



NELC Interview: Bill Tobler

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Bill Tobler is one of the founding members of the Intercounty Citizens' Action Group (ICAG), a grassroots organization formed to resist the expansion of a limestone quarry in southern Michigan. Bill was also one of the plaintiffs in a lawsuit filed by NELC attorneys against the owner of the quarry, London Aggregates (LSA), a subsidiary of Wolcottville Sand and Gravel Corporation of Ohio. LSA discharged more than eight million gallons of polluted wastewater a day to a local stream, drawing the water out of the aquifer and neighboring residential wells, and damaging the surrounding environment. In 1998, ICAG joined forces with PIRGIM Public Interest Lobby and enlisted the aid of NELC to file a citizens' suit against LSA under the Clean Water Act. The citizen plaintiffs were joined in the suit by the federal Environmental Protection Agency (EPA), and a Consent Decree resolving the case ultimately was signed by federal judge Arthur J. Tarnow in January 2003.

How is it that the LSA quarry became an environmental problem?

In 1992, the quarry owners converted what was previously a shallow sandpit into a limestone mine that they eventually excavated to a depth of about 130 feet. When groundwater began entering the quarry through the sidewalls and floor, LSA removed it from the

quarry by pumping it into Palmer Drain, a watershed tributary that flows into Stony Creek on its way to Lake Erie. Almost overnight, residential wells immediately surrounding the quarry stopped producing water, and gradually more wells dried up throughout the summer of 1993. Moreover, because the water pumped out of the quarry was contaminated with dissolved solids and hydrogen sulfide, it was very harmful to fish and other aquatic life in the creek.

How did government agencies respond?

Local politicians and our State Representative held a private meeting with the Michigan Department of Environmental Quality (MDEQ) and officials from the quarry, including LSA's hydrogeologist. The group issued a press release stating that the hydrogeologist's studies proved that "the quarry was not to blame" and that the dry wells were an "Act of God." At that point in time, the public understood little of why their wells were failing. The circle of dry wells eventually expanded to a six-mile radius around the quarry, enclosing 100 square miles and portions of five townships. Virtually every well less than 100 feet deep went completely dry, leaving 2,000 families without any water in their homes.

When was ICAG formed?

In December 1995, LSA applied for permits to expand its operations onto two new pieces of land, which would have led to even more water being discharged from the site. The plan for expansion galvanized a group of twenty of us to form ICAG, both to start seriously building a data base on the quarry and to oppose the proposed expansion. With about 15 years of Planning Commission experience, I became the "zoning ordinance consultant."

How did ICAG move to stop LSA's expansion?

ICAG learned that the quarry is required to have a discharge permit under the Clean Water Act, and we hired a professor from the University of Michigan to measure the discharge flow at Palmer Drain. He discovered that LSA was discharging more than four times the maximum amount allowed under the permit and reported to MDEQ. Later, at a public hearing, LSA officials and their hydrogeologist denied that this was possible, claiming that their discharge pumps did not have the capacity to discharge four times the reported amount. Thanks to a great deal of citizen pressure, MDEQ performed a field inspection and found that the analysis performed by ICAG's expert

(Continued on next page)

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(Continued from previous page)

was correct. Yet at a subsequent public meeting, MDEQ made it clear that it intended to increase LSA's permit limit to whatever value was required to make the quarry "legal."

How did ICAG respond?

This pushed us into high gear. We invited all relevant public officials to several televised public meetings. We also filed a request under the Public Records Law to obtain MDEQ records. From this, we learned that LSA had been exceeding its permit limits for dissolved solids since 1993, and that the degree of noncompliance was growing virtually every month. MDEQ staff had also performed a biological study on the discharge water in 1995, and had declared the stream to be essentially dead as a result of the polluted water discharged from the quarry. In fact, MDEQ staff had refused to return to the site without protective gear because of the presence of highly irritating, poisonous, and nauseating hydrogen sulfide gas.

How did NELC help bring about justice in this case?

In 1996, ICAG sought support from other environmental groups to help us take LSA to court. We met several times with representatives of PIRGIM and NELC over the next year.

In August 1998, NELC filed a Clean Water Act suit against LSA on behalf of four citizen plaintiffs and PIRGIM. ICAG provided the technical information, including MDEQ records documenting some 2,700 permit violations. A month later, at our urging, EPA filed a similar suit for even more violations, and joined NELC in prosecuting the case.

Was the lawsuit successful?

Ultimately, it was quite successful. The judge strongly encouraged the parties to negotiate a settlement, but reaching an agreement took four years of often contentious discussions and court appearances, during which the quarry continued its operations unabated. Finally, LSA agreed to end its discharge, and to relinquish its Clean Water Act permit, and on December 24, 2002, the company turned off the quarry pumps. Under the settlement, LSA also paid \$695,000 in costs, penalties and funding for Stony Creek restoration and other local and regional environmental projects.

It has now been nearly two years since the pumps were shut down. What has happened?

The discharge of toxic waters into Stony Creek ended immediately, and the quarry rapidly filled with water. In addition to

the settlement terms obtained jointly by the citizen plaintiffs and EPA, the citizen plaintiffs negotiated additional provisions in the consent decree requiring LSA to monitor the groundwater as the quarry filled. This monitoring documented a concomitant rise in the aquifer level. Some residential wells started returning within just a couple of months of the settlement, and reports now indicate that wells are returning all over four townships.

What advice do you give to concerned citizens in other areas of the country about taking on a polluter in their community?

First, do not let the complicity of your elected and appointed officials surprise you. Instead, try to replace them, and lobby for the election of people who care enough about the environment to fight for it. Second, plan on the "long haul." These polluters count on wearing you down and out. Often, battles against big polluters can be expensive and complicated, with evidence that is difficult to find. Polluters don't always take demands from citizen's groups seriously. But London Aggregates underestimated us, and although it took ten years, we won. We have stopped the devastating impact of their pollution in our community, at least for now. ♦

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