

when the required locations are impractical or infeasible. To gain approval, an applicant must submit an alternate posting proposal with the permit application and have it approved as part of the permit. There are also new posting sign requirements which include: a minimum poster size, attachment to a supporting device, and inclusion of the waterbody name, specific sign removal language, and the expiration date of water use restrictions for each chemical used.

In addition to the new administrative rules, there have been recent changes to the ANC program to meet the challenges of increasing permit demand and state budgetary problems. The 2003 PA 164 was signed by Governor Granholm on August 12, 2003 revising the fee schedule in Act 368. **The new fees are based on the proposed treatment area size, not waterbody size, and consist of the following:**

- Certificate of Coverage under a GP, fee is \$75.
- Treatment areas less than 1/2 acre, fee is \$75.
- Treatment areas of 1/2 acre or more but less than 5 acres, fee is \$200.
- Treatment areas of 5 acres or more but less than 20 acres, fee is \$400.
- Treatment areas of 20 acres or more but less than 100 acres, fee is \$800.
- Treatment areas of 100 acres or more, fee is \$1500.

The increase in permit application fees has allowed the ANC Program to hire three additional full-time staff. These positions were filled in December 2003 and the new staff are currently reviewing permit applications.

If you need to obtain a permit application form, please contact us by mail at:

- Inland Lakes and Remedial Action Unit  
MDEQ – Water Division  
P.O. Box 30273  
Lansing, Michigan 48909-7773
- or email us at [deq-lwm-anc@michigan.gov](mailto:deq-lwm-anc@michigan.gov)
- or download from our website at [www.michigan.gov/deq](http://www.michigan.gov/deq), click on WATER, then INLAND LAKES & STREAMS, then AQUATIC NUISANCE CONTROL

More information on the ANC program, including status of permit applications, treatment report forms, and fluridone procedures is available from our website at [www.michigan.gov/deq](http://www.michigan.gov/deq).

## PRO-RIPARIAN MICHIGAN APPELLATE COURT CASES REGARDING LAKE ACCESS EASEMENTS

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Recently, the Michigan Court of Appeals issued its unpublished opinion in *Dyball v Lennox* (decided November 18, 2003—Case No. 241296). That case involved a 16-foot wide ingress and egress easement for backlot owners to Fenton Lake. Even though a dock and boat may have been utilized on the shore of the easement at the lake for many years (and potentially even at the time the easement was created), the Court of Appeals reaffirmed long-standing case law indicating that where a simple lake access easement is involved, it normally cannot be used for dockage, permanent boat moorage, sunbathing, lounging, etc. In other words, such lake access easements can only be used for travel purposes. Michigan Lake & Stream Associations, Inc. filed an *amicus curie* brief on behalf of the riparian property owner in this appeal.

*Dyball* is just the latest in a series of Michigan appellate court decisions over the years which have held that absent express language in an easement permitting dockage or permanent boat moorage (or the presence of prescriptive rights), lake access easements with the following language (or similar wording) are for travel purposes only—that is, no dockage, shorestations, permanent boat moorage, sunbathing, lounging, etc. can occur:

- “Ingress and egress to the lake”
- “An easement to the lake”
- “A right-of-way to the lake”
- “For access to the lake”

The two key cases in this area are *Delaney v Pond*, 350 Mich 685 (1957) and *Thies v Howland*, 424 Mich 282 (1985). See also, *Schofield v Dingman*, 261 Mich 611 (1933). Additionally, the following unpublished Michigan Court of Appeals cases are also helpful to riparian property owners:

- I. *Gross v Mills* (unpublished Michigan Court of Appeals decision No. 21176, decided September 28, 1999)
- II. *Hoisington v Parkes* (unpublished Michigan Court of Appeals decision No. 204515, decided March 12, 1999)
- III. *Krause v Keeler Twp* (unpublished Michigan Court of Appeals decision No. 220692, decided July 28, 2000)
- IV. *Miller v Peterson, et al* (unpublished Michigan Court of Appeals decision No. 111358, decided December 27, 1989)
- V. *Trustdorf v Benson, et al* (unpublished Michigan Court of Appeals decision No. 103109, decided December 21, 1989).

Although an unpublished Michigan Court of Appeals decision is not technically binding precedent, it can be utilized by both trial and appellate courts for insight and as a guide if considered persuasive.

While some backlot owners will attempt to “spin” the decisions by the Michigan Supreme Court and Court of Appeals in *Little v Kin*, 249 Mich App 502 (2002); modified in 468 Mich 699 (2003), the Michigan Supreme Court’s opinion in that case is actually fairly pro-riparian property owner. Pursuant to that decision, unless a lake access easement has express dockage or boat moorage language (or a prescriptive right expanding the usage rights can be proven), the easement can almost never be used for dockage or permanent boat moorage, even if there is a long history of such use. The final Michigan Supreme Court decision in *Little v Kin* puts a heavy burden on backlot owners to prove that a lake access easement can be used for anything other than travel.

(Continued on page 21)

## Symptoms of Toxicity

The earliest obvious signs of methylmercury poisoning in adult humans include tremor of the hands and paresthesias (abnormal sensations of the lips, tongue, fingers or toes). At higher levels, walking is affected, followed by blurred vision and decreased peripheral vision. Severely-affected patients have speech and hearing problems. If methylmercury exposure continues, a person can become paralyzed and die.

In the early 1970s, more than 400 people in Iraq died from eating bread made from methylmercury-treated wheat that was intended for planting. During the Iraq poisoning, researchers found that children exposed in utero experienced delayed development in walking and talking when the level of mercury in their mothers' body was four- or five-fold lower than levels known to cause symptoms of poisoning in adults.

Fetuses are especially susceptible to methylmercury. At high levels of exposure methylmercury interferes with the way nerve cells move into position as the brain develops. As a result, the brain does not develop normally.

In both the Japan and Iraq disasters, some mothers who showed few obvious symptoms of mercury poisoning gave birth to children with severe mental and physical retardation.

## "The Dose Makes the Poison"

Methylmercury toxicity is related to the dose – the amount taken into the body – and the duration of exposure. While fish seem to accumulate methylmercury throughout their lives, humans can eliminate methylmercury from their bodies over a period of months. When the amount of methylmercury taken into the body exceeds the amount that can be eliminated, methylmercury builds up in the body.

Methylmercury is attracted to sulfur atoms on cells and attaches to sulfur-rich proteins, such as those in muscle, throughout the body. At a certain level in the blood, methylmercury harms the cells of the body.

Data relating clinical symptoms of poisoning to mercury levels in blood and hair come from studies of methylmercury poisoning in Iraq. Paresthesias occurred at blood levels around 200 nanograms mercury per milliliter of blood (200 ng/ml), which is equivalent to a daily methylmercury intake of 0.3 milligrams methylmercury per 70 kilogram body weight per day. A maternal blood level four or five-fold lower is associated with developmental delays in fetuses.

To calculate meal advice for mercury-contaminated fish, the Minnesota Department of Health uses a level of mercury in the blood 10-fold lower than the blood levels associated with the first symptoms of toxicity. Advice on meal spacing is based on information about the length of time it takes for people to eliminate methylmercury. By following the MDH advisory, blood levels of mercury would not exceed 20 ng/ml for an adult and 4.7 ng/ml for women of childbearing age.

## The Fish Consumption Advisory

Mercury levels of less than 0.16, 0.16 to 0.65, 0.66 to 2.8, and more than 2.8 parts per million in fish correspond to meal advice categories of unlimited meals, one meal a week, one meal a month, and do not eat, respectively. This advice protects the average adult (except pregnant women) who eats fish all year round.

For women of reproductive age and children who eat fish year-round, levels of less than 0.16, 0.16 to 0.65, and more than 0.66 parts per million correspond respectively to meal advice categories of one meal a week, one meal a month, and do not eat.

The *Minnesota Fish Consumption Advisory* provides less restrictive advice for people who eat fish only a few months or weeks of the year.

Minnesota Department of Health  
Division of Environmental Health  
121 East Seventh Place, P.O. Box 64975  
St. Paul, MN 55164-0975

FOR THE MICHIGAN FISH CONSUMPTION  
ADVISORY FOR 2003 THRU MARCH 2004  
— go to the MDCH web site at:  
[www.mdch.state.mi.us/pha/fish/index.htm](http://www.mdch.state.mi.us/pha/fish/index.htm)

## PRO-RIPARIAN COURT CASES... (Cont. from page 17)

Occasionally, backlot owners will cite one or two other Michigan appellate court decisions for the proposition that simple lake access easements can be used for dockage, permanent boat moorage, sunbathing, etc. However, if one carefully studies those few cases, they either do not stand for that proposition or contain highly unusual fact situations which are rarely applicable.

The case law involving public roads which end perpendicular at lakes is slightly different than that involving private lake access easements. The Michigan appellate courts have also held that permanent boat mooring, private dockage, sunbathing, lounging, and similar activities cannot occur on road ends at lakes. However, the presence of one public dock is permitted for temporary mooring to aid navigation. Accordingly, if a private individual places a dock at a public road end, it becomes public and can be utilized by anyone for temporary mooring only. *Jacobs v Lyon Twp*, 199 Mich 667 (1993), is the key case in this area. *Jacobs* was recently reaffirmed by the Michigan Court of Appeals in *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83 (2003); *lv den* 469 Mich 902 (2003). See also *Higgins Lake Property Owners Ass'n v Gerrish Twp* (unpublished Michigan Court of Appeals decision No. 235418, decided October 30, 2003).

It should be noted that even activities which might normally be allowed on lake access easements and at public road ends can be further regulated (or even prohibited) by local ordinance. Furthermore, dockage and permanent boat moorage at private lake easements or public road ends still normally require a marina permit from the Michigan Department of Environmental Quality.