

State to hold hearing on Musky Bay pollution

By Terrell Boettcher

A state hearing examiner will hold a contested-case hearing regarding a complaint filed by property owners on Lac Courte Oreilles alleging that a cranberry grower was the source of nutrient pollution that led to excessive weed and algae growth on the lake's Musky Bay.

On August 31, a complaint was served on the Department of Natural Resources by the citizens, demanding that the Department hold a public hearing over alleged water quality contamination to the bay.

The complaint was filed under a Wisconsin law which requires the Department to conduct a public hearing and issue

Order.

DNR Secretary George Meyer has asked that the Division consider the following issues for hearing:

1) Whether the alleged activity of Zawistowski Cranberries Inc. constitutes pollution, and if so, whether the discharge is a point or nonpoint source;

2) If a discharge exists which is a point source, whether there is a state or federal law requiring the activity to be covered by a Wisconsin Pollutant Discharge Elimination System (WPDES) permit;

3) If a discharge exists which is a nonpoint discharge, does the Department of Natural Resources have the authority under Section 281.20 of the Statutes to order corrective actions.

The Division will hold a telephone pre-hearing conference on the matter on Friday, Nov. 3, at 10 a.m. The conference will identify all parties to the hearing, simplify the issues which ultimately will be contested at the hearing, and establish appropriate schedules for the submission of documentary evidence and for prehearing discovery.

No testimony will be held at the telephone pre-hearing conference. However, a date will be set for the hearing on the merits established at the conference.

When the hearing is held before Administrative Law Judge Jeffrey D. Boldt, it will be

similar to a court trial. Any enforcement action and/or permit application hearings will be held at the same time and place.

The plaintiffs are represented by attorney Bill O'Connor of Madison.

1998 study cited

In their complaint, the six citizens cite the results of a 1998 study initiated by the Lac Courte Oreilles Conservation Department and conducted by Barr Engineering Company.

The study concluded that the level of phosphorus loading in Musky Bay on Lac Courte Oreilles is approximately four times that found elsewhere in the lake, including areas where drainage water from other cranberry operations is discharged into the lake.

The study linked 44 percent of the phosphorus level in Musky Bay to tributary cranberry bogs. Phosphorus is said to contribute to undesirable algae blooms and poor water quality, and Musky Bay is said to be particularly sensitive to phosphorus loading due to its comparatively shallow depth.

The 1998 study also found that the aerial spray method of fertilizer application used by the cranberry farms located on the tributaries to Musky Bay results in greater concentrations of phosphorus in the bay as

compared with ground application methods.

One of the complainants, Harry Schroeder of La Crosse, is president of the Court Oreilles Lakes Association (COLA). He said that association members have been frustrated by the lack of oversight of cranberry operations. "I like cranberries as much as anybody," he said. "But Wisconsin's lakes are the state's crown jewels. We have to protect them."

Study labeled 'fiction'

In response to the 1998 Barr Engineering study, local cranberry growers say that the statement that cranberry growing has led to water quality degradation on Lac Courte Oreilles is "fiction."

The fact, they say, is that the water quality on Lac Courte Oreilles is "excellent." They point out that the 1998 study blamed the grower for elevated phosphorus levels and the loss of wild rice on the bay, but enumerated three other cranberry marshes on the lake. "A computer model that was part of this study was modified to reach this conclusion," they say. "Data from water samples collected also showed that the water in the bay was in the mesotrophic range and not eutrophic. This suggests better water quality than reported. The marsh has been located there for over 50 years."

The growers continue that sampling conducted by the University of Wisconsin-Madison on Musky Bay in the fall of 1999 showed that the phosphorus concentration of the outflow cranberry harvest waters was lower than the inflow waters from Musky Bay by about one-third. "In this case, the cranberry marsh was removing or cleaning nutrients from the water. This data conflicts with the conclusion of COLA that the marsh is adding phosphorus to the bay."

The growers also point out that horticultural faculty at the UW-Madison "dispute the claim that phosphorus would cause the elimination of wild rice. On the contrary, they argue that if anything, increased nutrient levels would enhance the wild rice population."

In a recent letter to the Sawyer County Record, LCO tribal member D.E. Coon attributes the loss of wild rice to other causes than the cranberry marsh—primarily shoreline development and boating. He calls for all groups to work together to restore the wild rice. "Cranberry growers have offered to do just that, but their offer was rejected by COLA," they said.