

Dakota Counsel

April 2007

Organizing • Research • Advocacy • Education

Vol. 30, No 3

TURTLE RIVER WINS LANDFILL CASE

Just after its seventh birthday, the Grand Forks County Citizens Coalition won its founding issue.

There will be no landfill in Turtle River Township.

District Judge Joel D. Medd ruled April 16 that the township’s zoning was legal, and that township officials were within their rights to withhold a landfill permit from the city of Grand Forks on the basis of evidence given at the permit hearing.

“This restores my faith in democracy,” said GFC3 chair, Daryl Bragg. “The judge looked carefully at the evidence we provided, and the system worked.”

With the help of current GFC3 member Todd Leake, the township enacted zoning in December, 1998. By then the city had acquired the land it intended to use for the landfill but had sought no permits.

By the time the city got around to asking for a permit in March, 2000, they confronted a sophisticated ordinance that called for an Environmental Impact Study—and well-organized opposition in the form of GFC3.

The city plowed ahead but encountered a barrage of evidence supplied by GFC3 members that cast grave doubts on the landfill’s safety.

The biggest concern of most GFC3 members was water. The proposed landfill site was prone to overland flooding and had a high water table.

GFC3 produced pictures of the site under water during past floods, and an independent scientific study showing that soil fractures at the site could lead to soil and water contamination.

“[T]here was ample evidence presented at the hearing to support the Township’s decision not to grant the conditional use permit,” ruled Medd.

The city has not said if it will appeal the ruling. It has already spent more than \$2 million to date on the landfill, according to the Grand Forks Herald.

Recent *Herald* articles have warned of rising garbage collection rates if the city’s lawsuit failed, and the city has already lost contracts with Devils Lake and Minnesota’s Pennington County.

“This case shows us how important it is to look beyond landfills, which are essentially an 18th Century technology,” said Bragg.

“We need to change the way we deal with garbage,” he added. “Providing incentives to recycle and cut down on trash would be a start.”

AFFILIATES IN ACTION

MCETA

If done right, biofuels could be a boon to western North Dakota counties like McKenzie, according to Dr. Jerald Bergman, keynote speaker at the McKenzie County Energies and Taxation Association annual meeting March 24.

Bergman has done extensive work with safflower breeding to develop varieties best suited for biodiesel production.

He works with both the North Dakota State University Williston Research Extension Center and the Montana State University Eastern Agricultural Center at Sidney.

“North Dakota is well positioned to become a leader in meeting fuel needs with clean, renewable energy from farms,” said MCETA chair, Roger Brenna. “We have millions of acres to grow agricultural products to make biofuels.”



Dr. Jerald Bergman (l) and MCETA Chair Roger Brenna

SARC

Local food is best, agreed the three panel participants at South Agassiz Resource Council’s annual meeting March 27.

To bring the point home, SARC raffled off one-eighth of beef donated by one of the panelists, organic farmer Lynn Brakke, who raised it near Moorhead.

See Affiliates p. 4

The Dakota Counsel is published six times a year by Dakota Resource Council, a nonprofit, grassroots activist organization. The mission of Dakota Resource Council is to form enduring, democratic local groups that empower people to influence decision-making processes that affect their lives. DRC is committed to preserving sustainable agriculture and natural resources.

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THE RAZOR'S EDGE

By DRC Board Chair Dean Remboldt

From the time we are school-aged children we are educated on the fact that our country has always taken the high ground or set the standard when it comes to promoting democracy, human rights, and moral behavior around the world.

But as we get older we come to realize that there has been many times throughout our nation's history that we have for various reasons, simply looked the other way.

Most of the reasons that we have embraced some of these "tin horn" dictators has to do with our corporations' ability to rake in huge sums of money off the backs of workers from other countries. The corporate globalization that has gone on the last 10-15 years has accelerated the pace of our moral malfeasance to the point of worldwide blowback.

In December 2006, the National People's Congress in China, with considerable populist backing, proposed a new labor law that includes limited but significant worker rights.

Finally we have a chance to help the worlds' largest labor force adopt child labor laws and get rid of the sweatshop mentality that has become so prevalent in our world economies today.

But not so fast. This bumps up against our global corporations' "race to the bottom." After all, they have a significant investment in China, and we couldn't do anything that would disrupt their ability to do business the way they see fit.

The U.S. Chamber of Commerce, US-China Business Council, Wal-Mart, and GE and other global corporations opposed the new labor law in China and aggressively lobbied to gut most of its provisions. One of the most effective lobbying tools that they have used to get concessions is to threaten that if this labor law gets passed they would leave China for countries like Pakistan and Thailand.

Most of our government or corporate behavior hasn't been lost on the people whom we oppress; to the contrary, we've made ourselves their enemy. As more people around the world are better educated, and with today's flow of information, they are starting to become better organized. Like our country's workers and producers, they are seeing the difference between free trade and fair trade.

Am I one of those "blame America first" people who are being depicted as hating our country? No, I bring this up because it affects our ability to do business around the world and has a huge impact on our workers and producers right here in North Dakota. DRC has adopted many resolutions that deal with fair trade, workers rights and moral integrity. If organizations like ours don't speak up on these matters who will?

We all need to be concerned by the fact that Monsanto forces its genetically modified crops onto a world that doesn't want them, or that we lobby against the Kyoto protocol rather than embrace it, or that we fail to champion the basic rights of freedom for workers around the world. It's our duty as morally conscious beings.



GM ALFALFA DE-DE-REGULATED

Roundup Ready alfalfa seeds are now a controlled substance again.

Federal judge Charles Breyer on March 12 vacated the 2005 federal government's approval of Roundup Ready alfalfa and ordered an injunction to halt seed sales immediately.

The ruling was the latest development in a lawsuit filed by the Center for Food Safety (CFS). DRC is a co-plaintiff in the suit, along with several organizations and two family seed businesses.

Breyer had already ruled on February 13 that the U.S. Department of Agriculture violated national law by failing to conduct a full Environmental Impact Study of the effects of Roundup Ready alfalfa release.

"Roundup Ready alfalfa poses threats to farmers, to our export markets, and to the environment," said CFS Senior Attorney Will Rostov. "We expect the USDA to abide by the law and give these harmful effects of the crop full consideration."

The injunction allowed farmers who had already purchased the genetically-

modified alfalfa seed to plant it prior to March 30.

The ruling came as a blow to Monsanto and Forage Genetics, which developed the patented seed and intervened in the case to argue against the injunction.

Monsanto contended the injunction was unfair in limiting the choices of farmers who planned to grow Roundup Ready alfalfa, but the judge disagreed.

"Disappointment in the delay to their switch to Roundup Ready alfalfa is not an interest which outweighs the potential environmental harm" posed by the GM crop, he wrote.

This ruling was consistent with Breyer's original opinion that Roundup Ready alfalfa itself would limit the choices of alfalfa producers.

"For those farmers who choose to grow non-genetically engineered alfalfa," said Breyer, "the possibility that their crops will be infected with the engineered gene is tantamount to the elimination of all alfalfa; they cannot grow their chosen crop."

Rugby seed grower Blaine

Schmaltz, who submitted a declaration in the case, said USDA's Roundup Ready alfalfa declaration caused the loss of a foreign alfalfa seed buyer.

This was the first year he was not able to guarantee a crop free of genetic engineering, and he has gotten out of the alfalfa seed business. To stay in would have required expensive testing on every lot sold.

Since the judge's injunction ruling, Organic Valley Farmers have entered the fray, submitting a declaration calling for a permanent injunction against GM alfalfa

Organic Valley is America's largest and oldest organic farmer cooperative, with 975 farmers in 26 states and one Canadian province and \$334 million in sales in 2006.

"If farmers can't source adequate organic feed, they will not be able to produce organic milk," said Organic Valley CEO George Siemon.

Judge Breyer will hold a hearing and is expected to decide whether to impose a permanent injunction in late April.

SEE YOU AT THE COUNTY COMMISSION

The battle over local livestock zoning ended with a whimper at the state legislature, but promises to continue in county courthouses across the state.

The Farm Bureau and others who wanted to remove zoning rights to make way for giant hog facilities managed to pass one of their bills, but it was a shadow of its former self.

Hog factory proponents originally introduced two bills that would have eliminated nearly all local control over permit provisions.

The Senate killed SB 2331 early in the session.

HB 1420 did nothing but move language around by the time it finally cleared both houses of the legislature, April 12.

The legislature did pass a resolution calling for an interim study of livestock zoning.

Meanwhile, Ramsey County served notice to the North Dakota Sow Center March 9 that it did not have a per-

mit from the county for its Edmore facility, which was under construction.

The Sow Center, formerly known as Viking Feeders, refused to submit a full permit application to the county and instead got a permit from Prospect Township, which had quickly written its own factory-farm-friendly ordinance.

States Attorney Lonnie Olson got an Attorney General's opinion last year that township zoning supersedes the county on issues addressed in both ordinances.

The Devils Lake *Journal* reported that county officials are looking at the two ordinances to decide what elements of the county ordinance are not addressed by the township.

One obvious one is the county's closure rule, which requires a bond to insure the county against the costs of clean-up if the facility is abandoned.

Oh, and yes, the Farm Bureau is still suing the county for allegedly overreaching its authority by enacting the ordinance.

ANOTHER TRY AT CAPTIVE SUPPLY

Efforts to curtail packing industry power over livestock contracts are under way again in Congress as farm bill debate looms on the horizon.

Sen. Mike Enzi (R-WY) introduced the Captive Supply Act March 28 with both Senators Conrad and Dorgan as co-sponsors.

“Our cattle markets have been held hostage by these mega-corporations for too long, and it’s good to see our senators working to free them,” said former DRC chair Donald Nelson, Keene.

The legislation would limit meatpacker control of the cattle market by requiring more transparent transactions and firm base prices for cattle supplied under advance contracts.

The terms of the bill are essentially the same as those presented to then Secretary of Agriculture Dan Glickman by the Western Organization of Resource Councils as a petition for rulemaking in 1996.

Originally, WORC and DRC wanted Glickman to utilize powers given to the Secretary in the Packers and Stockyards Act of 1921 to outlaw formula-price forward contracts, which require future delivery of livestock at a price to be determined later.

Neither Glickman nor his predecessors ever acted on the petition.

Four huge, multi-national packing firms currently exercise overwhelming control of those markets—in part through captive supplies, or cattle owned or contracted by the packers themselves.

The Captive Supply Reform Act has been introduced in every Congress since 2002 but has never moved to a committee vote.

Farm bill debate that year included serious consideration of livestock competition issues, especially in the Senate.

The Senate passed a ban on packer ownership of cattle and country-of-ori-

gin labeling, but only the latter made it into the farm bill. It has never been enforced on beef.

Both houses of Congress did hold hearings the week of April 16, with the Senate again the more friendly body to producer concerns about lack of competition in the marketplace.

The National Cattlemen’s Beef Association continued to deny the problem and characterized captive supply reform as an attempt to “restrict the way producers market their cattle.”

The group cited a USDA Grain Inspection, Packers and Stockyards Administration study that concluded forward contracts have benefited some producers.

However, GIPSA officials conceded before Congress that USDA did not allow them to study the separate impacts of different types of contracts—such as forward contracts with a base price and those without.

AFFILIATES, from p. 1

Local food “has been raised with much hands-on care and knowledge, and it shows,” said panelist Andrea Baumgardner, who with partner Stephen Long operates Fargo’s new Green Market, where the meeting was held.

It sells a lot of local food.

Nutritionist Abby Gold, the third panelist, told of her efforts to help low-



Margaret Bitz and Lynn Brakke at the SARC annual meeting

income people improve their diets by adding more fruits and vegetables without adding cost—through gardening.

SARC elected Jerry Jernberg as its new chair. Lynn Brakke and Jen Walla also became first-time officers.

BARC

What is it like to live near a coal mine and coal-fired power plant?

DRC member and farmer Gene Wirtz, Underwood, gave Badlands Area Resource Council members the inside scoop at BARC’s March 24 annual meeting.

Wirtz has lived near the Falkirk Mine and Coal Creek power plant since they came into being a generation ago.

Many BARC members live in the South Heart area and want to know what to expect if the mine and power

plant proposed for their area become reality.

Linda Weiss, Belfield, was re-elected Chair, and Neil Tangen, South Heart, joined the Board as Vice-Chair.

MVRC

Missouri Valley Resource Council hosted a public forum, “Examining your Carbon Footprint,” in Bismarck April 16,

Speaker Jason Schaefer, a GFC3 member, talked with the audience about reducing their impact on global warming through personal choices—such as eating more local foods, driving less, installing Energy Star-rated appliances and windows, and replacing standard light bulbs with energy-efficient ones.

OIL AND GAS PROGRESS

Rural residents of oil and gas country came away from the legislative session with a little more leverage, thanks to DRC’s lobby effort.

HB 1229 puts a little more distance between a home and the nearest well—500 feet, up from 330 feet in existing law.

It also provides a 20-day notice prior to drilling for owners of occupied buildings within one-fourth mile. It’s not a lot of time—but enough to get the well test that is crucial to any claims of well damage due to oil and gas activity.

Both provisions got some legs from Bruce and Paula Kaye’s unpleasant experience last year, when they came home from vacation to find a drill rig less than 400 feet from their back door.

The bill’s sponsors were Reps. Drovdal (R-Arnegard) and Kempenich (R-Bowman) and Sens. Bowman (R-Bowman), Urlacher (R-Taylor) and Wardner (R-Dickinson).

HB 1511 lights a little warmer fire under oil companies to either plug and abandon or produce from older wells that have lain mostly idle for years.

The bill gives the Oil and Gas Commission the right to assign a \$20,000 single-well bond to wells that have not produced oil or gas in paying quantities for one year.

Under previous law, companies could include all wells under a single \$100,000 blanket bond.

The result has been neglect.

DRC testimony noted that one well

in McKenzie County, drilled in 1957, has not produced oil or gas since 1972 yet is still classified as “temporarily abandoned,” with little incentive for the company to clean it up.

In one McKenzie County township alone, DRC identified 23 separate wells that were “temporarily abandoned.”

The bill’s sponsors were Reps. Drovdal, S. Meyer (D-Dickinson), Keiser (R-Bismarck) and Onstad (D-Parshall), and Sen. Heitkamp (D-Hankinson).

Although the oil industry presented numerous amendments and arguments against passage, in the end only one vote was cast against either measure in the Senate, and the bills were signed into law by Governor Hoeven.



SAVE THAT WATER

DRC is going before an administrative hearing officer to try to stave off a series of McKenzie County water well permits for the company that caused the largest saltwater spill in state history.

The State Water Commission in late January recommended 20 of the 21 permits Zenergy requested to drill water into the Tongue River aquifer, used by many rural residents. It appears that if successful, Zenergy will request dozens more for its drilling operations in the Foreman Butte Oil Field near Alexander.

The proposed permits answered some of DRC’s earlier objections, requiring the installation of devices to prevent backflow, and specifying that wells should be either plugged or turned over to landowners after permits expire.

The gnawing concern, however, is loss of water.

“The Water Commission is not looking at the big picture,” said Donald Nelson, Keene, of DRC’s Oil and Gas Task Force.

“This type of water use threatens our livelihood as ranchers,” he added.

One state monitoring well in the area showed a drop of nearly one foot in the past year, and simulations presented in

the Water Commission’s own recommendation show a predicted aquifer drawdown of 50 feet.

DRC’s request for a hearing pointed out that North Dakota law requires the State Health Department to establish a degradation prevention program to protect existing uses of Class I waters of the state (like the Tongue River aquifer) whenever a regulated activity is proposed that might affect ground water.

There is no evidence that the Water Commission even considered this obligation.

At issue also is the Water Commission’s assertion that an oil lease confers the right to enter the surface for the purpose of drilling a water well, and that surface occupancy agreements also confer access to water.

DRC disagrees, noting that state law nowhere says that a water well is part of the oil or gas drilling process.

Assistant Attorney General Matthew A. Sagsveen, representing the Water Commission, asked for a prehearing conference in late March, but DRC held out for a conference in May, following calving, and the hearing officer, Allen C. Hoberg, honored the request.

The conference will take place May 9.

“Whiskey’s for drinking, water’s for fighting.”

THE “EXTERNALITIES” DEFENSE

The state’s Public Service Commission (PSC) must put its head in the sand and give its blessing to the proposed Big Stone II power plant, according to Montana-Dakota Utilities and Otter Tail Power.

The two utilities moved that the PSC disallow any testimony from DRC on carbon dioxide regulatory costs in the “advance determination of prudence” case, even though John Dwyer of the Lignite Energy Council (LEC) admitted to the *Fargo Forum* April 8 that carbon restrictions are inevitable.

They may be inevitable, but according to MDU and Otter Tail, state regulators may not take them into consideration.

The utilities are appealing to a 1995 statute pushed through by the LEC. It forbids the PSC from considering “environmental externality values” in “the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service.”

These “externality values” include “the alleged costs of complying with future environmental laws or regulations that have not been enacted.”

The occasion for the bill in 1995 was Minnesota legisla-

tion enacted to establish environmental costs for emissions of carbon dioxide, which are linked with global climate change.

In testimony on the 1995 bill, Dwyer presented a “Comparison of Lignite Energy & Wind Energy” with and without “externality cost.” His conclusion: “Without Externalities, Lignite Wins. With Externalities, Lignite Loses.”

PSC staff attorney William Binek has advised Commissioners to accept the utilities’ motion. The result would be that DRC could not produce evidence at the hearing from its expert witness, David Schlissel, on the estimated costs of compliance with carbon regulations.

DRC has moved that Binek be recused, since he testified side-by-side with Dwyer in favor of the “externalities” law when it was passed, which “does not create an appearance of impartiality.”

Action on these per-hearing motions is pending. Administrative law judge Al Wahl will be conducting the hearing, including these motions, and the Commissioners have agreed to abide by his decision.

The hearing is scheduled for May 29-30.

IN BRIEF

Ethanol Exemption

Ethanol plants will be able to pollute more due to new rules issued April 12 by the U.S. Environmental Protection Agency.

The rules allow ethanol plants to avoid “best available control technology” requirements if they stay under 250 tons of pollution annually. The limit for other facilities is 100 tons.

EPA further exempted from that 250 tons fugitive emissions from vents and other minor sources.

National Association of Clean Air Agencies executives William Becker called the decision a “double whammy.”

“They have inappropriately increased the major source threshold and made that change worse by ignoring plant emissions that are still a problem for public health,” Becker told the press.

Windsorce Rejected

The state Public Service Commission unanimously rejected Xcel’s rate request for its Windsorce program April 4, saying it was too high.

DRC argued against the rate in the PSC’s public hearing.

Windsorce is a “green pricing” program that allows customers to choose to purchase electricity generated by wind power.

“Why should people who really support wind have to pay significantly more for that resource than others?” argued Commissioner Susan Wefald.

Because of Minnesota requirements, Xcel already has wind online for which it charges no premium.

Xcel was asking PSC for permission to charge \$2.50 for a block of 100 kilowatt-hours—about five times the going rate in North Dakota.

The high rate “treats wind as if it’s some sort of boutique fuel that’s set aside from the rest of the generation grid,” said Commissioner Tony Clark.

Corporate Farming

The U.S. Supreme Court refused to hear Nebraska’s petition to overturn the Eight Circuit’s decision that the state’s corporate farming law is unconstitutional.

With the April 2 decision, the law enacted by Nebraska’s voters in 1982 was nullified.

See IN BRIEF, p. 8

LIGNITE'S PRIVATE, POLLUTION'S PUBLIC

by Ron Martin

Where pollution is concerned, it's time for our state to stop weighing in on the side of private interests, and start defending the public interest, which includes clean air and a livable planet.

Instead, legislators are poised to pour more money into lawsuits that ignore the public interest in favor of special, private interests through two pending bills, HB 1014 and HB 1093.

These bills as now worded would set aside \$2 million for litigation to defend the interests of the lignite industry.

Presumably, the state would spend this money on cases such as the one on carbon dioxide that was decided April 2 by the U.S. Supreme Court.

North Dakota entered that case on the losing side, arguing that the U.S. Environmental Protection Agency didn't have the ability under the Clean Air Act to regulate carbon dioxide emissions, which appear to be contributing to climate change.

Fortunately, the court decided otherwise. We can hope that this decision opens the way to rules controlling carbon dioxide emissions, which will be



Ron Martin, Sawyer, is a member of DRC's Souris Valley Chapter. At press time for Dakota Counsel, both bills mentioned above were still pending.

of great benefit to the public, even though it may inconvenience some private interests. We all expect the lignite industry to go to court to protect its private interests. But if it is a viable industry, why does it need the public's help?

And why should the public support it when lignite's interests conflict with the common good? Polls show that North Dakotans want development of clean, renewable electricity. Nothing would help that happen more than federal limits on carbon emissions.

There's still time for legislators to draw back from the brink and remove the litigation funding from these bills.

Our tax money should never be used to help polluting industries throw up legal roadblocks to clean air.



UNDER-ENFORCEMENT

North Dakota is dead last among the states in the percentage of federal minimum pollution fees it collects, according to a March 7 report from the Environmental Integrity Project (EIP).

The state collected \$1.7 million from 2002 to 2006, or 70% less in emissions fees than the federal Clean Air Act calls for in its minimum standards.

The report found that 17 other states also collected fees below the minimum.

"States are shortchanging either the public health or the pockets of taxpay-

ers by setting emissions fees that are too low to cover the cost of Clean Air Act enforcement programs," said EIP Director Eric Schaeffer.

The U.S. Environmental Protection Agency says states should assess a minimum fee of \$39.48 per ton on the first 4,000 tons of sulfur dioxide, nitrogen oxide, volatile organic compounds, particulate matter and hazardous air pollutants.

The fees are used to monitor emissions, hire inspectors and develop and enforce state regulations necessary to meet federal air quality standards.



I'D LIKE TO SUPPORT DRC ENCLOSED PLEASE FIND:

- General Membership
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MVRC/DRC Membership
Family \$50 ___ Individual \$30 ___

SARC/DRC Membership
Family \$55 ___ Individual \$ 30 ___

SVC/DRC Membership
Family \$50 ___ Individual \$30 ___

SC3/DRC Membership
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IN BRIEF, from p. 6

The high court upheld a lower court decision to strike down a similar South Dakota law in 2004.

In both cases, the key factor was the “dormant commerce clause” of the U.S. Constitution, which disallows discrimination against out-of-state business interests.

DRC joined 41 other organizations in filing an amicus curiae, or “friend of the court” brief in favor of the petition, which was drafted by Farmers Legal Action Group.

Farm Bill Renewable Grants

Two North Dakota companies won the first major grants for renewable energy this year under Section 9006 of the

2002 Farm Bill. Northwood Mills will use its grant of over \$500,000 to develop a biodiesel production plant next to its soybean crushing facility in northeastern North Dakota.

Verendrye Electric will use its grant of \$100,800 to expand its program of installing high-efficiency pumps and solar panels for their customers at remote livestock wells.

The cost of extending lines to service such pumps can reach \$15,000 per mile. Verendrye says farmers will lease the panels but receive the pumps at almost no cost.

Two additional energy efficiency grants brought North Dakota's total to eight grants for nearly \$750,000 since the federal government began the Section 9006 program in 2003.

Bid for Better World Online Auction Coming Soon!

Mark your calendar and get ready to join in the fun to support a worthy cause!

Dakota Resource Council and State Environmental Leadership Program (SELP) are partnering to help the environment by holding an online fundraising auction from May 1 - 25, 2007.

We're building a catalog full of unique and exciting items for auction: a relaxing week in the scenic South Carolina Mountains, an exhilarating river rafting trip on the Middle Fork in Idaho, and lots more to come!

Be one of the first to visit the auction website at <http://www.selp.cmarket.com>, where you can browse through our catalog and start building your wish list.

There's no better time to “**give green, while getting greener!**” Don't miss **YOUR** chance to bid for a better world!

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