide your e-mail address below for an eco-friendly version sent privacy protected

e-mail: \_\_\_\_\_

Name(s): \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

Please send me, privacy protected, occasional action alert e-mails.

e-mail or write: see above: \_\_\_\_\_

I would like to volunteer. Please contact me to help with:

- the newsletter     events     website under construction  
 joining or leading one of the committees     other \_\_\_\_\_

Send check or money order to: Clean Water Action Council,  
P.O. Box 9144, Green Bay, WI 54308

### 2011 Leaders

#### Officers

Dean Hoegger, President  
John Hermanson, Treasurer

#### Board Members

Stephen Abitz  
Curt Andersen  
Christine Fossen Rades  
Charles Frisk  
Audrey Thompson  
Bev Watkins

### Contact Us

#### By Phone 920 421-8885

If you leave us a message, we will try to get back to you within 24 hours.

#### By Mail:

Clean Water Action Council  
P.O. Box 9144  
Green Bay, WI 54308

#### By e-mail:

You may contact our president at  
[dhoegger@centurytel.net](mailto:dhoegger@centurytel.net)

The newsletter, "Clean Water Action Council of N.E. WI is published quarterly by the Clean Water Action Council of Northeast Wisconsin, Inc., P.O. Box 9144, Green Bay, WI 54308, a registered non-profit charitable, educational organization. All contributions are tax-deductible.

## *Dance for Clean Water Saturday, May 21 7:30–Midnight*

**Featuring the Sparkplugz Blues Band and Preceded by the Annual Meeting at 6:00**

### **Ticket Order Form for \$10 in Advance Tickets**

# of tickets \_\_\_\_\_ @ \$10 each for a total of \$ \_\_\_\_\_

Or, you can really help our organization by purchasing a block of tickets:

\_\_\_\_\_ \$40 enclosed for 5 advance tickets, 1 free.

\_\_\_\_\_ \$80 enclosed for 10 advance tickets, 2 free

**Please include the money with your order. Checks payable to  
Clean Water Action Council, P.O. Box 9144, Green Bay, WI 54308**

\_\_\_\_\_ Yes, I will bring an item for the bake sale, cut and ready for sale.

\_\_\_\_\_ Yes, I would be willing to help at the food stand.

\_\_\_\_\_ Yes, I have an item for the art silent auction. I will bring it by 5:30 or call  
Dean at 495-5127 for prior pickup.

**Send tickets to:** \_\_\_\_\_

**Address:** \_\_\_\_\_

### **Coal Tar Sealant, from page 2**

researchers have raised alarms about potential health effects for humans—especially young children—from the parking-lot coatings.

Scientists say, taken with previous studies indicating that the chemicals contaminate waterways, where they have been shown to harm insects and tadpoles, the finding raises serious questions about the advisability of using coal tar as a sealant.

The scientists' published their research recently in the journal *Environmental Science & Technology*. The research, which examined both parking lot dust and dust tracked into homes, focused on a class of chemicals known as **polycyclic aromatic hydrocarbons**, or PAHs, which are a significant component of coal tar.

#### **A known carcinogen**

Coal tar is known to cause cancer in humans. That finding dates to the 1770s, when chimney sweeps in London were found to have high levels of scrotal cancer. Late in the next century, it was associated with skin cancers among creosote workers. PAHs themselves are listed by the U.S. Environmental Protection Agency as a probable human carcinogen, based on laboratory studies in which they caused cancer in animals.

Emerging evidence also suggests that babies exposed to PAHs while in the womb, may be more prone to asthma and other ailments and may have lowered IQs.

The new USGS study compared house dust from 23 ground floor apartments in Austin—11 with coal tar-sealed parking lots, and 12 coated with other substances or not sealed at all. The study found that dust in the apartments next to the coal-tar-sealed lots had PAH pollution levels 25 times higher, on average, than the dust in other apartments.

More than half the apartments with the coal tar-sealed lots contained dust with levels of PAHs that would increase the risk of cancer if ingested by preschoolers, researchers said. They came to this conclusion by comparing their results to a 2008 study that estimated risks based on lab tests on animals. The increased risk means one additional child in 10,000 would develop cancer if exposed to that level of toxins over a lifetime.

Local governments in Austin, Texas, Washington, D.C., and Dane County, Wis., have banned pavement sealants containing coal tar after findings of PAHs in local waterways. In its place, they rely on the second main type of sealant used in the U.S., which is asphalt based and is commonly used in Wisconsin and other states and does not pose a known threat to humans.

*Condensed from MSNBC Investigate West Report ~JMV and reprinted with permission of Door County Environmental Council*

**Until coal tar sealants are completely banned in Wisconsin, we are well advised to check the product label to avoid this dangerous substance.**