



ATLANTIC STATES LEGAL FOUNDATION

NEWSLETTER, WINTER 1991

658 West Onondaga Street, Syracuse, New York 13204-3757
Phone : (315) 475-1170 Fax: (315) 475-6719

This Issue:

Clean Water Act Program

Fort Wayne Effort 1
Industrial Pretreatment
Background Information 2

EPCRA Program

EPCRA Pollution Prevention 3
RTK Enforcement 4

CNY Issues

ASLF v. Bristol-Meyers 5
Onondaga Co. Incinerator 5

New Programs

Arizona Program 2
Joyce Foundation Renews Grant
to ASLF for Second Year 6
Plain Pigeon Protected in Puerto
Rico Settlement Terms 6

FYI

The Future of Ecotourism: 7
Membership Renewal insert

Greetings! We hope you find the Winter 1991 Newsletter informative. It's not an easy task to condense all the various operations of Atlantic States into a small publication, but we think we have put together another representative sampling of our organization's activities.

Don't forget to renew your membership with ASLF -- the contribution of each and every member is crucial for our continued survival as an effective organization, especially in these trying economic and political times. You will find the renewal form inserted in the middle of the newsletter. Thanks!

Atlantic States Continues Enforcement Efforts in Fort Wayne, Indiana

by M. Alan Hays, Esq.

Acting on requests from a number of its members in Indiana, Atlantic States Legal Foundation began investigating pollution problems at the Fort Wayne Water Pollution Control Plant last December. A review of the monthly discharge reports of Fort Wayne industries discharging to the Plant revealed an extensive history of Clean Water Act violations by almost one-quarter of those industries.

For decades, the Fort Wayne Water Pollution Control Plant was able to distribute valuable, nutrient-rich sewage sludge, a by-product of sewage treatment, to Fort Wayne farmers and gardeners for use as a fertilizer. This program was halted by the United States Environmental Protection Agency in 1987 when it was determined that the sludge contained high levels of heavy metals, including cadmium and zinc, and other toxic contaminants.

This sludge is now accumulating at a rate of 7,000 tons per year at a storage site on the Maumee River Flood Plain. Fort Wayne activists examined this problem and stated publicly that Fort Wayne's toxic pollution problems ran deep, declaring the need for tougher enforcement.

Following their review of "pretreatment" files [see sidebar pg. 2, "Industrial Pretreatment and the Clean Water Act"] at the Fort Wayne Water Pollution Control Plant, Atlantic States staff returned to Syracuse with discharge data supporting citizen enforcement actions against twenty of Fort Wayne's most egregious pretreatment violators. Subsequently, Atlantic States put twenty pretreaters on notice of its intent to sue for Clean Water Act violations.

Atlantic States' actions prompted a meeting behind closed doors among representatives of the industries who had been put on notice, the City of Fort Wayne, and the Indiana Department of Environmental Management (IDEM), to discuss strategies for derailing Atlantic States' enforcement efforts. The Clean Water Act provides that if a polluter is already facing "diligent" enforcement by government, then a citizen suit may be precluded. We believed that the objective of this meeting was to develop a strategy for precluding our enforcement efforts after the fact, with slap-on-the-wrist settlements between government and the polluters.

Were it not for a keen Atlantic States' member who blew the whistle on this dubious meeting, government and industry in Fort Wayne might have succeeded in colluding to defeat the intent of Congress in authorizing citizens to sue to enforce the Act, with the public no wiser and again left out in the dark.

These events whipped up a frenzy of debate in Fort Wayne. Newspaper articles likened Atlantic States attorneys to eastern vigilantes swaggering down

(Continued next pg...)

(...from previous page)

shuttered streets to a showdown with polluters; a series of letters to the editor not coincidentally written by an industry engineer misrepresented and slandered Atlantic States, calling its staff "notorious mercenaries" who "lined their pockets" with money "blackmailed" from poor, helpless industries. Needless to say, the hyperventilated letter-writer offered no evidence to back up his charges. Later, more balanced letters and editorials from other Fort Wayne citizens rebutted his claims, and affirmed that Atlantic States' actions were proper, and in fact necessary, for the good of the city.

As of press time, Atlantic States' enforcement actions have compelled a number of Fort Wayne pretreaters to install "closed-loop" wastewater recirculation systems, eliminating altogether the discharge of wastewater to the municipal plant by these companies. Other larger dischargers are negotiating with Atlantic States to settle its Clean Water Act lawsuits in terms involving significant penalties for past violations, penalties in the event of future violations, and mandated improvements in wastewater treatment. Since Atlantic States' involvement began, significant discharge pollutant non-compliance in Fort Wayne has nearly ceased.

In addition, a number of settlements will result in payments to the Indiana Nature Conservancy totalling over \$20,000.00, earmarked for the Conservancy's Fish Creek Project. That project is an effort to preserve Fish Creek, sole remaining habitat of the White Cat's Paw Pearly Mussel. The Pearly Mussel, once found throughout the Maumee River, is now on the federal endangered species list, its existence threatened, like many freshwater mussels, both by water pollution and by the pearl button industry. It is hoped that one day the Maumee River will again be clean enough to support the endangered mussel. ♣

NEW PROGRAM LAUNCHED IN ARIZONA

by W. Richard Texier

Atlantic States has recently begun coordinating with groups in Arizona as part of an effort to clean up that state's environmental woes. Arizona presents us with some unusual and exciting new challenges for carrying out professional, technical and legal assistance to citizen's striving to restore the quality of the environment.

Of course, water resources are scarce in the desert southwest. Most of Arizona's water resources are derived from deep aquifers which contain water deposited in prehistoric times when the area was substantially wetter, and which regenerate only over very long periods of time. Such deep groundwater contaminates easily with toxic chemicals but is extremely difficult to clean up. Arizona law recognizes the vulnerability of these water systems, and has established fairly strong legislation, including provisions for citizen enforcement in groundwater protection.

In addition to mining companies, Arizona is home to other large industries that have become its economic backbone, and the only employer in some small towns. These companies have prospered, while the quality of the environment has not; many people resist environmental solutions that may cost industry large sums which companies claim—often without factual basis—will threaten jobs, or put them out of business altogether.

A number of groups and individuals in Arizona are working with us to open an office in Tucson. As a result, we have registered to do business in the state of Arizona and have chosen the name "SWEP" for this initiative: SouthWest Environmental Project. By our next newsletter we anticipate having established a staffed office in full operation, tackling an extensive list of projects within the state. If this work proves successful, we hope to expand SWEP's scope to neighboring states as well. ♣

Some Background Information on Industrial Pretreatment and the Clean Water Act:

What do a great many industrial operations do with their facilities' wastewater? They flush it down the toilet; that is to say, they simply discharge it into their sewer system. Municipalities often encourage this practice, despite the possibility of abuse by industry, because of the potential revenues they stand to collect from the increases in sewage usage fees.

The Federal Clean Water Act not only regulates the discharge of pollutants into surface waters of the United States, it also establishes a program to regulate pollutant discharge by industry, large and small, into municipal sewage treatment plants, as well. Many municipal sewage treatment plants (referred to in the Act as "Publicly Owned Treatment Works," or "POTWs") are charged with the responsibility of administering permit programs limiting the amounts of pollutants, on a discharger by discharger basis, that can enter a city's sewer system.

The limits imposed by a POTW on the so-called "indirect dischargers" often require the discharger to "pretreat" its wastewater before discharging to the sewer. Pretreatment is intended to remove a variety of pollutants, including metals such as lead and silver, from the discharger's waste stream before it enters the sewer system. In addition, pretreatment permits require the permittee to file regular reports on the pollutant content of their wastewater discharge. These "industrial discharge reports" are public records and are typically filed at the POTW itself.

Because POTWs are designed primarily to handle "sanitary" sewage, it is extremely important to prevent large quantities of metals from entering the plants in the first place and disrupting the biological and chemical processes upon which those facilities rely to break down and treat sanitary sewage.

One also finds that many of the industrial pollutants entering a POTW—which should have been removed by industry—simply pass

(Continued next pg...)

(...con't from prev pg.)

through the plant to be discharged into the plant's receiving water, usually a river. The US EPA estimates that tens of thousands of tons of industrial waste enter the nation's waterways in this way each and every day. In addition, some pollutants, like poly-chlorinated biphenyls (PCB's) and heavy metals (lead and cadmium, for example), accumulate in the sewage sludge. An prime example of the dangers of contaminated sludge occurred in Bloomington, Indiana, where soil additive distributed from the sewage treatment plant spread PCB's to gardens all over the city, making them unfit for use.

Since discharge permits are issued under the authority of the Federal Clean Water Act, they are subject to the citizen enforcement provisions of the Act. Therefore, when a permittee continually exceeds the pollution limitations in its permit, it subjects itself to liability for violating the Clean Water Act. Citizen enforcers of the Clean Water Act will be focusing increasing attention on pretreatment in the future, as more and more industrial operations are coming to rely on sewage treatment plants to handle their wastewater. ♣

The Simon J. Volpert Environmental Center

at 658 W. Onondaga Street
Syracuse, New York

Is home to the environmental and social not-for-profit groups:

Atlantic States Legal Foundation

American Clean Water Project

Energy Clearing House

SANE/FREEZE of CNY

In Concert With Nature

Fund for the Environment, Inc.

EPCRA ISSUES

EPCRA ENFORCEMENT ENCOURAGES POLLUTION PREVENTION

By Robert Nagel, Esq.

Atlantic States Legal Foundation is the first plaintiff to successfully use the citizen suit provisions contained in the Emergency Planning and Community Right-to-Know Act (EPCRA). Ten cases have now been settled; seven of these ten settlements require the defendant to prepare and implement pollution prevention and toxic use reduction plans. Most of the settled cases involve Erie County, N.Y. companies; one is with a Jefferson County, N.Y. manufacturer; one is with a Broome County, N.Y. manufacturer; and the other concerns a tannery in Milwaukee, Wisconsin.

The EPCRA legislation serves a very important function by enabling industrial workers and concerned citizens to find out about materials they work with, or reside near, that might have an impact on their health or safety. Citizen enforcement of EPCRA's provisions—such as those undertaken by Atlantic States—becomes necessary as companies regularly neglect to file the required information, leaving neighbors, workers, and local emergency services in the dark about hazardous substances stored or used by industries. It is easy to see why a city fire and police departments would need to know exactly which types and quantities of dangerous substances are present when they might well be called upon to fight a fire in a factory or storage facility.

Under a settlement reached with Atlantic States in December 1990, a Buffalo company, Murray Sandblast and Paint, has now implemented a pollution prevention and toxics use reduction plan. Murray Sandblast is a metal blasting and paint shop, whose primary business activity is finishing auto carrier trailers and trucks.

The two primary toxic substances used by Murray are methyl ethyl ketone and methyl isobutyl ketone. Other toxic substances they employ include xylene, glycol ethers, and toluene. These solvents are contained in the primers and paints used by Murray, and are all extremely toxic.

In 1989, Murray generated twenty-one tons of paint and primer sludge, over twenty tons of solvent emissions, over seven tons of paint and primer overspray, and some 450 pounds of steam cleaning residues. It is important to remember that these solvents, in addition to being stored and used on-site, are also released to the atmosphere as both stack and fugitive emissions. The waste primer, waste paint, and waste thinner must finally be disposed of as hazardous wastes, according to the Federal Resource Conservation and Recovery Act (RCRA). Hence a strategy for dramatically cutting such substances' use becomes crucial, to insure the safety of local residents and plant workers alike.

The primary pollution prevention strategies identified for Murray are spent blasting-grit reclamation, electrostatic painting, and water-based paint substitution. Murray has identified a company that will reuse the spent aluminum oxide blasting grit that had formerly been landfilled. In 1989, Murray landfilled twenty-seven tons of the material. Now, as a result of the pollution prevention plan, the material will be sold to a Michigan abrasive manufacturer and used in the manufacture of sandpaper and abrasive wheels. Not only will this avoid using scarce landfill space, but Murray also achieves cost savings by avoiding tipping fees and by generating revenues through the sale of this former waste product.

(Continued next pg...)

Murray also is purchasing an electrostatic system for use in its priming and painting operations. They anticipate that the use of this system will substantially reduce primer and paint usage by reducing the amount of overspray that typically occurs during painting. Lower primer and paint usage will consequently reduce solvent emissions and the necessity for disposing of much of this hazardous waste. Additionally, Murray is evaluating the substitution of water-based primer and paint formulations for their current solvents.

Overall, Murray's pollution-prevention program will not only yield significant environmental improvement, but will also economically benefit the company. One should note that at the time Atlantic States initiated the citizen suit against the company, it was tottering on the verge of bankruptcy. Today, its outlook has improved due in part to the cost savings associated with implementation of its pollution prevention plan. ♣

RIGHT-TO-KNOW DECISIONS BREAK NEW LEGAL GROUND

By Robert Nagel, Esq.

In the first court decision in the country on the right of citizens to sue industries for violations of the federal Emergency Planning and Community Right-to-Know Act (EPCRA), Atlantic States was upheld in a landmark opinion dated September 3, 1991. The decision, in the matter of *Atlantic States Legal Foundation, Inc. v. Whiting Roll-Up Door Manufacturing Corp.* (W.D.N.Y., CIV-90-1109S), reinforces the objectives of EPCRA, namely to provide public access to information concerning hazardous chemicals in the community.

In this ruling, Judge Skretny of the U. S. District Court for the Western District of New York, denied Whiting's motion to dismiss the lawsuit. Whiting had argued that the case should be dismissed because they filed their delinquent forms after they Atlantic States' notice of intent to sue. Atlantic States maintained this did not constitute compliance with the law, as the statutes require timely submittal of the data on hazardous substances.

The court agreed unequivocally. It concluded that "based on the statute's plain language, and the legislation's underlying purpose, which is well documented by its legislative history, this Court must conclude in the affirmative [that citizens have a right to pursue enforcement]. . . EPCRA's reporting, enforcement, and civil penalty provis-

ions, when logically viewed together, compel a conclusion that EPCRA confers federal jurisdiction over citizen lawsuits for past violations. . . . To overlook EPCRA's reporting deadlines would subvert the objectives of EPCRA."

This case clearly distinguishes citizens' rights to sue under EPCRA from limitations recently placed upon citizens' rights to sue industries under the Clean Water Act for past violations and non-reporting, as decided by the Supreme Court in *Gwaltney of Smithfield v. Chesapeake Bay Foundation* (see the article in March '91 Newsletter for details of that decision).

This current decision, however, will bolster the ability of citizens to enforce EPCRA compliance. The U.S. EPA, and the General Accounting Office, have estimated that over one-third of facilities nationwide are not in compliance with section 313, which requires submission of information to the EPA Toxic Release Inventory. Atlantic States estimates that the degree of non-compliance may be even higher for sections 311 and 312, which require companies to provide safety data sheets, and information on the location of hazardous chemicals, respectively. Perhaps the deterrent effect alone of this preliminary decision to hold industry responsible for the timely filing of all EPCRA-required forms will go a long way toward better protecting the general public from

toxic hazards.

Whiting (a manufacturer of roll-up and hinged doors) allegedly failed to meet its EPCRA stipulations for the 1987-1989 reporting years. The company violated sections 311 and 312 by not submitting the required chemical hazard information, including amounts and location, to the New York State Emergency Response Commission, the Erie County Local Emergency Planning Committee, and the Akron fire department plan for potential chemical disasters. Further, under section 313, Whiting was required to have reported all releases of chemicals into the environment (using Toxic Chemical Release Inventory Forms) to EPA, as well as to the New York State Emergency Response Commission.

At the time Atlantic States issued its notice of intent to sue for violations of EPCRA, Whiting had provided none of this information about its use and release of hazardous chemicals. Whiting made various subsequent EPCRA filings, some submitted nearly three years late.

Following closely on the heels of the Whiting matter came another decision, in September, *Atlantic States Legal Foundation, Inc. v. Buffalo Envelope Company*, (W.D.N.Y., CIV-90-1110S). Buffalo Envelope had made a similar argument as Whiting in asking the court to dismiss Atlantic States' lawsuit against them. But, in another victory for the rights of citizens to enforce EPCRA, Judge Skretny denied Buffalo Envelope's motion to dismiss the lawsuit. Buffalo Envelope is a manufacturer of paper products, located in Orchard Park, New York.

In both these cases, Atlantic States received invaluable assistance from other environmental groups. Trial Lawyers for Public Justice coordinated the efforts of Environmental Action, Natural Resources Defense Council, and Public Interest Research Group of New Jersey in preparing and filing an *amicus* brief. Both cases are still before the Federal District Court for the Western District of New York, having now moved into the penalty assessment phase. ♣

Central New York Issues

Atlantic States Settles Case with Bristol-Meyers and Onondaga County

by Donald Hughes, P.E.

On November 4, 1991, Atlantic States filed a Consent Decree with the U.S. District Court in Albany, N.Y., formalizing a settlement with Bristol-Meyers and Onondaga County that has been well over a year in the making. According to the terms of the settlement, Bristol must comply with the following measures:

- complete a sewer consolidation project which will combine seven separate outfalls into a single discharge point;

- hire an independent consultant to perform a wastewater pretreatment/pollution-prevention study;

- fund a study by Onondaga County that will develop pretreatment standards concerning volatile compounds (such as acetone, methylene, and chloride), in order to make improvements to the Metro sewage treatment plant;

- provide funds for Atlantic States to monitor compliance with the levels of its wastewater discharge permit; and

- cover the legal fees and costs of Atlantic States and its attorneys (True, Walsh, and Miller of Ithaca, NY) incurred while carrying out this citizens' enforcement suit.

The county, in addition to the study mentioned above, is also required to revise Bristol's discharge permit to reflect tighter limits on phenols and pH.

Background

Bristol Meyers operates a pharmaceutical facility located in East Syracuse, N.Y., which produces penicillin and other antibiotics in large quantities. This plant discharges about one million gallons per day of high strength wastewater to the "Metro" sewage treatment plant owned and operated by Onondaga County. Although Bristol's wastewater constitutes less than two percent of the total flow, it accounts for about twenty percent of the nitrogen, ten percent of the phosphorus, and twenty percent of the suspended solids entering the plant each day. Much of this pollutant loading could be avoided if Bristol Meyers pretreated their wastewater,

or modified their industrial processes so that so many pollutants did not enter the wastewater in the first place.

Shortly after Atlantic States served notice of their intent to sue Bristol, Onondaga County proceeded to revise their discharge permit (the legal license that sets limitations on various pollutants in wastewater) by removing limits on nitrogen and phosphorus the plant had violated. In effect the county attempted to bring Bristol's discharge into compliance with the law by simply issuing a more lenient permit.

In December 1989, Atlantic States filed a formal Complaint against Bristol Meyers that reaffirmed the accusations contained in the notice letter, and also cited the numerous chemical spills which have entered the municipal sewer system. Such spills endanger both the Bristol plant and the public-owned treatment facility downstream. Susan Brock, the attorney representing Atlantic States, said, "Over the next several months we tried, in vain, to convince the county to restore Bristol's original permit limits. They refused, and in August 1990 we named Onondaga County as a co-defendant in the case."

Settlement Terms

Three major issues formed the basis of these lengthy negotiations: in-plant improvements at Bristol-Meyers' facility, a pretreatment study to determine the best method of processing the water before it enters the sewage system, and a study to determine enforceable but environmentally reasonable limits on volatile compounds in the wastewater discharge.

Altogether, Bristol Meyers expects to have spent some \$3.2 million upgrading their tank farm, installing new neutralization facilities, and consolidating their sewer lines measures that should have been in place all along. Any funds left over

from the pretreatment study will go to Save the County, a local land preservation group, for the purchase and protection of sensitive wetlands in the Onondaga Lake watershed.

Atlantic States will receive funds explicitly for the purpose of monitoring and enforcing the terms of the settlement, insuring Bristol's compliance with the terms. This includes attending progress meetings and reviewing in detail the results of the mandated studies, which should be available from the consultants no longer than eighteen months from the filing of the consent decree.

We are optimistic that, after review by the U.S. Department of Justice, the judge will sign the decree by January 1992. ♣

Incinerator Update

Atlantic States, together with a coalition of five other local activist groups and a county legislator, filed for party status to challenge the proposed solid waste incinerator to be built in the Town of Onondaga near the Rock Cut Road exit of Interstate 481. The coalition believes the proposed incinerator does not reflect the state's overall waste management priorities of reducing, reusing, and recycling garbage before burying or burning it. Further, we question procedural matters, as well as issues not yet addressed adequately, such as the landfilling of concentrated waste ash, possible effects of the facility on endangered plant species, and effectiveness of air pollution controls.

At the time of this writing, we still await a decision on whether an adjudicatory hearing will be held by the New York State Department of Environmental Conservation to review these issues, and whether the coalition of groups that includes Atlantic States will be permitted to participate and voice its concerns. ♣

SETTLEMENT MONEY TO PROTECT THE PUERTO RICO PLAIN PIGEON

The Puerto Rican Plain pigeon, *Columba inornata wetmorei*, is one of the most endangered bird subspecies in the United States. Although once abundant across much of Puerto Rico, by early in this century it had become rare, and by the 1930's was considered extinct. In about 1960, a small population of this bird was discovered near Cidra (just outside metropolitan San Juan) and now in and about the cities of Cidra and Cayey dwells an estimated population of around 200 birds.

Although the bird breeds throughout the year and can successfully nest three times a year, growing development in the prime habitats around Cidra, and illegal hunting and poaching of the squabs, keep the population from increasing. The University of Puerto Rico at Humacao has established a captive breeding program, and public interest in the pigeon has increased. Notably, a group called Fundacion Para La Conservacion de La Paloma Sabanera was recently established to champion the bird's cause. With the help of funds from settlements of Atlantic States legal actions in Puerto Rico this organization is moving ahead with a major campaign.

The Fundacion has amassed a detailed knowledge of the areas used by the birds for nesting, preening, resting, and feeding. Funds will assist in purchase of much of the prime territory necessary for the birds' survival. In addition, the Fundacion hopes to launch an educational effort to engage the assistance of the general public in their efforts. Most Puerto Ricans are unaware of the presence of this species as it is often confused with the common Red-necked Pigeon, *Columba squamosa*.

In a related effort Atlantic States is working with an organization that is trying to protect Lake Cidra from eutrophication. This waterbody is located in the midst of the fast-growing, sprawling Cidra area and is now so over-fertilized that it is hard to tell that there is water under the weeds! The Comite Despertar Cidreno was or-

ganized to work on this problems.

Actually the fate of the pigeon and of the lake are linked. Unplanned development in the area threatens both. Cidra is a choice location for development, located high above the coastal torpor yet very accessible to San Juan and the rest of the island.

Atlantic States' efforts in and around Cidra exemplify our interest in protecting the environment by working with dedicated local organizations. Those wishing to find out more about these projects can write to us, or directly to the two organizations mentioned. To write to the Fundacion, contact Raul A. Perez Rivera, Departamento de Biologia, Proyecto Paloma Sabanera, Colegio Universitario de Humacao, Estacion Postal C.U.H., Humacao, Puerto Rico 00661. Or write to the Comite care of Eliezer Colon Rivera, Apartado 123, Cidra, Puerto Rico 00639. ♣

Atlantic States Completes First Year of Joyce Project

In August 1990, the Joyce Foundation awarded Atlantic States funds for a project focusing on the Lake Michigan Lakewide Management Plan ("LaMP"). This project, under the direction of staff engineer Don Hughes, was recently extended for an additional year through September 1992. This work consists of three major components:

- Assist the development of the LaMP; Atlantic States' President Samuel Sage serves on a Lakewide Advisory Council ("LAC"), set up to allow direct citizen involvement;
- National Pollutant Discharge Elimination System ("NPDES") Permit Workshops and Comments: Don Hughes and Samuel Sage conducted many workshops around the Lake Michigan basin last summer. At each workshop we described the LaMP process, as well as NPDES permit issues. The workshops stressed citizen involvement in the NPDES permitting process.

Atlantic States has assisted other groups and individuals in commenting upon permits in each of the four states surrounding Lake Michigan. Please contact Don Hughes at Atlantic States if you are interested in the permit renewal process for a Lake Michigan Basin facility in your community.

- The Lake Michigan Citizen's Resource Guide is a manual we have prepared to inform citizens about environmental issues confronting the lake. The guide puts special emphasis on the LaMP itself and discussions of toxic substances. Atlantic States has distributed 200 copies of the first edition. Based on comments from the recipients, we hope by early 1992 to have a revised edition ready to distribute in future workshops. Please contact Don Hughes if you are an Atlantic States member and wish to receive a copy of the guide. ♣

Staff Update

Once again, the passing months have brought changes to Atlantic States' staff roster.

Departures: Administrative V.P. Sue Mihalyi has left us to accept leadership of the American Clean Water Project; researcher Lloyd Ritter is now coordinating efforts in Albany for NPIRG.

Arrivals: Calvin Barrett, formerly with the Syracuse human services organization PEACE, Inc., works half-time as Business Manager while completing a Ph.D. in Public Administration at Syracuse University; Rich Texier, our new researcher, is fresh from the wilds of Maine where he worked for the National Park Service; and Ron Henry has taken the dual role of office manager and assistant to the president, and is finishing up a degree in English and Creative Writing, also at Syracuse University. ♣

The Future of Ecotourism: Lessons from the U.S.

by Samuel H. Sage and Anne Beeman

The first national park in the world was Yellowstone, whose magnificent geysers, waterfalls, and relict ungulate herds commanded the attention of the public. However, even Yellowstone could not be set aside for its own sake, but needed to be created and promoted as a tourist destination before the concept of a national park gained widespread acceptance. The first directors of the United States National Park Service spent more energy promoting the parks and trying to attract visitors than they did trying to protect the parks from unneeded development.

The debate still continues. The recent purchase of the parent company that runs the concessions at Yosemite National Park in California has raised important questions surrounding the role of tourism in the protection of natural wonders: can you protect an area and develop it at the same time? With development, there seem to be only incentives for more people to visit; in essence, we love our parks to death.

Another example of this dilemma is Niagara Falls, perhaps the most-visited "ecotourism" site in the world, where the abundant waters of the upper Great Lakes drop 99 meters (326 feet) through the Niagara Escarpment and then into Lake Ontario. The area has become despoiled over time by unaesthetic trinket shops, fast food restaurants, and ugly towers, and ironically, one of the greatest concentrations of chemical industries and concurrent toxic emissions in the world.

Promoters of ecotourism maintain that one does not face an all-or-nothing choice between economic development and environmental preservation. They insist that ecotourism can be a "win-win" situation, since the area does not have to be

built-up in order to attract visitors. Visitors, ecotourist promoters argue, will pay for the opportunity to see the land in its primitive form. Of course, the development of ecotourism as a viable economic alternative is not as simple nor as environmentally sound as they suggest. All tourists, "eco-" or not, require a basic infrastructure somewhere airports, ground transportation, lodging, communications, and the bureaucracy to maintain these facilities. Investments in water and sanitation are often needed to ensure the health and well-being of the tourists. This investment in infrastructure development necessarily involves a sacrifice of land and resources and the possibility of environmental degradation in the process. Where there are numbers of people, some kind of development seems nearly impossible to prevent.

Is it possible to strike a balance between environmental protection and sustainable development? And who should be responsible for doing so? In many instances, local citizens are excluded from the decision-making loop by developers with an abundance of projects and capital to finance them and by national officials with hopes of attracting development. As the experiences of the United States National Park Service reveal, even active public concern for the protection and preservation of natural wonders may not be enough to prevent the environmental degradation created by uncontrolled ecotourism. What is needed for successful environmentally-sound tourism is widespread planning and foresight.

All environments are fragile to a certain extent and all have an inherent "carrying capacity," or threshold level of tourist activity [or any activity] beyond which there will occur physical deterioration of the resource or damage to natural habitats. Therefore, all ecotourist promotion and development must be grounded in an understanding of the carrying capacity of particular regions.

An ecotourism-planning mechanism should allow for the control of

the scale and amount of development appropriate to the particular site and should include guarantees that no pollution would result from this development. However, the best planning cannot take the place of an understanding of the finite nature of the carrying capacity of the areas in question. How much is too much requires a case-by-case analysis.

Fragile areas need special management. Examples of this kind of management include wetland and coastal dune areas in the United States where boardwalk systems have been designed to keep people from trampling the very resources that are being protected and visited. Another example is the seasonal closing of bird nesting areas which has been important in the preservation of viable populations of these creatures.

True ecotourism may well have the potential for being economically viable and environmentally sound. However, as can be seen, it requires much planning for cooperation among developers, tourists, and communities. The key in this planning is the empowerment of the local population and their involvement in any development projects, and the presence of numerous non-governmental organizations that can carry the burden of being watchdogs and protectors of the land. ♣

Volunteers and Interns:

A special thank-you to our community volunteers:

Carl Borek, Andrew Gold, and Anne Stephens.

We are equally grateful to our student interns from Syracuse University and the State University of New York School of Environmental Science and Forestry.

Anne Beeman, Brian Colella, Denver Gilliland, Jesse Herbert, and Danielle Hindenruth.

You all contributed ably to Atlantic States Legal Foundation's fight to improve the environment!

FYI

Atlantic States Legal Foundation

Board of Directors

Chair - Steven W. Kulick

James M. Dingley

Vivan Newman

Samuel H. Sage

Shirley Taylor

Secretary - Calvin Barrett

General Counsel - Richard Lippes

Staff:

President - Samuel H. Sage

Business Mgr. - M. Calvin Barrett

Staff Counsel - M. Alan Hays

Staff Counsel - Robert F. Nagel

Env. Engineer - Donald J. Hughes

Office Mgr. - Ronald Henry

Research Assoc. - Richard Texier

Research Asst. - Andy Leahy

Field Rep (Mich.) - John Soluri

Newsletter Editor:

Ronald Henry

Our Purpose Is To Protect And Restore The Quality Of The Natural And Human Environment.

We pursue this goal through the concepts of good process, empowerment and accountability.

Process — how things get done, on all levels — should be fair, equitable, open and, once established, observed in both spirit and in letter. Citizens have a right and a responsibility to participate in the processes that shape their world. We at Atlantic States use our legal expertise and technical skills to empower people to act on their own behalf. Violators of environmental laws, the agencies that enforce those laws, as well as we, individually in our personal lives, should be held accountable for our actions.

Achieving environmental balance is the responsibility of all the players of the community in its broadest sense - the global community of citizens, government and business.

Atlantic States provides legal, technical, and organizing assistance on environmental issues to local groups and communities that don't know where to turn and who might not otherwise find the help they need.

Atlantic States Legal Foundation
658 West Onondaga St.
Syracuse, New York 13204-3757
Ph: 315-475-1170; fax: 315-475-6719

Bulk Rate
Non-profit
Permit No. 29
Jamesville, NY 13078



Printed with Soy Ink
on Recycled Paper