

CMS takes Bay Harbor cleanup to heart

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Neil Stilwell/News-Review

The visions of fantastic luxury homes, breathtaking golfing vistas and a chance to make money came true for some original Bay Harbor investors.

But the resort jewel on the shores of Little Traverse Bay has proven to be a money pit for Consumer Energy's affiliated CMS Land Co., which is responsible for environmental cleanup at Bay Harbor.

Much to its credit, CMS has shown no sign of shirking its responsibility.

CMS land has spent eight years and more than \$160 million taking responsibility for an environmental mess not of its own making.

And it's not done spending — oh, no. CMS Land Co. vice president Mike Sniegowski, who heads the division's Little Traverse Bay Environmental Project said parent company CMS Energy has taken a \$250 million charge to pay for the project past and future. That money did not come from rate payers in the company's electrical and gas energy markets, but from stock dividends and profits, Sniegowski said.

History

Eighteen years ago this month, with much fanfare and state dignitaries including Gov. John Engler as witnesses, the old Portland Cement/Penn-Dixie smokestacks were dynamited to signal the start of construction on the 1,200-acre luxury resort community.

As part of construction, CMS, Bay Harbor developer (David Johnson and Victor International), the Michigan Department of Natural Resources Environmental Quality and Michigan attorney general Frank Kelley entered into a redevelopment compact. That compact laid out the development partnership's responsibilities to clean up known existing industrial contamination including capturing the caustic pH, mercury-laden leachate and sending it via sewer line to Petoskey's wastewater treatment plant. Leachate is formed when rainwater and runoff water comes in contact with the dust.

Portions of Bay Harbor and neighboring East Park were developed over deposits of cement kiln dust, a waste product from the decades and decades when a cement plant operated along the shore. That development plan, approved by Michigan environmental regulators, spelled out the means for moving and capping with soil and fill, large amounts of cement kiln dust containing contaminants into four large piles: Upon one would be built Resort Township's East Park; the other three became parts of breathtaking (27 holes in all) golf courses.

Without CMS there would be no Bay Harbor as we know it today. Before it met up with Victor International, CMS had loaned money to another hopeful site developer, who dubbed his proposed project Three Fires Pointe. CMS, said Sniegowski, saw an opportunity to gain thousands of new electrical customers in the then-proposed, 4,500-unit project.

Three Fires Pointe flamed out, and CMS seized the collateral — the 300-acre plot which was home to the heart of the abandoned cement operation. With the land on its hands, CMS regrouped, and found David Johnson and Victor International. Bay Harbor Co. was formed.

That was 1994.

In 2002 CMS Land Co. sold out its interests in Bay Harbor Co. but retained legal liability for environmental responsibilities.

In August of 2004, public health officials found shoreline waters with elevated pH, enough to warn the public against bare contact with the water there. Eventually these caustic alkaline levels were found in locations near each of the four state-permitted capped kiln dust piles.

The collection system had failed. And a long, expensive road for CMS began.

While there is no end in sight for CMS, the company and regulators have struck upon an a successful environmental remediation.

It's good news for Northern Michigan, Little Traverse Bay and the environment and Bay Harbor and — we hope — for CMS in the long run.

Critics who say Bay Harbor developers could have or should have stopped contamination from leaching into Little Traverse Bay ignore the fact that neither company created the mess — leaching of water containing caustic pH levels and heavy metals such as mercury was already occurring long before either entered the picture. It was seeping freely and untreated into our watershed with no one responsible to stop it.

Today

Since 2004 it's been a fight, a balancing act, for CMS, regulators, stakeholders such as Little Traverse Bay Bands of Odawa Indians, environmental groups and even vocal individuals claiming that the development itself is poisoning Northern Michigan.

Since around 2005, CMS started collecting the leaching water, put it through a treatment process plant it built along U.S. 31 to neutralize the pH, and began shipping it to a deep injection well in Johannesburg and to Traverse City's wastewater treatment plant. CMS Land area manager, Tim Petrosky, and Sniegowski, said CMS trucked between 150,000 gallons and sometimes up to 300,000 gallons of neutralized water every day, seven days a week, at a cost of \$7 million a year, from 2006 through 2011. Some trucks still are shipping even today.

The company ran into a community and public relations buzz saw when, in an attempt to shorten its shipping distance and control its own costs, a CMS affiliate sought to develop its own deep injection well in the Alba area to deal with the wastewater. Michigan issued a permit for that well's development, but court challenges led to the proposal being placed on indefinite hold.

“The folks in Alba were not very pleased,” Sniegowski said.

An injection well was also under exploration on Bay Harbor grounds, a consideration required by the Federal Environmental Protection Agency and state. That is on a pause, for five years, and will be dropped from further CMS efforts as long as the current treatment system holds up, Petrosky and Sniegowski said.

Treatment

A newly reached agreement gives Michigan state officials long-term oversight responsibilities for ongoing efforts to control and treat the caustic seepage. The state Department of Environmental Quality has assumed the primary role for environmental remedies which the U.S. Environmental Protection Agency has filled on an interim basis at Bay Harbor.

Eventually, mercury levels became the chief concern as CMS pushed for a remedy to its disposal problem — discharging water into Little Traverse Bay. Today’s state-approved and regulated solution consists of two treatment plants, extensive seepage/leachate interception and collection, treatment to neutralize pH, remove solids and most notable, drastic reduction of any mercury coming from the Bay Harbor area into the watershed.

Water which goes to the plants, Petrosky and Sniegowski said, can exceed 60 parts per trillion of mercury. Coming out, it ranges between .5 parts per trillion to 1.5 parts per trillion, they said.

That treated water is diluted with still more clean water, flows along the shore and into Little Traverse Bay and according to Petrosky, Sniegowski, and state regulators, has no or nearly no detectable traces of mercury.

The future

The new agreement with Michigan should assure the public that the state and CMS take the problem seriously.

For the public and stakeholders \$250 million has bought “state of the art” privately funded treatment facilities which do not burden the taxpayer-supported Petoskey waste water treatment facilities. It’s bought a reprieve for public roads where tankers were hauling leachate 50-60 miles away a day to other towns.

It’s even bought a larger, nicer East Part for Resort Township and the public to enjoy. It assures Bay Harbor property owners — who contribute half of Petoskey’s entire property tax collection — that their shoreline is safe, usable.

To its credit, CMS has always taken responsibility and will, we believe, continue to do so as long as a problem remains.

In an era where big corporations spend 20 years in court fighting responsibility for their environmental mistakes — think Exxon Valdez spill — CMS repeatedly demonstrates its eagerness to accept its role at Bay Harbor.

We see no indication CMS will ever change that game plan, now or well into the future.

‘Our View’ represents the opinion of the News-Review editorial board: Ryan Bentley, Rachel Brougham, Doug Caldwell, Brandon Hubbard, Jeremy McBain, Neil Stilwell and Babette Stenuis Stolz.