

NORTHWEST DEFENSE

The Newsletter of the Northwest Environmental Defense Center



FALL 2004

THE DIRTY SIDE OF RECYCLING

As environmentalists, we all love to think of recycling as an almost perfect answer to many environmental problems in the world today: over-consumption, logging of precious forests, landfills and garbage storage. While recycling seems the best and most logical solution to so many problems, it somewhat befuddled me when I experienced a certain aspect of recycling this summer – animal carcass rendering.

Animal rendering, the process of extracting lard, tallow, and protein from leftover animal parts, could easily have been called ‘animal recycling’ because that is exactly what it is. To someone like me, who had generally thought of recycling as one of the best environmentally-friendly practices in which an industry could participate, I must admit I was confused to find myself sitting on a rocky shoreline near Astoria, OR with a jar in my hand waiting for more milky-white liquid to spew, geyser-like, out of a hole in a rusty pipe while making its way into the Columbia River from a seafood processing facility. It turns out I was trying to catch someone in the act – the act of recycling!

Animal rendering is a messy industrial process, and it takes a lot of water. Rendered animal products are used in cosmetics, animal feed, and pharmaceuticals. In the Fall of 2003, the Modesto Tallow Corporation of Modesto, CA rented a seafood processing plant near Astoria, OR in order to render leftover chicken carcasses. At that time, Modesto Tallow already had a disturbing history of environmental crimes: the company had previously been charged with falsifying wastewater sampling results at their Modesto, CA rendering plant, which resulted in a \$600,000 fine against the company and a year in federal prison for the plant manager – a very stiff penalty for an environmental crime.

NEDC received a tip earlier this summer about more potentially illegal activities by Modesto Tallow, who had moved up from California to render chicken carcasses at a seafood processing plant in Oregon, so we decided to start our own investigation. We talked to neighbors who explained that the smells coming from the plant had changed from ‘fishy’ to a more rancid smell, the putrid, lingering stench characteristic of chicken rendering. We made several site visits, including one where we took a sample and photographed the geyser-like discharge of chicken wastewater spewing from the effluent pipe on its way to the

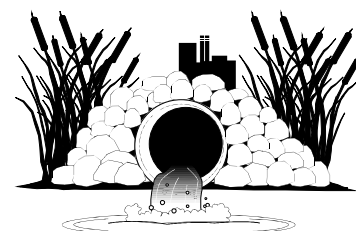
Columbia River (for a photo see: www.nedc.org/Pt_Adams.shtml). We even followed tanker trucks from a local poultry processing operation right to the facility where the illegal chicken rendering was taking place. After extensive file review at the Oregon Department of Environmental Quality, it became apparent to us that the company’s behavior had criminal implications, so we then referred the matter to the Environmental Protection Agency, who is currently investigating Modesto Tallow Corp. for criminal violations of the Clean Water Act.

Based on our investigation, NEDC, joined by Columbia Riverkeeper, sent a 60-day notice to Modesto Tallow Corp. informing them of our intent to file a citizen’s suit against the company for violations of the Clean Water Act. Although the federal government is currently immersed in a criminal investigation of this activity, we felt it was important to initiate civil proceedings as well in the event that the criminal investigation breaks down or is called off for political reasons.

Modesto Tallow broke the law when they dumped their wastewater into the Columbia River because the seafood processing plant had a pollution discharge permit for just that – *seafood processing* – **not** chicken rendering. The company knew that they needed a different permit to legally render chicken parts and discharge the wastewater into the Columbia River, but they decided to cut corners and operate without the appropriate permit. Their actions resulted in the illegal discharge of large volumes of suspended solids, E. coli, and other pollutants directly into the Columbia River. Fortunately NEDC was informed of the illegal activity, helped to bring the pollution to an end, and put the polluters into the spotlight, where we hope they finally learn that it doesn’t pay to pollute. We’ll keep you updated as things progress.

NEDC is in the final phases of our citizen action against Modesto Tallow.

~NEDC Law Clerk Chris Mixson



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NEDC Ensures Protection of the Columbia Slough

Last winter, NEDC staff and student volunteers spent dozens of hours paddling canoes and kayaks in northeast Portland's Columbia Slough searching for illegal pollution discharges. Our efforts ultimately focused on a number of specific industrial sites, the largest of which was owned by Waste Management of Oregon, just across from Portland International Airport. Through regular visual observation, water quality sampling and review of Oregon Department of Environmental Quality files, we learned that large volumes of heavily contaminated industrial storm water were flowing off Waste Management's property and straight into the Columbia Slough every time it rained.

We chronicled the hundreds of Clean Water Act violations that were occurring at the site and, represented by Melissa Powers, staff attorney at the Pacific Environmental Advocacy Center and NEDC board member, initiated a citizen suit against the company earlier this year. The company sat down with us shortly thereafter, and agreed to invest over \$250,000 in structural changes to their site to stop the untreated storm water from flowing directly to the Columbia Slough. Waste Management will also contribute \$25,000 for a Columbia Slough watershed restoration effort by Northwest Youth Corps early next year. The funding will not only benefit the environment; it will also support an excellent program that provides invaluable work experience – and life experience – to teenagers. The company also agreed to contribute \$5,000 to the Columbia Slough Watershed Council for that organization's Slough School, a hands-on learning program that gets kids of all ages out to learn about the Slough's unique wildlife, natural history and ecosystems. Finally, Waste Management established the Lower Columbia Basin Water Quality Monitoring Fund, a new account at a nationally-renowned water quality lab at which non-profit watchdog groups will be able to have water quality samples from industrial polluters analyzed for free. This is yet another way that your generous contributions in support of NEDC's work are multiplied and passed on to benefit the environmental advocacy efforts of other groups, and concerned citizens throughout the region.

Thanks for supporting NEDC!

TEAM NEDC RISES AGAIN

As the dawn breaks on October 3rd, a lean, chiseled team of NEDC illuminati, skin shining with Vaseline, will toe the starting line in downtown Portland. Yes, for the second year in a row, NEDC will field a team of runners in the Portland Marathon, all of whom have raised hundreds of dollars for NEDC while training.

But wait! Something's different this time. This time there are more team members, and they don't seem quite as crazed. Some of them aren't even wearing Vaseline (this prevents chafing, by the way). What gives? This year, not all team members are doing the marathon. Some are doing the other races associated with the marathon: the 5-mile race, the 10K walk, and the kids' 2-mile "Marafun" run. We realized it was silly to restrict the joy of sweating and fundraising for NEDC to those willing to punish their bodies for a full 26.2 miles. Opening up Team NEDC to include these shorter races has inspired a horde of new supporters and board members to join us.

In fact, we're hoping that YOU might like to join. Why? Because NEDC, as a hard-hitting nonprofit organization, is always looking for new ways to fund its important work. And it turns out that fundraising for a race is one of the least time-consuming and most successful ways to do so. Case in point: last year, team NEDC's twelve runners raised over \$6,000! Our runners did this simply by writing letters to their families, friends, and professors, explaining why they believed in NEDC and asking for financial support. Many friends chose to give donations of \$26.20 (one dollar for each mile), but many gave more. Most of us found that asking friends and family for money wasn't as hard as we feared. They were tickled to be included in what we care about, and our excitement for the race tended to be infectious.

If you are interested in joining team NEDC for any of the walks or runs, we will provide you with a template fundraising letter to send your friends, a healthy supply of our donated Clif bars, a pasta dinner the night before the big event, and lots of moral support. Last but not least, NEDC pays the race registration fees for our fundraising racers. We hope you will join us in toning up your calves while raising money for NEDC. For more info, email kruether@lclark.edu or msr@lclark.edu.

~ Kristin Ruether

PROJECT COORDINATORS' SUMMER - TIME WELL SPENT

Mary Keeps an Eye on Timber Sales

Largely because of my volunteer work with NEDC, I secured a PILP stipend to work with Lewis & Clark alumnus, and former Lands & Wildlife Project Coordinator, Brenna Bell at the Klamath-Siskiyou Wildlands Center (a.k.a. KS-Wild) in Portland this summer. Brenna is KS-Wild's staff attorney, so she handles the bulk of the group's environmental litigation. Most of my summer work involved litigating cases with the Bureau of Land Management, whose planned timber sales and restoration projects often raise legal issues.

I had a great experience working with Brenna and KS-Wild, putting to use my newly-acquired legal writing and research skills and learning the 'ins and outs' of tricky environmental legislation. I know it will help me out as I start this year's environmental classes.

~Mary Godwin

Ian Sheds Light on Central American Cultural Traditions

The stereotypical environmental protection conflict pits a corporate industry's bottom line against a local community's need for unspoiled natural resources. In the protected Caño Negro wetland of northern Costa Rica the conflict is between two local communities' desire to protect their way of life. The Maleku community of Guatuso, Costa Rica has not had access to the wetlands to practice their cultural activities for twenty years. They recently asked the administrating government ministry to advise them on the rights they may have to restart their cultural practice of hunting freshwater turtles. The local community of Caño Negro is vehemently opposed to the renewal of the Maleku cultural practices because the Caño Negro residents rely on wetlands protection for tourism, as well as a turtle hatchery used for profit. In many ways this is still the stereotypical conflict of the financial resources of one community versus the desire of another community to traditionally access natural resources.

As part of a team of three law students (two Costa Rican and myself), I investigated and analyzed the international documents and treaties applicable to the situation above. The Costa Rican Constitution establishes any international treaty or document signed and ratified by the government as not only legally binding on the government and its ministries, but even superior to nationally created laws. Because of this legal hierarchy the Maleku had a strong argument that they should be provided limited access to continue their traditional practices in the wetlands. The continuation of their activities should follow notions of sustainability, and the Maleku should be folded into active partners in management of the wetlands.

Our recommendations stemming from the legal analysis we performed for the Ministry of Environment and Energy (MINAE) may or may not be accepted and implemented in the area. We believe, at the very least, the Maleku will be incorporated into the management structure. Nevertheless, the process of investigating Maleku members, residents of Caño Negro and the MINAE rangers made the project worthwhile. To get out of the stilted air of a law classroom and into the realm where the work matters and has a direct impact on people made the project worthwhile. We were not asked to protect the bottom line of Caño Negro, nor to find a way to provide unfettered access for the Maleku. Hopefully all three parties will come together to use our analysis and recommendations to create a fair and balanced resolution.

~ Ian Boisvert

Chaitna Gains Litigation Skills at Earth Justice

NEDC has been one of the most significant parts of my legal education. I came to law school in order to better advocate for the protection of our public lands. NEDC provided me an opportunity to not only learn about environmental law, but to directly apply this knowledge. Partially because of the work I have done with NEDC, I received a PILP stipend and spent the summer working with Earthjustice. It was an amazing experience to work on a wide variety of issues including The Roadless Rule, R.S. 2477, and Coal Bed Methane Mining. Through working with Earth Justice this summer, I had the opportunity to learn more about the procedure and strategy involved in environmental litigation, and I hope to apply some of these skills in NEDC's Lands & Wildlife project group this year.

~ Chaitna Sinha



NEDC would like to extend a special thank you to the Bullitt Foundation for its long-standing support of our work.

NEDC Sues Over Controversial Post-Fire Salvage Logging

This summer, NEDC has been active in litigation against the Forest Service and Bureau of Land Management (BLM) on post-fire salvage timber sales. In April, NEDC and several other conservation organizations – represented by the Pacific Environmental Advocacy Center – filed suit against the Forest Service, challenging the Flagtail fire recovery project on the Malheur National Forest. *League of Wilderness Defenders et al. v. Forest Service*, Civ. No. 04-488-HA (D. Or. 2004). One month later, the same organizations filed a lawsuit against the Forest Service challenging the Monument fire recovery project, also on the Malheur National Forest. *League of Wilderness Defenders et al. v. Forest Service*, Civ. No. 04-639-HU (D. Or. 2004). Among other claims, both lawsuits challenge the agency’s allegation that post-fire salvage logging will reduce the risk of future wildfire, and that removing valuable “snag” habitat will not affect viable populations of primary cavity excavator (woodpeckers) management indicator species. The Plaintiffs are also challenging the Forest Service’s determination of which old growth trees affected by the 2002 fires are “dead and dying”: restrictions in eastern Oregon prohibit the logging of living trees greater than 21 inches in diameter, so whether or not these trees are alive is an important ecological inquiry.

Of precedential note, these cases contest the 2003 National Forest Management Act Notice, Comment, and Appeal Regulations, which permit the Forest Service to make an “emergency situation determination” whenever the delay associated with an administrative stay pending administrative appeal would result in “economic loss to the government.” Because these are post-fire salvage sales and the wood is quickly rotting, the Forest Service has argued that the administrative process will take too long to permit economic recovery of the burned timber. We are arguing that the regulations should have gone through the National Environmental Policy Act process to determine the environmental impact of these regulations.

These two cases are before federal District Court Judge Ancer Haggerty, who sits in Portland. We have completed summary judgment briefing in the Flagtail case, and a preliminary injunction motion is still pending before Judge Haggerty in the Monument case. Although we were not successful in obtaining a temporary restraining order in either case (which would have postponed logging in these areas pending the outcome of litigation), we are confident that we will ultimately prevail on the merits of our case.

In another post-fire salvage case also litigated by the Pacific Environmental Advocacy Center, NEDC and others are challenging the Timbered Rock fire recovery project, located on the Medford District of the BLM in southern Oregon. *Oregon Natural Resources Council Fund et al. v. Brong*, 04-693-AA (D. Or. 2004). This case is before Judge Ann Aiken in Eugene, who granted our temporary restraining order motion in June. The Judge found persuasive our claims that the BLM violated the Medford Resource Management Plan and the Northwest Forest Plan in planning aggressive salvage logging in spotted owl critical habitat, Tier 1 Key Watersheds, late-successional reserves, riparian reserves, and watersheds that BLM deferred from logging due to extensive adverse cumulative effects. Judge Aiken also halted a large “logging for learning” “research” project that proposed to clear cut the burned landscape – sometimes over streams – in order to “study” the effects of logging and reforestation.

The merits of the Timbered Rock case will be heard by the court in late September. In the meantime, Judge Aiken’s temporary restraining order has stopped any logging in the fragile Elk Creek Watershed.

~ Susan Jane M. Brown, NEDC Board Member

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