

The Kentucky Conservation Committee

Guardian

A Review of Kentucky's Commitment to Protecting
Its Environment and Conserving Its Natural Resources



P.O. Box 1152, Frankfort, KY 40602

Fall 2000

Governor Patton to Propose Solid Waste Legislation for 2001 Container Deposits Unlikely

The biggest victory in the 2000 Legislative Session, declared Natural Resources Secretary James Bickford at the KCC Annual Meeting, may be the defeat of the Farm Bureau Bill designed to load up Kentucky with hogs and chickens. KCC along with KFTC, Community Farm Alliance, Democracy Resource Center, and Sierra Club worked very hard to defeat this bill.

Another victory, according to Sec. Bickford, was the passage of SB 409, a water resources bill. This bill sprang from Governor Patton's commitment to bring potable water to every Kentuckian by 2020. As the result of this legislation, Roger Rectenwald will direct the planning office in an effort to focus the various funds (grants & loans) toward water supply projects.

Small water districts around the state do not have the financial assets to get this job done, therefore NREPC wants to promote regionalization. The difficulty, noted Bickford, is that many of these small water districts are mini-fiefdoms. To make matter worse, new water quality standards coming on line will simply overwhelm the little water districts.

When the turf battles can be overcome, progress can be achieved as demonstrated on the Logan/Todd Counties border where eleven water districts have been combined into one, providing better service, better treatment and lower fees, according to Bickford.

The Secretary recognized that with the extension of water lines, we need to think about the sewers as well. This is a much more difficult and expensive pipe to run. Low interest loans are being offered to convert straight pipes to septic tanks and sewage treatment plant hookups, although, Bickford admits, septic tanks are not the best solution, especially in Kentucky karst. He also added that sewage is now narrowly evaluated by Health Departments as a health issue. He recommends it be part of Planning and Zoning so that water, sewer, roads and other infrastructure can be coordinated in an efficient manner.

Also in the Secretary's plus column this session was HB 643, the reauthorization of the hazardous waste fees. These fees provide funds for cleanup of hazardous waste sites, state superfund sites and the state's emergency response team. The bill originally extended the fees indefinitely but was amended to extend the fees for only two years. In the next session we need to reauthorize the fees indefinitely and possibly look at ways to reduce the fees by enlarging the universe of hazardous waste generators covered.

Secretary Bickford spoke to the Cabinet's view of the brownfields legislation (See Sen Kelly, pg.4). saying the Cabinet is very concerned with protecting the environment at these sites. The legal entanglements are complicated. The Cabinet negotiated with the City of Louisville and the Associated Industries of Kentucky for many hours without resolution. Most brownfields are very dirty, Bickford emphasized. Many of the issues dealt with in the legislation can be handled with under the Cabinet's existing regulatory authority. To fulfill a promise made during negotiation, a notice of intent to promulgate a regulation has been recently filed and is available for public comment. The draft regulation allows volunteer remediators to avoid penalties as long as the contamination is cleaned up. The draft regulations can be viewed at www.nr.state.ky.us/nrepc/dep/waste/regs/ppanoi.htm.

Continued pg. 5

President's Message

This issue of the Guardian reviews the 2000 KCC annual meeting. The information here was derived from the speakers' comments. As you can see, we had a fairly significant meeting this year.

It is gratifying to see the Governor promising action in 2001 on some of our core issues, namely solid waste, environmental education and, potentially, smart growth. This is especially true considering the lack of results on these issues in the last session.

However, since we are now assured of a session in early 2001, KCC is faced with the challenge of financing our efforts. Normally we use membership dues from the off years to build our treasury for the biennial session. We won't be able to do that this time. Memberships are key to our financial solvency. Invite a friend to join KCC.

Solid Waste Legislation Development Schedule (Approximate)

August 2000 – gather information
Sept 1 – Sept 15 – Skunkworks to White Paper
Sept. 15 – Sept 22 – Review by Secretary Bickford
Sept. 22 – Oct 30 – Public Review
Oct 30 – Nov. 10 – Evaluation of Public Comment
Nov. 10 – Dec. 1 – Prepare Final Draft for Governor

To View the Cabinet's Analysis of the solid waste problem in Kentucky visit the Web Site:

<http://205.204.201.51/nrepc/wasteproblems.pdf>

Despite Setbacks on Smart Growth Rep. Wayne Upeat

Rep. Jim Wayne spoke at the KCC annual meeting about the smart growth legislation he introduced during the 2000 Session. He began his talk recalling that in his own district the Louisville Airport Expansion had created 10,000 refugees needing relocation and that a mall was planned for the wetlands at I-65 and the Outer Loop. The neighbor's experience with City Hall and the Planning Commission on these issues showed him the lack of respect for due process and the developers' inordinate influence in the zoning process.

Wayne paused his presentation to recommend the book Great Work by Thomas Berry which examines the challenge of man to integrate into the natural rhythms. When we live to dominate nature we will destroy ourselves.

He continued by declaring it's not urban sprawl but *suburban sprawl* and it came about by designing to meet the needs of the automobile, not people. The '60's, '70's, and '80's have replicated the nightmare of the Dixie Highway (4 lanes of concrete lined with retail enterprises) over and over again.

Rep. Wayne recalled the pre-session legislative process that he hoped brought a change in thinking to Frankfort. For four years the Interim Local Government Subcommittee invited witnesses to educate legislators. An informal group then gathered to draft the legislation with input from a broad array of stakeholders. Four bills emerged so that the defeat of any one bill would not sink the entire effort.

HB 521 was proposed to provide a credit for renovation of residential/commercial downtown properties. The purpose of this bill was to help slow suburban sprawl by saving the urban core from decay.

HB 522 was proposed to provide training and continuing education for planning staff. This was particularly aimed at giving communities that don't currently have planning commissions confidence that they can start one that will know how to operate.

HB 523 was proposed to provide tax exemption for farmers. Keeping farmers economically viable keeps farms in production and slows the encroachment of the suburbs.

HB 524 was proposed to provide counties incentives to institute planning and zoning and to coordinate service areas.

Growth has not been coordinated which has been very costly to taxpayers. Suburban sprawl has resulted in an increase in traffic congestion and consequently, increased air pollution. Suburban sprawl has created an increase for services outside of existing or planned infrastructure. Better planning and coordinated infrastructure will save taxpayers money and protect the livability of our cities and towns.

These bills did not pass, but success in Frankfort, Rep. Wayne observed, can be measured by education and staying true to our goals. The smart growth efforts raised awareness of these issues and got the governor's attention! That is a measure of success.

Next Session- Wayne thinks we need to educate the League of Cities and Association of Counties which stayed neutral on these bills. The Farm Bureau stayed neutral as well. Although the Board of Realtors and Homebuilders had input

Continued pg 4

Environmental Ed is Kentucky's Future

At the KCC annual meeting Jane Eller, Director of the Kentucky Environmental Education Council, presented a brief overview of the Environmental Education Master Plan, which remains unfunded. She began by pointing out that education was mentioned 12 times by the speakers preceding her that morning. Environmental Ed. is like the weather, Ms Eller compared, "everyone talks about it, but no one does anything about it."

According to Jane, the Environmental Education Council is *the* smallest state agency. It consists of a director and an assistant. The Council set out to develop the Environmental Education Master Plan, which was mandated by the legislature, through a broad consensus of stakeholders. The contributors included educators, environmentalists, businesses, and other state agencies. After all the work developing the plan, the legislature did not see fit to fund any of it in the last session.

Ms. Eller explained the basics of environmental education as a three step process.

1. First we must establish an awareness that there is an environment and that there are environmental issues.
2. From awareness, we move on to knowledge (i.e. what is a habitat, what is a watershed etc.)
3. Then we can have action to protect the environment, change behaviors, vote, etc.

Kentucky does a lot of awareness. This generally takes the form of one-day events and fairs, such as earth day. Events, however, are not knowledge transfer and do not change behavior. Jane compared this to teaching history for one day of every year. Environmental topics must be part of the regular curricula.

We are in a great position to do this in Kentucky because we have KERA. The environment is a cross-discipline topic that can easily integrate the curricula, KERA style. It is easy to combine science, math, writing, art and other subjects into the study of the environment. In doing this, she emphasized, education is greatly improved.

Some schools have gone from the category of "crisis" school to "exemplary" school by using the environment as the theme to integrate their subject matter. It has been observed that discipline problems fall drastically when children learn about their local environment. The hands-on learning it brings connects them to something outside themselves and reaches children whom otherwise take no interest in learning.

The Environmental Ed. Master Plan is not a curriculum it sets forth a plan that can truly change behavior. It promotes standards for "scope" and "sequence". In other words, it outlines the topics, the order of the topics, and the grade level for them.

Setting standards helps eliminate the battles between industry and environment now taking place in the classroom. Each side is trying to push it's own standards and materials which are highly biased. To make matters worse, the teachers have no training in the area. The teachers must be environmentally literate.

Another problem Ms. Eller declared is that environmental ed. is not equally distributed. The Master Plan sets up a delivery system via a network of Env. Ed. Offices at each state university to help distribute curricula, materials, and information to all the schools.

Coordination is also critical, according to Ms. Eller,

Continued pg 5

Organized by the
Kentucky Conservation Committee
an organization of citizens who work for
progressive environmental legislation
and by
the Commodity Growers Cooperative

Kentucky Voices

an evening to benefit the protection
of Kentucky's natural resources
featuring

Sena Jeter Naslund

Author of "Ahab's Wife"

Diane Aprile with Mary Lou Hess

"The Eye is not Enough," Essayist and Artist

Jonathan Montlado,

Co-editor of *The Intimate Merton*

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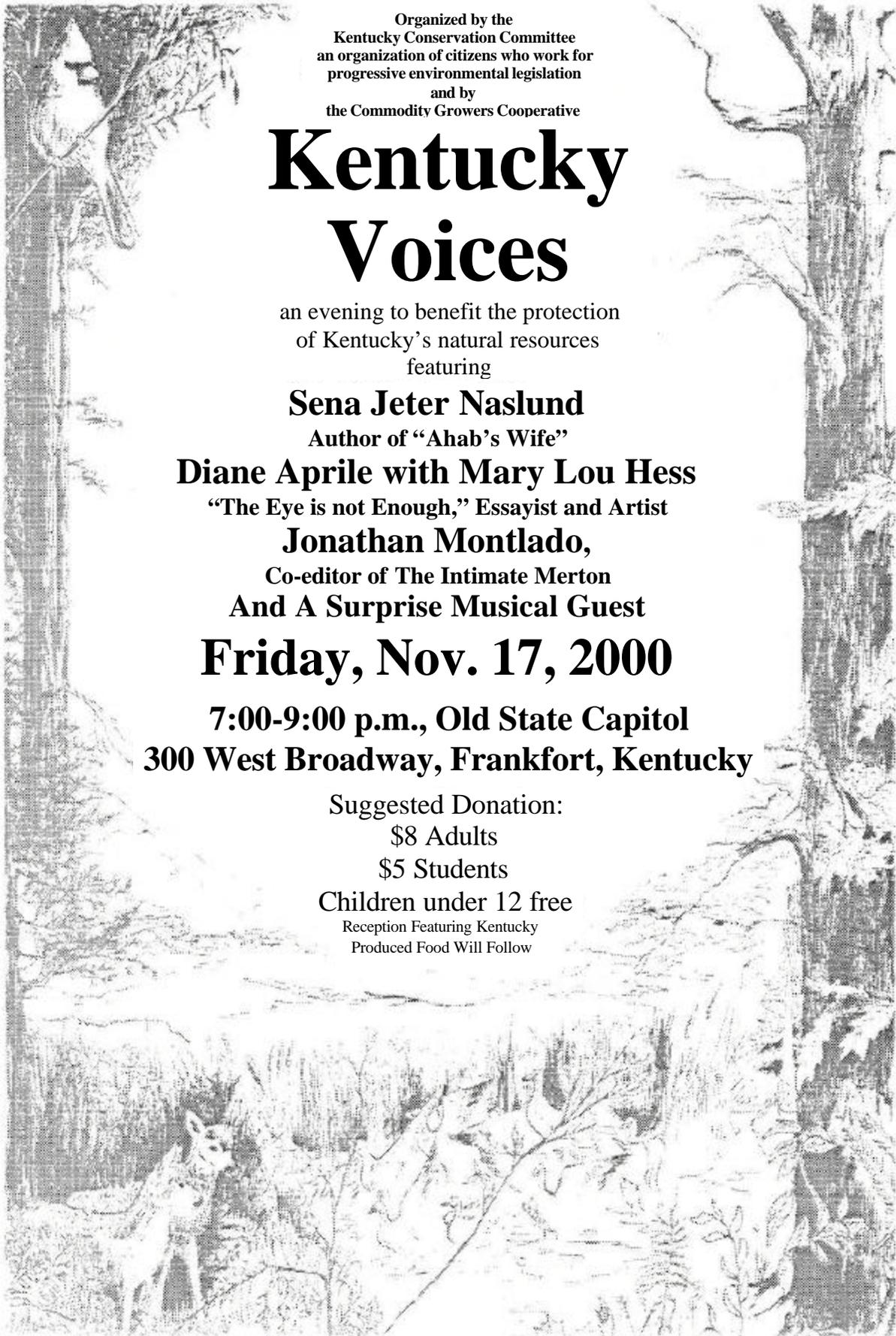
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Senator Kelly Discusses Brownfields Legislation

Senator Dan Kelly reviewed the attempt to pass Brownfield legislation at the KCC annual meeting. Brownfields are properties previously used for industrial or commercial purposes that are now abandoned and have contamination too low to be a superfund site. Senator Kelly sees a need for a program to encourage redevelopment by providing certainty and assurance to developers. Re-developers want an up-front agreement on costs and liability with no surprises.

Remediating these sites puts them back into productivity and into the tax base. It also helps curb suburban sprawl. The big question is, "Who will accept the risk of the unknowns?" When the developer runs into previously unknown contamination, who will pay?

The Jefferson County Brownfields Initiative developed legislation after looking at what other states were doing and focusing on Kentucky specific concerns. They proposed a process that included investigation of the site, remediation planning, and then remediation. The Division of Environmental Protection Cabinet was to be involved at all phases.

The cabinet had many concerns about the bill. Considerable changes were made during the process, but the cabinet still opposed. The legislation passed the Senate 37-0. The bill passed out of committee in the House, and was recommitted to House Appropriations and Revenue to be killed.

According to Sen. Kelly, a variety of concerns came up in the debate over this bill. These included:

1. Concern of timeliness - Developers wanted a 60-90 day response time from the NREPC. The Cabinet wanted sufficient review time to reduce surprises and make sure the plans were adequate. By the end of negotiations, the cabinet had up to a year not including clock stoppages to request more data.

2. Concern for liability - Developers sought assurance from the Cabinet in the form of a covenant not to sue or a "No Action Letter". They wanted the Cabinet to assume the risk of something unknown discovered during development. The risk to adjoining lands further complicated the issue. Environmentalists argued that neighbors should have the right to hold the developer liable if a new threat is discovered. That, however, undermined the certainty which developers sought.

3. Concern for Cabinet error - This is the question of who pays the costs if the Cabinet makes an error. Under the bill, the Cabinet would assume responsibility unless there was a serious threat to the public.

4. Concern for confidentiality - The Cabinet did not want restrictions on the availability of detailed information. The public and especially neighbors have a right to know. The proponents felt it would have a chilling effect on proposals if all details were made public. The final bill proposed to keep the process confidential until the project was approved or disapproved.

What Next?

Sen. Kelly was unsure what's next for this legislation. The Cabinet has committed to address Brownfields issues through administrative regulations. Sen. Kelly stressed that an appropriate corollary is the Petroleum Storage Tank Assurance Fund. There is a concern for abuse of this process if contamination was caused by a known corporation.

Discussion - Meeting participants pointed out other concerns

such as who accepts liability for brownfields when new science discovers previously unrecognized hazards. Another concern is contamination at sites that were not recognized as brownfields at the start of construction. Then there is the worry that long term owners of property, who know what is present, will take advantage of the program to escape liability for past sins.

Stumbo Reaffirms Commitment to Deposits

Rep. Greg Stumbo recalled at the KCC annual meeting how students from Estill County High breathed new life into the issue of recycling by lobbying the 1998 Legislative Session. In the 2000 Session for the 1st time in 25 years the Bottle Bill came out of committee and was debated on the floor of the House chamber. At least 10 legislators said after the defeat of HB 1 that they wanted another chance to vote for recycling. So Rep. Stumbo introduced HB 745 to create a constitutional amendment allowing a referendum on container deposits. It passed the House but it was not called in the Senate. Mr. Stumbo considers this debate a major turning point for Kentucky.

Governor Patton claims that polls still show 70% of Kentuckians support mandatory collection, an advanced disposal fee and container deposits. The Governor has committed to take the lead on solid waste. (See "Bickford..." pg.1.)

Rep. Stumbo has already prefiled HB 1 and HB 745 with the Legislative Research Commission and begun contacting schools to support the bills. He has also been networking with other state majority leaders to see what they are doing. "I call this the lobbyist full employment bill.", Greg laughed, adding that more money was spent lobbying this issue than any other in the last session. "This is a 15 round battle," he proclaimed, "We are going to wear them out."

The disappointing news was that Rep Stumbo does not think we can pass container deposit legislation with the current legislature. A poll of the House Democratic caucus showed no support. However, "I will go to my grave believing that container deposits are the best way to clean up Kentucky roads and streams." he proclaimed.

In the meanwhile, Greg suggested that we work with Secretary Bickford and the Cabinet's proposals. A revenue stream will be required to support these proposals, including the cleanup of illegal dumps. The Transportation Cabinet has estimated that 4 yearly roadside cleanups will cost \$24 million/year. This money may come from an advance disposal fee of one cent per package.

Wayne Upbeat cont. from Pg 2...

they opposed the legislation and need to be made aware of the advantages of planning and coordinated infrastructure development. The Governor is sensitive to this issue, wants to support this type of legislation and leave a positive legacy. Key players are Crit Luallen and Jack Conway who will lead a blue ribbon task force reporting back to the Governor next fall and recommend legislation.

Discussion-Rep Wayne was asked, "Are Kentuckians ready to challenge the wal-marting of our communities?" To which he responded that change has come to Kentucky when Frankfort provided leadership. There is a need for regional planning and the importance of education can not be downplayed. Citizens need to stay involved because the Federal/State/Local governments seem to subsidize sprawl unless neighbors make their voices heard.

Bickford, cont from pg 1

Moving on to CAFO regulations (See Hank Graddy, this page), Bickford noted the importance of the EPA guidelines, since by state law the Kentucky regulations can be no more stringent than the Federal standards.

He sees the current EPA proposal as weak. The EPA guidance has no setbacks and nothing strong on manure handling, especially for chickens. The Secretary plans to submit his comments to the EPA. Meanwhile, NREPC will start enforcement of Kentucky's current regulations. One hog farmer is currently facing a substantial fine for polluting ground water and a stream. In another case, a farmer is trying to avoid CAFO status, and hence the CAFO regulations, by splitting his operation up among family members. The Cabinet is watching this situation closely.

Looking toward the future, Secretary Bickford reaffirmed the Governor is prepared to call a special session on solid waste issues in February 2001 if voters do not approve the constitutional amendment creating annual sessions. The Governor's likely proposals include Statewide mandatory garbage collection, a one-time clean up of illegal dumps (after which counties would be responsible), roadside litter cleanups, and junk car disposal.

The junk car issue is new. The Cabinet now realizes that there are over 4000 junkyards around the state. Only about 150 are what the cabinet would call responsible operators. That is, they properly remove and dispose of all of the fluids and take care not to pollute the land, ground water or streams.

The first thing the Governor intends to do is move the responsibility for junk cars from the Transportation Cabinet to NREPC. This can be done by executive order. Secretary Bickford anticipates the junk car program to operate like the used tire program, however cleaning up illegal junkyards will be more difficult and expensive. Cars must be crushed and recycled. The proposal is to run an amnesty program for junkyards, using a mobile car crusher to clean them out.

The disappointing news was that recycling will not be a part of the legislative package, neither mandatory curbside recycling nor container deposits. Neither is considered politically feasible at this time. Instead, they are proposing a one-cent advance disposal fee on bottles and cans. This money will be distributed to counties prorated by population for litter cleanup. The county judges are expected to cooperate because this brings them money, but the beverage industry will fight it.

The Secretary does not expect this to be a friendly session, in fact he expects it will be a bigger battle than CAFOs. NREPC needs everybody to tell their neighbors and legislators how they feel about the need to clean up Kentucky. "The natural beauty of Kentucky is not being capitalized on. People will not come (to Kentucky) if it looks like a dump." Bickford proclaimed, "Our garbage is not unique. People will not come to see it."

As a final note, Secretary Bickford invited everyone to the Governor's Conference on the Environment October 30 – 31 and hinted at an announcement by the Governor on smart growth.

Sierra, KRC Back Cabinet's CAFO Regs

Environmental Attorney Hank Graddy spoke about CAFOs at the KCC annual meeting. Governor Patton signed the permanent administrative regulations on CAFOs only minutes after the interim joint Agriculture and Natural Resources Committee attached seven votes against them. There are two important provisions in the administrative regulations: integrator liability and setback requirements. Integrator liability provides for co-permitting of farmer and company. This is important for animal waste management. The companies own the birds, provide the feed and are avoiding responsibility for waste management. The setback requirements are minimums and clearly need to be stronger. The Cabinet has taken modest steps and the Legislature needs to do more.

The Farm Bureau has filed suite against the Cabinet to stop the regulations. They are specifically taking issue with integrator liability. They allege that integrator liability is illegal because of a state law passed in 1998 that prohibits regulations more stringent than Federal requirements.

Sierra Club and Kentucky Resources Council have intervened on the side of the Cabinet. Judge Crittenden has issued a very limited restraint to the new regulations, with which the Cabinet agrees. The order provides that the farmer can not be held responsible for the company not signing the permit as required by the regulations. Litigation is just beginning.

On the federal level U.S. EPA showed some courage in the 1999 draft guidance, but they still have not released the final document. Progress in other states will help Kentucky because the Farm Bureau argues that these regulations put Kentucky farmers at a competitive disadvantage. The regulations need to be enforced aggressively by the Cabinet. It should be noted that with integrator liability, Kentucky is leading the Nation.

As a side note, Mr. Graddy called attention to the Farm Bureau expose' on "60 Minutes" where it was shown they were protecting the multinational corporations and at the expense of family and local members.

Next Steps - Join your local Watershed Watch. Support the legislators that stand up to the Farm Bureau and vote for these administrative regulations. Especially let the legislators who voted to attach the CAFO regulations about the elevated fecal-coliform levels downstream from CAFOs and your displeasure at their action. [Editor-check with LRC for vote at the Interim AG/Nat Res Committee.

Environmental. Ed. From pg 2

especially if the money is to be spent effectively. For example, good coordination will target money toward knowledge instead of awareness.

Next Steps: The cost to implement the Master Plan is \$1.5 million. Support for the plan is very broad, but according to Ms. Eller, not very deep, explaining why it was not funded in a very tight budget session. With 90% of Kentucians in support of having environmental education in the schools, we need to push for better support from the legislature.

Mark Your Calendar

Oct 30-31 – Governor’s Conference on the Environment, Lexington, Registration \$55.

Oct 30- Nov1 – KY Urban & Community Forestry Conference, Holiday Inn, Frankfort

Nov 5 – It’s not Old McDonald’s Farm Anymore! A conference on the impacts of Industrial Agriculture. 2:00 – 4:00 PM Curtis Center, Murray State University, Murray, KY. Nationally known speakers. Sponsored by Sierra Club and KFTC.

Nov. 11-12 – 3rd Interstate Summit for the Mountains, Camp Virgil Tate 4-H Camp, Sissonville, W.V. Come help stop Mountaintop Removal. Contact OVEC 304-522-0246.

Nov. 17 – Kentucky Voices. KCC’s annual Fund raiser. Hear Kentucky authors live. 7:30 PM Old State Capitol, Frankfort.

Nov.14-17 – Soil BioEngineering Workshop, Galt House, Louisville. Contact KY Waterways Alliance, 270-524-1774.

Jan 26-28 – Sierra Club Activist Weekend, Environmental Activist and Outing Leader Training, Jabez, KY

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