



## Friends of the Jordan River Watershed, Inc.

P.O. Box 412, East Jordan, MI 49727

Phone/Fax 231 536-9947

Website [www.friendsofthejordan.org](http://www.friendsofthejordan.org) e-mail [foj@friendsofthejordan.org](mailto:foj@friendsofthejordan.org)

### Comments Regarding NPDES Permit #MI0058827 for CMS Land Company Little Traverse Bay Environmental Project, 12/9/10

Some of my comments probably won't matter to the permit writers here tonight but I feel that it is important, for the record, for Friends of the Jordan (FOJ) to express our perspectives on these matters.

I doubt FOJ would be here tonight and I doubt that this meeting would even be taking place had CMS not proposed to drill a Class I industrial well in Antrim Co. in which to dispose CKD leachate from Bay Harbor. That action sparked a lawsuit in Circuit Court by FOJ, Star Township and Antrim Co. The Judge in that case issued an injunction against the drilling of the well which opened the door to negotiations to find better, local solutions to the contamination at Bay Harbor. Those negotiations have led us here tonight.

FOJ has been deeply involved with the myriad of issues at Bay Harbor for several years. We have, as an organization, studied, researched and consulted with independent experts on these matters since before the site was developed. Our investigations have revealed the obvious, that this site should never have been developed without first removing or containing the CKD. Furthermore, historical documents show that this was not some innocent oversight but rather a calculated risk and gamble. From the beginning mistakes and poor judgments were compounded by shoddy science, denials and lax oversight.

Things radically changed when caustic CKD leachate was discovered along the shoreline at Bay Harbor and forced a Public Health Advisory closing the beaches. EPA intervened and in 2005 issued an Administrative Order of Consent thereby setting in motion a process to remediate the site. These actions resulted in much better scientific analyses, oversight and processes backed by the authority of the regulatory agencies. Scientific understanding of the site and transparency gradually improved especially with the dogged inquiries and FOIA requests by NPO's like FOJ, POWER Coalition, Tip of the Mitt and others.

Much has changed since then. CMS has taken responsibility for the cleanup, CKD leachate no longer flows unabated into Little Traverse Bay (LTB), the beaches have largely reopened and the site has been extensively mapped and studied. Moreover, after considerable "debate" and litigation, local solutions are being sought for a local problem. Trucking CKD leachate is no longer considered viable. However, a mountain of CKD still lies buried beneath the golf course and resort constantly leaking large volumes of toxic CKD leachate each and every day. The investigative and remediation process has identified a series of options by which to mitigate the CKD contamination. Most of them involve the management of CKD

leachate. Among those choices, onsite treatment utilizing the latest technology available and discharge into LTB probably goes the farthest toward reducing mercury and other chemicals of concern. It also alleviates other concerns like trucking. But is it the best solution?

What method or methods best resolve the CKD contamination at Bay Harbor has been and probably will be hotly contested now and into the future. FOJ believes that a multifaceted approach is warranted. While we appreciate and commend the hard work done by CMS, we also endorse EPA's 2005 Administrative Order of Consent which calls for the removal, isolation or containment of the CKD. We believe that more emphasis should be applied to the management of CKD, before it comes in contact with groundwater, thereby precluding the need to collect, treat and dispose CKD leachate.

One of the guiding principals of remediating contaminated sites is containing or isolating the source of contamination. Given the fractured nature of the limestone formations and Karst geology at the site, 100% containment is not possible. However 80% of the CKD and the worst seeps are accessible. FOJ contends that containment of buried CKD on site in hazardous waste cells, much like how bees construct a honeycomb, is worthy of serious consideration and should be part of a final remedy. This work could be done during the off season with basic excavation equipment.

When isolation and containment were discussed, disruption of the golf course was deemed unacceptable. It was declared technologically unfeasible even though it has been done elsewhere. Others argued that 100% of the CKD couldn't be removed so the idea had no merit. To us, it is a sad statement that we value the temporary inconvenience of a golf course more than protecting the largest body of fresh water in the world.

Costs and time are other major issues factored into the various cleanup options. We argue that neither have been accurately considered but should be. To collect and treat CKD leachate as proposed requires the maintenance of the complex array of collection lines, lift pumps, holding tanks and diversion wells at a high level of efficiency for up to 10,000 years. That's how long it could take for the 2.5 million cubic yards of CKD to finally "leach out." Yet EPA only requires costs to be projected out for 30 years. Clearly, this cost analysis is unrealistic.

FOJ wants the record to show that, while we commend the work and merits of what CMS now proposes, we believe a proper cleanup should include a stronger resolve to contain the CKD as declared in EPA's 2005 Administrative Order of Consent. We do not believe that the other alternatives are superior. We contend and have proposed that isolation and containment of CKD can be accomplished in a timely, cost efficient manner with relatively minimal disruption to the golf course or resort. Isolation and containment of the CKD to the extent practicable would

significantly reduce the volume of CKD leachate. Less leachate means less collection, treatment and release into LTB, fewer contaminants, lower costs and a shorter time horizon to when we can finally declare Bay Harbor no longer a threat to its residents, neighbors or the environment. We further propose that a trust fund be established by those parties responsible for the contamination, including the former owners of the cement plant and developers, to insure the ongoing hazard free maintenance of the site into perpetuity.

We have one final request, that CKD leachate not be called water. It is no more water than bleach or lye. To characterize leachate as water subverts the serious nature of this toxic substance and is misleading.

FOJ respectfully submits that the permit being considered here tonight be viewed as a temporary stopgap measure. Any final remedy should be multifaceted, timely and include a concerted effort to manage, isolate and contain the CKD without contaminating other places.

On behalf of the Friends of the Jordan River Watershed Inc.,

Dr. John W. Richter, President