

# NORTHWEST DEFENSE



The Newsletter of the Northwest Environmental Defense Center

SUMMER 2018

## DECONSTRUCTING DIESEL

Diesel particulate is the air toxic that presents the greatest cumulative health risk to Oregonians. According to EPA estimates, pollution from Oregon's diesel emissions causes serious health ailments that cumulatively cost the state more than \$3 billion annually. The adverse effects of diesel emissions are widespread, but they are at the highest concentrations in low-income neighborhoods and communities of color.

In addition to the public health benefits of reducing diesel pollution, diesel emissions reductions will also help prevent releases of black carbon, a potent climate forcer that exacerbates climate change. Unlike most climate forcers, black carbon is a localized and short-lived pollutant. Reducing black carbon



emissions today allows the global community additional time to reduce CO<sub>2</sub> emissions. Locally, reducing black carbon emissions in the Portland metropolitan area and along Oregon's highways could protect Cascade wilderness by reducing deposition of soot on snowpack and foliage, and protecting glaciers from melt caused by increased temperatures.

Over the past year, NEDC has been partnering with **Neighbors for Clean Air** and **Portland State University** in an air toxics reduction project known as **BREATHE Oregon**. Recently, the project has focused on harm from diesel emissions and a team of attorneys and legal researchers at Lewis & Clark Law School's **Green Energy Institute** has joined the collaborative.

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*(Deconstructing Diesel...Continued from page 1)*

The goal of our work is to accelerate diesel reduction efforts by developing enforceable legal strategies under the Clean Air Act and existing Oregon state law to reduce and eliminate emissions from diesel engines. Through this project, NEDC and its collaborative partners plan to craft and submit an upcoming rulemaking petition to press the Oregon Department of Environmental Quality (DEQ) to reduce diesel emissions in the Portland metropolitan area. The project will also include community engagement efforts with strategic partners to elevate the local conversation around diesel emissions and potential reduction strategies.

**JOIN NEDC & OUR BREATHE OREGON COLLABORATIVE PARTNERS AT THE UPCOMING EVENT:**

## **AIR QUALITY BY DESIGN: EFFECTIVE AIR MANAGEMENT**

**When:** August 14<sup>th</sup> | 6:00 – 8:00 P.M.

**Where:** PSU Native American Student & Community Center  
710, SW Jackson St, Portland, OR 97201



## **LETTER FROM THE BOARD PRESIDENT**

NEDC turns 50 next year! This winter, NEDC's board and staff developed a strategic plan to guide the organization through this major milestone and beyond. We reaffirmed our mission of preserving and protecting the natural environment of the Pacific Northwest. We identified our key values and guiding principles, which highlight our role as an environmental watchdog and our dedication to

filling advocacy gaps that warrant attention. Over the next five years, our substantive goals include spurring regulatory reform in Oregon, prosecuting polluters in the Pacific Northwest, and expanding our toolbox to include land use advocacy.

We also set internal organizational values and goals. Our strategic plan highlights the integral role that law students

play in our organization and commits us to continue empowering students to become public interest environmental advocates. Our plan calls for making NEDC more equitable and inclusive, and we are examining how NEDC can amplify the voices of community members disproportionately burdened by pollution and inadequate regulation. NEDC introduces many law students to our field, and thus is uniquely situated to foster a diverse and representative generation of advocates.

These goals may be lofty, but our staff and board members are up for the challenge. Our new Staff Attorney Peter Broderick is off to an impressive start and has already expanded our portfolio to include land use advocacy and is working up a major enforcement action against an egregious polluter of Portland's waterfront. Mark Riskedahl has spent time working to help reform Oregon's broken air toxics regulations to resolve critical environmental health and justice issues. We also have an amazing new law clerk, Hannah Clements, who has spent time this summer conducting legal research on a wide range of environmental topics.

Our future is bright, and we plan to celebrate that and our extraordinary history at our 50th anniversary party next fall. Save the date! We hope you can join us September 6-8, 2019 at Camp Westwind on the Oregon Coast for a fun weekend of reconnecting with old friends and commemorating our legacy.

# VANCOUVER RAIL OIL TERMINAL OFFICIALLY DEAD; PORT ADMITS TO VIOLATING THE LAW

The final chapter has closed in NEDC, Columbia Riverkeeper, and the Sierra Club's multi-year lawsuit against the Port of Vancouver, Washington, over a proposal to build what would have been the nation's largest rail-to-marine oil terminal there. In 2013, the Port approved a lease with Tesoro Corp. and Savage Companies to build and operate the terminal, which would have received up to 360,000 barrels of crude oil daily by train. Up to 2 million barrels of crude would have been stored in above-ground tanks before being loaded onto ships for export to refineries or foreign markets.

In approving the lease, the Port's Board of Commissioners held numerous so-called "executive sessions" in which it discussed the proposed oil terminal and its potential impacts on the community and the environment, as well as lease terms, behind closed doors. Some of these meetings took place before the project was even announced to the public. NEDC, along with Columbia Riverkeeper and the Sierra Club, sued the Port on the grounds that the secret meetings were illegal and violated Washington's Open Public Meetings Act. The case went all the way to the Washington Supreme Court, which issued an opinion in June 2017 rejecting the Port's interpretation of the law. The Supreme Court then remanded the case back to the trial court to decide whether the Port's private meetings were illegal.

The dominoes started falling from there. In late January of this year, Washington governor Jay Inslee denied state siting approval, and the following month the Port voted to terminate the lease, effectively killing the project. In March, the Port entered into a settlement agreement with NEDC, Columbia Riverkeeper, and the Sierra Club, in which the Port admitted that its closed-door meetings on the lease had violated the Open Public Meetings Act. The Port also paid for the attorneys' fees that plaintiffs had incurred during the multi-year case.

The end result was a big win for NEDC, its co-plaintiffs, and the interested public. The lawsuit was instrumental in mobilizing opposition to the project, and produced an important Washington Supreme Court decision that gives guidance to government bodies on what decision-makers may not discuss behind closed doors. As a result, the public will be better informed in the future about the full impacts of projects under consideration by governmental agencies, and will be able to more fully participate in the public process of deciding whether or not they should be approved. The public's right to transparency and open government are especially critical in circumstances like these, when high-stakes projects with profound regional environmental impacts are at issue.

NEDC thanks its outside counsel, Brian Knutsen at Kampmeier & Knutsen, PLLC and Knoll Lowney at Smith and Lowney PLLC, and Miles Johnson, staff attorney at Columbia Riverkeeper, for their dedication and hard work on this case.

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## NEDC IN THE NEWS

Executive Director Mark Riskedahl was front and center in a July 4th article in Willamette Week by reporters Rachel Monahan & Aaron Mesh about the toxic pollution caused by scrapyards and one Portland neighborhood's horrible experience. The piece focused on this Spring's toxic fire at NW Metals on Northeast Killingsworth Street, which left a plume of dark smoke visible from most of Portland. The owner of the



scrapyard, Moyata “Mo” Anotta, has a history of operating in a manner that pollutes the surrounding water and air. In 2013 NEDC filed suit against Anotta over problems at his prior scrapyard on Northeast Columbia Blvd. The lawsuit required him to clean-up the operation's toxic water discharges into the Columbia Slough and ultimately led to the closure of that site. Unfortunately, permitting authorities granted him authorization to re-start operations at his new NW Metals site, where problems started almost immediately. A pile of over 1,000 tires at the site fueled the March 12<sup>th</sup> toxic fire that caused evacuations of 2/3 of a square mile of the surrounding neighborhood. Mark told Willamette Week, **“I can't imagine living right next to it. That was horrific. And preventable.”** Anotta's case illustrates the holes in Oregon's environmental protection laws when it comes to regulating scrapyard operations in the state. NEDC continues its work to close the loopholes in the law and hold bad actors in the scrapyard business accountable. You can read the full article here: <https://bit.ly/2AUyT5p>

## OREGON'S BEACHES TO REMAIN FREE OF ELECTRIC BICYCLES

This spring, the Oregon Parks and Recreation Department Commission proposed changing its administrative rules to allow electric bicycles (“Ebikes”) to operate on Oregon's beaches. The rule change would have created an exception for Ebikes in areas of Oregon's shorelines that are permanently closed to cars and other motorized vehicles.

In written comments to the Commission, NEDC opposed the rule change. The use of Ebikes has expanded rapidly in recent years as technological advances have made them both cheaper and capable of higher speeds and a longer battery life. Because they are faster and more powerful than traditional bicycles, Ebikes pose greater risks to wildlife, particularly shorebirds. More cyclists riding at higher speeds also mean increases in conflicts with other users, including beachgoers who picnic, sunbathe, stroll, fly kites, walk dogs, clam and fish, and play with children along the beach. Additionally, the proposed rule did not include a speed limit and would have made it difficult to enforce size and power restrictions on Ebikes.

NEDC instead encouraged the OPRD to follow the approach taken by federal land-management agencies, like the Bureau of Land Management and the U.S. Forest Service, who treat EBikes as motorized vehicles and forbid their use in areas such as designated wilderness, where other motor vehicles are disallowed. Distinguishing plainly between motorized and non-motorized means of transportation provides a simple, enforceable, and reasonable basis for determining appropriate uses on Oregon's beaches in the face of evolving technologies.

The State Parks Commission ultimately agreed with NEDC and voted not to adopt the rule change. Ebikes will continue to be allowed in areas where cars and other motorized vehicles are permitted on the beach, and traditional bicycles remain allowed on all beaches. NEDC applauds the Commission's decision—our pristine beaches are far too important to subject to a new motorized use.





## PEDAL PURSUIT 2018: MORE RIDERS, MORE VOLUNTEERS, MORE SPONSORS, AND EVEN MORE FUN

Thank you to all the riders, sponsors, and volunteers that contributed to make this year's version of Pedal Pursuit, NEDC's annual spring fundraiser, such a blast. Congrats to Team Crag Law Center, 2018 Pedal Pursuit champs, and special thanks to Lagunitas Brewing for generously hosting this awesome event each year. We'll be announcing details soon about Pedal Pursuit 2019 so keep an eye out on NEDC's social media pages.

NEDC is able to fight for the preservation of the Pacific Northwest thanks to the ongoing support of individuals like you. From protecting resources like the Columbia River, to ensuring clean air is a right for all Oregonians, to mentoring the next generation of environmental advocates, your contributions help NEDC continue our mission.



# THANK YOU FOR YOUR SUPPORT!

### **A LEGACY OF ENVIRONMENTAL PROTECTION!**

Including NEDC in your will is a powerful way to leave a lasting impact on the Pacific Northwest.

To learn more about how to donate or what your donations will help support, visit us at <http://nedc.org> or email [nedc@lclark.edu](mailto:nedc@lclark.edu)

### **MAKE IT A REGULAR THING!**

Show NEDC your support by committing to an annual donation in whatever amount works for you. With a monthly donation in any amount, you will provide NEDC with ongoing support to protect the natural environment.

### **ONE AND DONE!**

By making a one-time donation today, you ensure NEDC will have the tools to continue unconditionally fighting for our environment and natural resources.

# STUDENT PROJECT HIGHLIGHTS

## AIR TOXICS, PROJECT COORDINATOR BEN KIRSCH

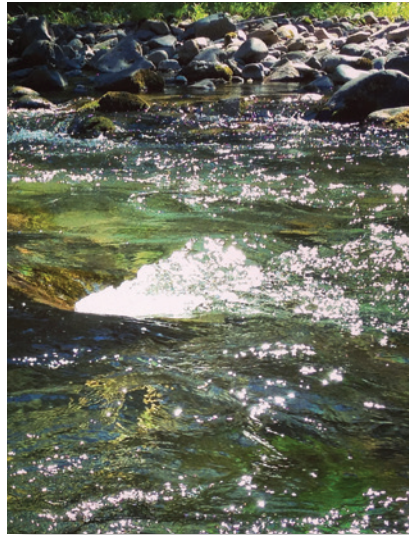
During the Fall 2017 semester, the air toxics group worked to finalize a comment on the proposed rules from the Cleaner Air Oregon working group. The team focused on the procedural and administrative shortcomings of the rule and commented on how feedback and final decisions should be made. Specifically, the group commented about how the permitting process could better incorporate the surrounding community, how to more equitably involve environmental justice and non-English speaking communities throughout the permitting process, and removing the final decision-making power from just one person. On top of this, the team also urged the committee to include ambient levels of pollution in all their calculations, on top of any proposed new pollution.

The comment was the culmination of more than a year of work on this issue. NEDC gave the team the opportunity to see nearly every step of this project, starting with the background research and brainstorming sessions in the fall of 2016, continuing during the summer with public meetings and opportunity to give public testimony urging stronger environmental protections, and finally, drafting and submitting comments. Being included first-hand during this whole process, from planning to research to advocacy, was an extremely valuable experience I could not have gotten anywhere except with NEDC.

## DIESEL, PROJECT COORDINATOR BEN KIRSCH

NEDC's diesel project team spent the Spring 2018 semester doing preliminary research into how Portland could address diesel pollution within the city. After some initial brainstorming about the sources of diesel pollution and how to address the issues broadly, the team focused on four main topics: advocating against highway expansions, limiting pollution through time-place-manner restrictions for diesel engines, identifying and addressing indirect sources of diesel pollution, and analyzing California's laws combating black carbon. These four topics all produced memos that laid the groundwork and gave a picture of the legal and procedural landscape for Portland and future NEDC teams to utilize going forward.

## FISH HATCHERIES, PROJECT COORDINATOR PAIGE FENNIE



The Oregon Department of Fish and Wildlife (ODFW) operates over 30 fish hatcheries in Oregon's waterways. These hatcheries divert millions of gallons of water per day from rivers, streams, and springs to raise fish and then discharge that water, along with pollutants used and created in the production process, back into these waterways. The Oregon Department of Environmental Quality (DEQ) regulates these facilities

and their discharges under a general National Pollutant Discharge Elimination System (NPDES) permit, and has allowed ODFW hatcheries to operate under expired and inadequate NPDES permits for nearly a decade.

This year, student volunteers worked with Attorney Board Member Lizzy Potter in researching possible legal claims NEDC could bring against DEQ and the standards for citizen suits under the Clean Water Act. Student volunteers also researched available technologies and practices for cleaning fish hatchery raceways and ponds, and the waste disposal methods currently used at hatcheries. Lastly, student volunteers updated NEDC's Fish Hatchery Report to include more recent data and case law.

As a project coordinator, I highly valued Lizzy's participation in the project as she provided guidance of the overall scope of the project and of individual research questions. She regularly made herself available to the student volunteers on the project, providing a valuable hands-on learning experience.

## CWA § 404 PUBLIC COMMENT PROJECT, PROJECT COORDINATOR SANGYE INCE-JOHANNSEN

For this project, NEDC student volunteers monitored the Portland and Seattle offices of the U.S. Army Corps of Engineers for new permit notices concerning dredging, filling, and construction activities in the wetlands and waterways of the Pacific Northwest. Students summarized several dozen permit proposals, so that NEDC's staff attorney could determine whether formal public comment was warranted.

The project that garnered the most attention was a particularly troubling permit proposal for a gold mining operation along a tributary of the Snake river in eastern Oregon. The project is still moving through early planning phases, and NEDC is monitoring its progress.

### **WILLAMETTE DAMS PROJECT, PROJECT COORDINATOR SANGYE INCE-JOHANNSEN**

Volunteers helping with the Willamette Dams project scoured government records for evidence of sources of funding—and conditions on such funding—for 13 hydroelectric dams on the Willamette river and its tributaries, to aid NEDC in developing claims brought under the Endangered Species Act concerning two species of salmon. Later, students researched and wrote a memo which helped NEDC and our co-plaintiffs determine the proper venue for our lawsuit. The Willamette dams are among the largest infrastructure developments in the Pacific Northwest, and their ongoing management has far-reaching implications for the imperiled species and ecosystems of the region.

### **OUTSTANDING RESOURCE WATERS, PROJECT COORDINATOR ANNA TADIO**

NEDC's Outstanding Resource Waters (ORW) designation project is a student-led effort to review potential candidates for addition to Oregon's list of protected ORWs. Designation offers significant protections to waterways, including dramatic limits on point source pollution discharge. Student volunteers reviewed the ORW petition for the North Fork Smith River (currently the only designated ORW in Oregon) and then created a spreadsheet with a list of factors that helped the North Fork qualify as an Outstanding Resource Water. We then added a list of bodies of water that we thought might qualify and began to assess them as potential waters to designate. Our group finished the semester by determining that Waldo Lake could be an excellent choice and we plan to work on a petition for this body of water to be designated as an Outstanding Resource Water during the upcoming school year.

## **WILLAMETTE VALLEY MUSIC FESTIVAL WON'T THREATEN WILDLIFE REFUGE THIS SUMMER**

The peaceful Ankeny National Wildlife Refuge, located near the confluence of the Willamette and Santiam Rivers in the Willamette Valley, provides wetlands and riparian woodland sanctuary for migratory and resident wildlife, from the tiny Pacific chorus frog to the black-tailed deer. It also hosts numerous bird species, including the threatened Streaked Horned Lark, for which the Willamette Valley is one of only two remaining habitat areas.

The Refuge recently came under threat when the organizers of the annual Bi-Mart Willamette Country Music Festival sought to relocate the massive three-day annual event—which would draw 30,000 attendees per day—to private farmland immediately adjacent to the Refuge.

Outdoor music festivals are a treasured aspect of summertime in the Pacific Northwest, but they should be held in venues that are designed and built to accommodate them. (Oregon boasts many such venues, including the Columbia River Gorge Amphitheater and Bend's Les Schwab Amphitheater). Along with constant noise from multiple soundstages and the 30,000 person crowd, impacts from the event would have included increased the wildfire risk, trash, and traffic associated with substantial crowds and overnight camping.

NEDC submitted comments to the Marion County Board of Commissioners emphasizing the festival's likely impacts on the Refuge, and focusing in particular on the effects of noise disturbance on birds. NEDC pointed out that the festival was scheduled to take place during the tail end of the Streaked Horned Lark's critical nesting and rearing season, and that the festival's organizers had done very little to minimize or mitigate impacts on the Refuge. Numerous residents and local farmers also commented to express concerns about traffic and the festival's potential to interfere with seasonal agricultural operations in the area.

The Marion County Board of Commissioners agreed that the location was not appropriate for the music festival, and unanimously voted in June not to issue the required Conditional Use, Outdoor Mass Gathering, and Noise Variance Permits. The birds and wildlife in the Ankeny Wildlife Refuge—and the people who come to see and enjoy them—can rest assured that they'll enjoy the summer undisturbed.

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REGISTER NOW for

# Westwind 2018



**WHEN:** Friday, September 28-Sunday, September 30  
**WHERE:** Westwind (north of Lincoln City, two hours from Portland)  
**WHO:** All law students, faculty, and friends (sorry, no pets)  
**PRICE:** *Includes food, drink, & lodging*  
**Students** \$85 for both nights, \$45 for one night  
**Regular** \$120 for both nights, \$70 for one night  
**Kids (4-12)** \$35 for both nights, \$20 for one night; **Kids (0-3)** free

The weekend will feature presentations on regional environmental issues, our annual board elections, delicious meals, a spectacular natural setting on the coast, and more!

To register, visit  
[nedc.org](http://nedc.org) or contact  
[nedc@lclark.edu](mailto:nedc@lclark.edu)