

Lake Waves

A Quarterly Newsletter

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Balancing Environmental Regulations



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Editor's Notes..



The theme of this issue of the newsletter is environmental regulations. If it wasn't for important legislation like the Clean Water Act we'd probably still have rivers catching on fire in this country and the quality of our drinking water would not be what it is today. Landmark environmental legislation, such as the Clean Water Act, that was passed in the late 1960's and early 1970's has not been static. Over the course of the last 40 years there has been a constant struggle between groups demanding more regulation and groups that try to eliminate existing regulations (or prevent new ones from coming into the system). Often regulations are drafted with good intentions but can inadvertently result in loop-holes or ambiguous definitions for big pieces of a regulation. It is often these ambiguous definitions that court cases spend years trying to sort out.

These laws and regulations can have a direct impact on our property, drinking water, recreational access, overall health and pocketbook. In this issue we'll cover recent changes on the books, changes in process, as well as highlight a red hot battleground where steam is building to generate new regulation.

We also are providing an update on our new NIU student chapter. As you'll read these are no bunch of college slackers and we are proud to have their enthusiasm and participation promoting the ILMA mission.

- Bryan Cross

The Illinois Lakes Management Association is a nonprofit organization whose mission is to promote understanding and comprehensive management of lake and watershed ecosystems. Membership is open to all.



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Trolling the Backwaters

An introduction to Illinois Senate Bill 0091

By: Robert P. Smyth

Illinois Senate Bill 0091 (sponsored by Sen. Pam Althoff (R) of Crystal Lake and House Rep. JoAnn Osmond (R) of Antioch) amends the *Fox Waterway Agency Act* (615 ILCS 90/1 *et seq.*) to provide that all streams, bayous, sloughs, backwaters, and channels that are part of the Fox River Recreational Waterway and are open to the public for navigation and fishing, shall fall under the jurisdiction of the Fox Waterway Agency. The bill was sent to the Governor's office for signature on June 9, and is currently under review.

Currently, the territory of the Fox Water Agency includes the townships of Antioch, Grant, Lake Villa and part of Cuba township in Lake County; as well as parts of McHenry, Algonquin, and Nunda townships in McHenry County. (615 ILCS 90/4).

As currently drafted, the bill proposes new language to the Illinois statute under 615 ILCS 90/3 subsection "e" to provide that the *Chain of Lakes Fox River Recreational Waterway or waterway* means "the Fox River and interconnecting lakes commonly known as the Chain O Lakes from the Wisconsin State line to the Algonquin Dam, all within the State of Illinois, and includes all streams, bayous, sloughs, backwaters, side channels, improved channels, and submerged lands or parts thereof which lie within the territory of the Agency.

Most importantly, a new section is created under 615 ILCS 90/3.1 that provides for public use for navigation and fishing to backwaters and other areas. *Sec. 3.1. Public use. All waters within the waterway are open to the public for navigation and fishing.* Such statutory language has far reaching effects and implications as to private property rights, especially the right to exclude others.

While the plain meaning of the language in the bill appears to be clear, the intent of those amendments seems ambiguous. At issue is whether future public funds expended to dredge and maintain private backwaters and other areas would thus open those private areas to future rights of passage, water quality set aside restrictions, or impress those areas with *public easements*. That issue is well worth contemplating.

Long ago, the United States Supreme Court recognized that even if the Government physically invades only an easement in property [navigation servitude], it must nonetheless pay just compensation. See *Kaiser-Aetna v. United States*, 444 U.S. 164, 180 (1979); *United States v. Causby*, 328 U.S. 256, 265 (1946); *Portsmouth Co. v. United States*, 260 U.S. 327 (1922). Private property *takings* issues arise to the surface whenever one's private property rights are diminished or reduced (where one or more sticks from the property rights bundle of sticks is lost or removed) without just compensation.

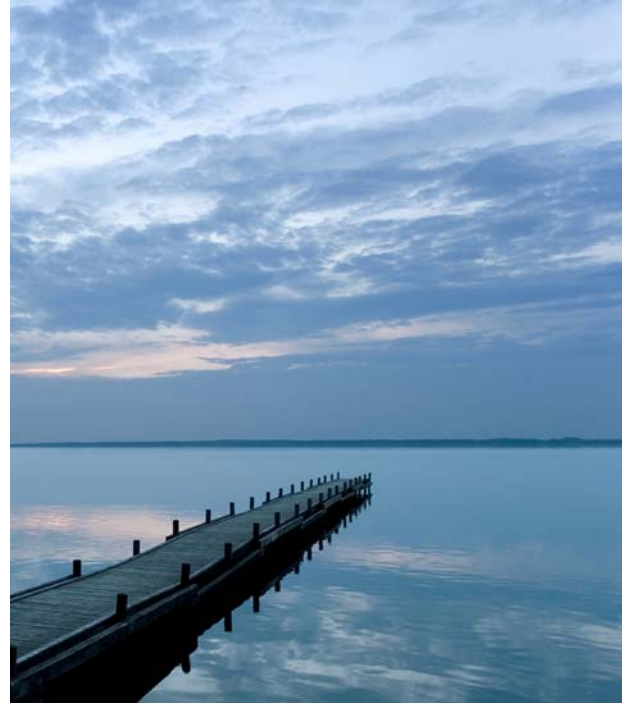
Interestingly, the Fox Water Agency Act provides that the Fox Waterway Agency may construct, acquire, improve, and maintain public recreational facilities within its territory, however the Fox Waterway Agency shall not have the power of eminent domain. (615 ILCS 90/7.4).

At the time of this publication, the Illinois Lake Management Association (ILMA) Government Affairs Committee is attempting to raise these concerns and issues to ILMA members and the Illinois General Assembly, prior to passage of the bill.

In summary, there may be far reaching unintended consequences for such amendments under Illinois Senate Bill 0091 to The Fox Waterway Agency Act. Illinois Senators and House members should consult their constituents on this legislation, and especially solicit feedback from those that own and troll the backwaters. To make your voice heard on this bill, contact the Governor's office at:

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Factory Farms Produce 100 Times More Waste Than All People In the US Combined and It's Killing Our Drinking Water

By: Jill Richardson



The Fifth Circuit Court of Appeals recently delivered a major victory to factory farms. Under a 2008 EPA rule, any confined animal feeding operation (CAFO) "designed, constructed, operated, and maintained in a manner such that the CAFO will discharge" animal waste must apply for a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act. The livestock industry ridiculed the notion that a farm must apply for a permit to discharge manure whether it intended to discharge it or not. And while, when phrased that way, it might sound ridiculous to you too, the details of the case betray a different story.

David Kirby, author of *Animal Factory, The Looming Threat of Industrial Pig, Dairy, and Poultry Farms to Humans and the Environment*, tells story after story in his book of factory farms discharging waste irresponsibly -- sometimes on purpose, and sometimes not. As Karen Hudson, whose story is told in the book, says, "Factory farms are dangerous to the environment; they are ticking time bombs of manure just waiting to be spilled into public waters."

The simple fact is that factory farms produce over 100 times more waste than all American humans produce combined. In the past, a pastured cow might disperse waste over an acre or more; how can farmers responsibly deal with the waste of 1,000, 5,000, or even 10,000 or more animals when they are crammed in tightly together? And, unfortunately for the farmers, they are often working under contract for major meat or dairy conglomerates who own the animals and leave the farmer with a tiny profit margin (or none at all) -- plus all of the liability, dead animals and manure. Therefore, in addition to simply disposing of manure responsibly, they also need to dispose of it cheaply if they are to stay in business.

In Karen's story, the CAFO in question perhaps did not intend to discharge manure. The farmer, if given the choice, may not have decided to apply for a permit. In February 2001, heavy rains coupled with melting snow and ice raised the levels of the nearby megadairy's manure lagoon to just inches below the rim. Panicking, the farmer, David Inskeep, decided not to hire tankers to haul away his cows' waste, as investigators

had ordered him to do. Instead he ran hoses from the lagoon to a nearby ravine over a mile away and pumped two million gallons of "a foamy, brown-yellow stew" into it. The 10-foot-high berm that dammed the ravine gave way, and the result was "the worst livestock spill in Illinois history."

The permits in question in the recently decided case would require farmers like Inskeep to make a plan for how to handle animal waste, and to follow that plan or face penalties. A version of this law has been in place for decades, but the details of the law have changed several times in the last few years. The major question of the case is: Can a CAFO be held liable for failing to apply for a permit?

Under a 1976 rule, all large CAFOs (those with more than 1,000 cattle or equivalent amounts of other species) and some medium-sized CAFOs were required to have permits to discharge waste. If a CAFO discharged waste without a permit, it faced civil or criminal penalties. The only permissible, unregulated pollution was "agricultural stormwater discharges," when a storm carried animal waste into navigable rivers.

This changed in 2003, when a new rule required all CAFOs to apply for permits or to ask the EPA for a "no potential to discharge" determination to become exempt from needing a permit. Additionally, the 2003 rule required all CAFOs to design and implement a "Nutrient Management Plan" (i.e. a plan to responsibly deal with animal waste). So long as the farmer followed his or her Nutrient Management Plan, any pollution of waterways was to be included in the "agricultural stormwater discharges" exemption.

After some legal wrangling, both by industrial farming interests and by environmental groups, the rules were changed again in 2008. The 2008 rule only requires CAFOs to apply for a permit if they are "designed, constructed, operated, and maintained in a manner such that the CAFO will discharge." Unless a CAFO can prove it does not meet that criteria (and thus does not need a permit), a discharge of manure would result in penalties both for the discharge itself and for failure to have a permit.

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The recent court decision ruled that the EPA has no right to require CAFOs to apply for permits unless they actually discharge waste. Once a CAFO discharges waste, however, the court decided that the EPA can then require it to apply for a permit.

The industrial farming groups -- the National Pork Producers Council, the American Farm Bureau Federation, the Oklahoma Pork Council, United Egg Producers, the North Carolina Pork Council, the National Chicken Council, the U.S. Poultry & Egg Association, Dairy Business Association Inc., and the National Milk Producers Federation -- also challenged the EPA's right to force CAFOs to design and implement Nutrient Management Plans and to penalize them if the plans are not followed and waste is discharged into waterways. On this issue, the court sided with the EPA.

What is the impact of this decision? Could it perhaps have no impact at all, as the CAFOs exempted from applying for permits are those that are not polluting? Sadly, this is likely not the case. By forcing CAFOs to apply for a permit, the EPA was forcing them to create a plan to manage the large amounts of waste their animals would inevitably generate. Without planning ahead for responsibly disposing of manure, how many CAFOs will wait until the last minute, like Inskeep, and then dump millions of gallons of manure into the environment? Even though the EPA will still be able to penalize them once they do, the damage to the environment will already be done.

These are not hypothetical scenarios. Just ask Rick Dove, an ex-Marine who serves as a Riverkeeper on his beloved Neuse River in North Carolina. After retiring from the Marines, he lived his dream of becoming a small-scale commercial

fisherman on the river briefly -- until enormous hog operations moved in, each producing as much waste as a town of 20,000 people, and their waste killed the fish.

Dove has seen hog farmers oversaturating their "sprayfields" - - cropland intended to absorb the unfathomable amount of manure generated by the hogs -- resulting in contamination of local waterways, but he has also seen the farmers illegally dumping the manure directly into the rivers. And then he's seen the Neuse turn red, green, yellow, orange, and black with various types of algae blooms that precede fish kills that kill millions or even a billion fish at a time.

In addition to irresponsible spraying or dumping of manure, there are the many lagoon spills that occur. In these cases, farmers likely have no intention of dumping manure into the environment, but it happens all the same. Kirby says that when writing his book, "there were so many lagoon spills that my editor had me take some out." And because such spills are accidents, farmers won't necessarily apply for permits ahead of time, since they don't intend to discharge manure.

The losers in this story are not just "tree-hugging" environmentalists or even fishermen. In far too many cases, the losers are drinkers of water -- which is all of us.

Jill Richardson is the founder of the blog La Vida Locavore and a member of the Organic Consumers Association policy advisory board. She is the author of Recipe for America: Why Our Food System Is Broken and What We Can Do to Fix It.. This article is reprinted with her permission.



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Editors Note: This issue is definitely on the front burner, as this spring the Illinois Attorney General (Lisa Madigan) filed a complaint against an owner of a mega-dairy operation in Illinois for unintended releases into the South Fork of the Apple River. The owner is vehemently opposed and fighting to prevent the requirement of a permit for his operation. A violation of a National Pollutant Discharge Elimination System (NPDES) permit can have a fine of \$50,000 with an additional \$10,000 per day which a violation continues. It is easy to see why agricultural operations oppose obtaining a permit where there is a high risk of violation.

Banning Coal Tar Sealants in Washington State

By: Robert McClure

W

ashington state has become the first in the

nation to ban toxic asphalt sealants made from cancer-causing industrial waste that have been spread over vast swaths of the nation's cities and suburbs.

The toxic ingredients in coal tar-based sealants are turning up in ordinary house dust as well as in streams, lakes and other waterways at levels that concern government researchers. The chemicals have been found in driveways at concentrations that could require treatment by moon-suited environmental technicians if detected at similar levels at a toxic-waste cleanup site. The sealants are also applied on playgrounds and parking lots.

Democratic Gov. Christine Gregoire signed the measure Thursday, making Washington the largest government to ban or restrict coal tar asphalt sealants. Last month, Prior Lake, Minn., joined a growing number of local governments to ban them. Alternative asphalt-based sealants shed far fewer toxic particles, government tests show. A federal scientist recently briefed congressional aides and others about threats to the environment and public health from sealing of driveways, parking lots and playgrounds with coal tar. The briefing was co-sponsored by U.S. Rep. Lloyd Doggett, D-Texas, who is seeking a nationwide ban on the toxic sealants.

The Washington state legislation and Doggett's drive for a nationwide ban flowed from studies by the U.S. Geological Survey, which showed that components of the toxic sealants are increasing in many waterways, while levels of most pollutants are declining. A 2009 Geological Survey study identified chemicals associated with the coal tar sealants in house dust at levels that worried researchers because they could contribute to long-term cancer risks, especially in young children who crawl through — and might accidentally ingest — the toxic dust.

InvestigateWest and msnbc.com partnered last year to publish the first major national story examining the toxic sealants. Washington's move follows earlier bans. The first ban came in 2006 in Austin, Texas, site of the discovery of the link between toxic parking-lot sealants and waterway pollution. Subsequent bans followed in Washington, D.C., and in Madison and surrounding Dane County, Wisconsin. In the 16 months since the InvestigateWest/msnbc.com story, bans or restrictions on

the use of the sealants also have been adopted in several towns, mostly in the Midwest, where they have been heavily used. McHenry County, Ill., near Chicago, is studying whether to ban the coal tar sealants. That was where Geological Survey studies found constituents of coal tar sealants on driveways at levels thousands of times above what would trigger a hazardous-waste cleanup at a Superfund site. "It is a very topical, hot issue in the Midwest now," said Bob Newport, stormwater specialist in the U.S. Environmental Protection Agency's Region 5 headquarters in Chicago. "It's quite possible other states will follow."

Washington's law brings the number of Americans living in places where the coal tar sealants are banned to 8.7 million, according to the Coal Tar Free Americablog by Tom Ennis, an Austin city official who helped prompt research on the sealants.

The fact that a second kind of asphalt sealant without coal tar is widely available helped gain support in the Washington Legislature, said state Rep. David Frockt, D-Seattle, sponsor of the measure. "When I started to understand the science, I concluded there is no reason to have this stuff," Frockt said. "Nobody felt their business was going to be impacted if they had to go to the (other) sealants." In the end, though, "the human health aspect is what really hit home," Frockt said.

The Pavement Coatings Technology Council, a Washington, D.C.,-area lobbying group representing companies that paint or spray on the deep black coal tar-based sealants, has launched scientific attacks on coal tar research. The pavement council hired a Seattle-area scientist and consultant, who told Washington legislators he found flaws in the methods used by government researchers to produce a "chemical fingerprint." The Geological Survey researchers say those chemical fingerprints implicate the parking-lot sealants as the largest source in many urban lakes of a class of toxic chemicals known as "polycyclic aromatic hydrocarbons," or PAHs.

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Industry officials' main defense is that the PAH chemicals can come from a variety of sources other than the coal tar sealants. "Their mathematical model that purports to apportion sources of PAHs is based on pre-selection of sources using cherry-picked data," Anne LeHuray, executive director of the pavement council, wrote in an email to InvestigateWest. But Mo McBroom, a lobbyist for the Washington Environmental Council, said the new law protects health, saves money and is supported by compelling scientific evidence. "Dealing with the problem of toxic runoff is huge," said McBroom, who brought the issue to Frockt's attention based on the InvesigateWest/msnbc.com story. "This is a big step forward. We know that coal tar sealants are potential threats to public health and to water quality."

The sealants are marketed as a way to extend the life of asphalt, while also restoring a rich dark color. The sealants usually are not applied to public streets. The alternative to coal tar-based sealants is a class of asphalt-based sealants. Dust on parking lots using the coal tar sealants can contain hundreds or sometimes even thousands of times the concentration of toxic chemicals as dust from parking lots using the asphalt-based products, federal research indicates.

The coal tar-based sealants typically are used more heavily east of the Rocky Mountains, in part because coal tar is a waste product of the steelmaking industry that was traditionally based in the Rust Belt. Both coal tar- and asphalt-based sealants are used in all 50 states.

Coal tar is a known human carcinogen. It caused scrotal cancer in London chimney sweeps in the 1700s and skin cancer in creosote workers in this country a century ago. Children exposed to these chemicals in the womb may be more prone to asthma and other health problems and may suffer from lowered IQs, emerging scientific evidence suggests. In men they can harm sperm and in pregnant women they can cause damage to the umbilical cord. In streams, the chemicals have been shown to kill tadpoles, cause tumors on fish, stunt growth of aquatic creatures and reduce the number of species able to live in a waterway.

Robert McClure is the Chief Environmental Correspondent for InvestigateWest. This is a nonprofit investigative journalism center covering the Pacific Northwest. For information on how you can support independent investigative reporting for the common good, go to www.invw.org. This article has been reprinted with his permission.



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**Introducing:
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Blackthorn Grille

On April 28th ILMA held its first Point of Discussion (POD) get together at Blackthorn Grille in Lake Villa, IL. The initial session was well attended by 23 people, both members and non-ILMA members. Attendance included several board members and experts in the field of aquatics and lakes management. The main topic of the POD was Aquatic Plants vs. Weeds with keynote speaker Mark Pfister who provided a lively presentation that engaged attendees and explained the impact of different plant communities, how plants can help promote certain fish communities and importance of your plant community on supporting a healthy lake environment. We hope to have Mark back to attend and speak at future POD events.

We also opened the floor to numerous other topics to be discussed by the Board of Directors and other lakes management experts on hand. The Blackthorn Grille provided a nice environment for the event as well as variety of beverages to be shared amongst attendees. Although the

scheduled session officially ended by 8:30pm, several attendees stayed well after to share ideas and discuss lake and watershed management goals (*and continue to enjoy the cold beverages!*).

We would like to invite you and anyone else interested in water quality, watershed planning, lakes management, or any other water resources related field to attend any upcoming POD. You *DO NOT* have to be an ILMA member to attend. It's a great way to get to meet other lake committees, exchange ideas, and meet new friends, whilst sharing a few laughs. The next POD will be on July 13th at the "Onion Pub and Brewery" in Lake Barrington. We are still discussing the main topic for discussion so feel free to chime in and provide ideas. If you are an ILMA member watch your email, if not watch for the announcement on the ILMA webpage or via Facebook! See you at the next POD.

ILMA Board

Another ILMA Update!

At the 2011 ILMA Conference we were pleased to provide the announcement of the formation of a student chapter of ILMA at Northern Illinois University. Below is an update from Evan Bing, an active member of the student chapter:

This spring, the Illinois Lakes Management Association board approved the creation of a student chapter at Northern Illinois University on the basis that the student organization would help draw interest among the student body in matters concerning lake and water quality. Since then, the subunit has been approved by Northern Illinois University's student government. This past March, I, along with two other members of the subunit, had the opportunity to attend ILMA's annual conference and become River Watch certified, improving our understanding and aiding us in monitoring the quality of Kishwaukee River and our campus lagoon. We will be establishing three sampling points along the river to determine the effects a nearby waste treatment facility has on the quality of the river. On Earth Day the subunit organized a cleanup of the lagoon and surrounding walkways in which members and non-members participated in preserving the appearance and quality of one of the most popular recreational areas on campus. A goal of our organization is to obtain a water quality meter through assistance from ILMA and the IEPA so we may accurately monitor several water quality parameters of the lagoon. To supplement the assistance, our chapter has planned fundraising activities for the coming year including screenings of the film "Living Downstream" as well as a native plant sale.



We are very excited about making a positive environmental impact at NIU! - Evan



Illinois Urban Fishing Program

By: Herb Dreier

The Illinois Urban Fishing Program (managed by the Illinois Department of Natural Resources) was introduced in 1985 to teach individuals of all ages to fish, to enhance fishing opportunities throughout the state, and to give participants an understanding of and a greater appreciation for natural resources. The backbone of the Program consists of:

- 1) Providing free summer fishing clinics that include fishing at nearby stocked lagoons and
- 2) Creating school fishing programs.

Regular summer fishing clinics are held at 19 locations throughout the state and less frequently at 9 additional sites in Central and Southern Illinois. Clinics are offered at most sites twice daily Monday through Friday for about nine weeks during the summer. Last summer approximately **19,940 kids** attended one of 1,126 summer fishing clinics that included fishing at a nearby stocked lagoon. Fish are stocked at 33 sites including all 19 regular fishing clinic locations. Approximately **88,515 lbs.** of channel catfish, **132,810 lbs.** hybrid sunfish and **1,200 lbs.** rainbow trout were stocked last summer. Members of the public were also able to fish at most stocked sites.

Additional volunteers and volunteer organizations have become more involved by conducting fishing programs. With IDNR training, assistance and fishing equipment, volunteers and volunteer organizations held 310 fishing programs for more than 10,790 children and adults last year. These individuals and organizations play a very important role in the ongoing success of the program.

Fishing programs in schools, mainly in P.E. classes, is also popular. The fishing clinic's educational session is presented at school and teachers then take students fishing numerous times at a nearby lake during their P.E. class the last several weeks of the school year. This past year 4,400 students made fishing trips after learning basic fishing information in one of 20 school fishing clinics. IDNR Urban Fishing Coordinators also held an additional 77 fishing programs at schools that allowed **3,244 students** to go fishing.

Urban Fishing Program coordinators held non-fishing Conservation Education Programs at numerous schools during the fall, winter and spring to teach environmental education and an appreciation for natural resources, and to promote summer fishing programs.

The Urban Fishing Program held or sponsored a total of 1,960 fishing and non-fishing programs for **82,618 participants** this past year.

The popular "Access to Fishing" rod and reel loaner program was established in 1997. There are currently 104 "Access to Fishing" loaner sites in Illinois, and rods and reels were borrowed more than 7,820 times last year. For any additional information about the program please visit the IDNR website (the easiest way to find the program site is to type 'Illinois urban fishing program' into any search engine).



REMEMBER... take care of your butts

Used cigarette filters can take up to twelve months to break down in fresh water and up to five years to break down in seawater. On dry land, the process can take even longer.

Discarded cigarette filters can contain lead, cadmium, nicotine, and tar. These chemicals can leach into lakes, streams, and rivers. In laboratory experiments, Kathleen Register, founder of Clean Virginia Waterways, noted that 100% of Daphnia died after 48 hours of exposure in concentrations that were equivalent to only two used cigarette filters per liter of water.

(The transparent crustacean Daphnia (often called a water flea) are planktonic animals which occupy a critical position in aquatic ecosystems; they transfer energy and organic matter from algae to higher consumers).

Always pack out what you pack in. It is easy to be a steward with regard to trash, and this includes cigarette butts.

The United States' Federal Trade Commission recently revised their Guides for the use of Environmental Marketing Claims. The revisions provide guidance that gives marketers help to avoid making misleading environmental claims.

The guidelines, also known as the Green Guides, address issues such as the use of certification and seals in marketing, compostability claims, and sustainability claims although they primarily address products.

When evaluating services, one must also be careful. Facilities, for example, may accept material for recycling, but then landfill a significant portion of the material received. When evaluating a product or a service for any sort of environmental claim, beware. Use caution and good judgment. Research your selections before you make your final decision.

The 14th World Lake Conference

Austin, Texas USA - The International Lake Environment Committee Foundation (ILEC), the United Nations Environmental Programme (UNEP), and the River Systems Institute (RSI) at Texas State University- San Marcos are sponsoring the 14th World Lake Conference at the Austin Convention Center, October 31 through November 4, 2011.

This event is an international forum, including seminars and presentations by water researchers and industry professionals on lake-based problems, their root causes, and possible solutions. Highlighted speakers will include two Stockholm Water Prize Laureates, Jörg Imberger (1996) from the University of Western Australia, an expert in water movement and mixing in lakes and estuaries, and Sven Jørgensen (2004), professor of environmental chemistry at the Danish University of Pharmaceutical Sciences in Copenhagen, and a pioneer in development and use of ecological models of lakes and wetlands in sustainable water resources management. Ms. Yukiko Kada, Governor of the Shiga Prefecture, Japan, home of the ILEC Secretariat, also will address conference participants.

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P.O. Box 57, Bloomington IL 60108

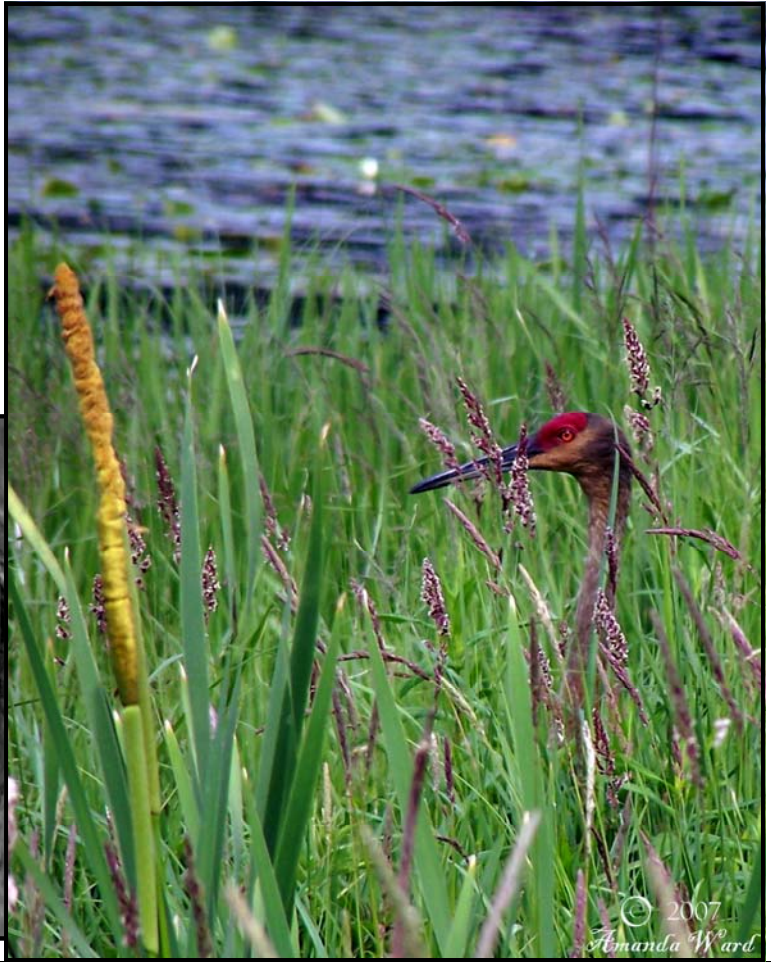
The complex block features a blue water drop logo on the left. To the right of the logo, the company name 'ROLLINS AQUATIC SOLUTIONS' is written in large, bold, blue and green letters. Below the name is the tagline 'The right solution for your pond and lake.' in a smaller, italicized font. Underneath the tagline is a line of smaller text describing the company's services. At the bottom of the block, there is a blue rectangular area containing contact information: phone number, email, fax number, and website. To the right of the contact information are several small, square images showing various aquatic environments like ponds and lakes.

Illinois
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Northern Illinois University
Holmes Student Center
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March 1st—3rd, 2012



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