

NORTHWEST DEFENSE

THE NEWSLETTER OF THE NORTHWEST ENVIRONMENTAL DEFENSE CENTER



WINTER 2005

Oregon's Water Clarity Standard: Bought and paid for by industrial polluters

Have you been losing sleep over concern that Oregon's rivers and streams are too clear? Worried about an "overly-protective" water clarity standard that has been on the books in Oregon since the 1970's? The North West Pulp and Paper Association (NWPPA) feels your pain. After contractually committing \$120,000 to the Oregon Department of Environmental Quality (DEQ) in 2002 for the purpose of weakening Oregon's water clarity standard, the NWPPA learned on October 19th that it got what it paid for.

Oregon's current water clarity standard requires, quite simply, that polluted water cannot be more than 10% murkier than the water into which it is discharged. The draft revised standard has been weakened, and no longer applies at the point of discharge. By removing any level of protection at all within areas that for rivers such as the Columbia or Willamette extend a full football field in all directions away from the discharge point, Oregon DEQ is for the first time building mixing zones directly into a water quality standard. The mixing zones are generic and apply statewide, irrespective of site-specific conditions or the needs of particularly vulnerable or sensitive wildlife and aquatic species.

Visit NEDC's water clarity standard webpage for additional background information, and also please consider submitting your own written comments to Oregon DEQ. Your comments can be as simple as "Please don't weaken Oregon's water clarity standard." (Public comment period closes Dec. 7th at 5:00 p.m. Please submit comments by email to: rosetta.Thomas.n@deq.state.or.us.)

Clean Air Act Permit Commenting: A student's perspective

On July 22, 2005, the Oregon Department of Environmental Quality (DEQ) released a notice of public hearings and request for comments on the renewal of the Title V operating permit for Georgia-Pacific's pulp and paper mill in Toledo on the central Oregon coast. A Title V permit acts like an all-inclusive binding agreement between a source and the permitting agency. The DEQ notice painted a rosy picture by focusing on one table with a column labeled the "proposed increase over netting basis" that showed mostly negative numbers or what appears to be permit limit reductions for 7 of the 9 pollutants shown. However, the other table in the notice had a column labeled "proposed permitted emissions" but not one labeled "proposed increase over permitted emissions." If this column were included, it would indicate the new permit emissions limitations would in fact be increasing from the prior permit levels in 4 of the 9 categories. Furthermore, DEQ acknowledged in this public notice that "anticipated decreases in emissions shown above are primarily the result of changes in emission factors used to calculate emissions." This statement should create further uneasiness in any reviewer's eyes, as it appears as though no actual pollutant decreases are occurring. Instead, permitted pollution levels in 4 of the 9 categories, including lead, total reduced sulfur (TRS), particulate matter (PM) and sulfur dioxide (SO₂), are increasing while the remaining 5 pollutants are merely being reduced on paper. As time passes, one would hope that improved technology would enable reductions across the board for all pollutants. At the very least, one would hope that there would not be increases.

Another aspect that is given short shrift in the public notice is the difference between the newly proposed emission limitations and the newly proposed netting basis. *(continued on page 2)*

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-Water and Air-



NEDC
10015 SW Terwilliger Blvd.
Portland, OR 97219
503.768.6673 phone
503.768.6671 fax
www.nedc.org

NEDC Students Comment on BLM's Proposed Resource Management Plans

NEDC student volunteers recently commented on the Bureau of Land Management's (BLM) proposed revisions of the Resource Management Plans for all six BLM districts in Western Oregon. The revisions are a response to a timber industry lawsuit against the Bush Administration claiming that some protected forest reserves are violating the original intent of BLM lands that were designated for "timber production." The settlement agreement requires the BLM to revise these plans and to follow a previous court ruling that the reserves violate the 1937 Oregon and California Act (O & C), which resulted in the federal government claiming land that was once owned by the railroad companies. The revisions affect 2.5 million acres of BLM forested land, including nearly 1 million acres of old-growth forests. Much of this is some of the last low elevation native forest left in Oregon, providing clean drinking water, salmon recovery habitat, and accessible recreational opportunities.

NEDC comments focused on protecting forest values for wildlife, fisheries, and recreation. Students also emphasized the BLM's requirement that revisions adhere to federal laws such as the Endangered Species Act and the Forest Lands Management Policy Act. The comments stressed that BLM's plan revision process should lead to the adoption of a truly sustainable management plan for O&C lands and address other issues of particular concern in each of the six RMPs. NEDC already had one small victory in this revision process: As a direct result of NEDC student requests, BLM made available on its Western Oregon website the six affected RMPs. BLM will be preparing a single EIS for all six RMPs. A draft EIS is scheduled to be released in January 2006.

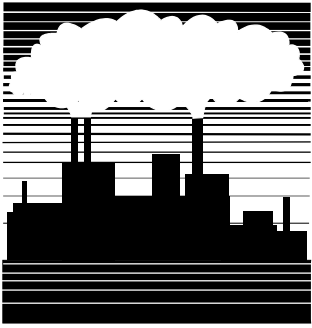
This revision process is intended to span three years with a final decision anticipated in Spring 2008. Our comments were in response to the first stage of the process. There will be a few more opportunities for the public to be involved. For more information visit, www.oregonheritageforests.org.

~ Liz Crosson, NEDC Student Board Member

(continued from page 1) Whether there is an increase or decrease from proposed emission limitations compared to previous emissions limitations or from the proposed netting basis to previous netting basis, the notice fails to point out there still exists a buffer of unassigned emissions. Although one would think the permitted emission limitations would be the cap for pollution, the netting basis allows for a type of buffer zone, based on past activities, such that for a given time period, the emissions may exceed the permitted emission limitations. To place this into perspective, this netting allows for unassigned emissions in 7 of the 9 categories ranging from 7.3 tons per year for sulfuric acid (H₂SO₄) mist (the proposed emission limitation is 11 tons per year) to 529 tons per year for Particulate Matter (the proposed emission limitation is 901 tons per year). A comparison of the previous netting basis with the newly proposed indicates an increase for 5 pollutants, a decrease for 2 pollutants and no change for 2 others. With this permitting action, DEQ has once again passed on providing an in-depth analysis of the Toledo operation via the New Source Review program. Given that the permit will be in effect until May 2010, there will be no chance to alter any of the permitted levels of pollution until the next renewal process begins. One can only hope that DEQ will properly consider and respond to the comments submitted by NEDC and concerned local residents.

~ Katherine Lin, Air and Water Project Group Coordinator

NEDC Achieving Success in Owens Corning Fight



December 6 marks an important milestone in the Owens Corning battle. It has been a full year since Allison LaPlante and Melissa Powers, NEDC board members and staff attorneys with the Pacific Environmental Advocacy Center, obtained an injunction against ongoing construction at the Owens Corning plant in Gresham, Oregon. Treating Oregon's permitting process as a mere formality, the company had begun building the new facility without first obtaining the requisite pre-construction permit, and without meeting other Clean Air Act requirements. HCFC-142b, the blowing agent Owens Corning proposed to use at the new plant to produce rigid foamboard insulation, is a harmful greenhouse gas and powerful ozone-depleting substance regulated globally under the Montreal Protocol and Title VI of the Clean Air Act.

Over the past year, Owens Corning has tried to keep the public in the dark about what the real pollution emissions would be from its new facility. We have repeatedly requested information from Owens Corning, information the company insisted on concealing from the public. Despite our requests, DEQ has refused to require a complete permit application from Owens Corning, accepting instead an application devoid of critical underlying data about the facility's expected emissions.

On November 21, 2005, a federal judge declared that the public was entitled to view all of the documents related to Owens Corning's emissions. The court rejected the company's arguments that documents regarding its emissions should be protected from disclosure as "trade secrets," stressing that the emission of air pollutants are a matter of public interest.

Also, on November 4, 2005, EPA announced its plans to ban the use of HCFC-142b in the foam sector. HCFC-142b was scheduled to be phased out of use by 2010. EPA's proposal, however, immediately prohibits new facilities from using the substance. EPA allows current use of HCFC-142b to be grandfathered, but only at facilities that had already been built and received all necessary permits prior to November 4, 2005.

EPA has finally realized what countries throughout the European Union have known for years – that there are readily available non-ozone depleting substances that can be used to manufacture insulation products. Were it not for PEAC's diligent work on our behalf, Owens Corning would have been up and running months ago, and would have been allowed to continue using HCFC-142b until 2010, reducing the quality of Oregon's air and greatly increasing the threat of global warming.

EPA's new rule adds significant force to NEDC's efforts to require Owens Corning to use a safer and cleaner substance. NEDC will be submitting comments to EPA in support of the proposal and encouraging EPA to stop any efforts by Owens Corning to get around the law. For more information, visit NEDC's Owens Corning webpage at www.nedc.org.

Tell EPA you support the immediate ban on HCFC-142b:

Suzie Kocchi, Stratospheric Protection Division

Office of Atmospheric Programs (6205J), Environmental Protection Agency

1200 Pennsylvania Ave., NW., Washington, DC 20460

tel: (202) 343-9387; fax: (202) 343-2363; e-mail: kocchi.suzanne@epa.gov

NEDC now accepts secure online donations

NEDC has partnered with PayPal, one of the world's leading online payment companies, to provide our supporters with a safe and convenient way to give. Its easy to make a one-time or monthly donation using a credit card; simply go to our website (www.nedc.org) and follow the link entitled 'Support NEDC.' PayPal has a 100% guarantee against unauthorized transactions.

NEDC launches new e-newsletter

Concurrently with this print newsletter, NEDC has issued our first 'e-newsletter' via email. To be added to our e-mailing list, please call our office or contact our law clerk, Jamie, at jsaul@nedc.org. We won't clutter your inbox, and we will never give or sell your email address to anyone. Thanks for your support!

Project Group Updates

Lands & Wildlife

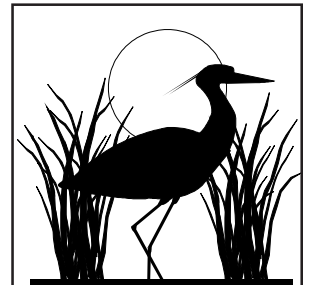
West Fork Illinois Land Management Plan comments

This semester, six NEDC student members enthusiastically dove into commenting to ensure that environmental concerns were adequately addressed by the Forest Service in its West Fork Illinois Land Management Plan. The students commented on the various issues of concern that were present in the EA and its addendum, stressing that the final plan should reflect a restorative approach to managing the watershed area. The students imparted in their comments that the plan should sustain old-growth forest and high canopy forest closures to protect forest ecosystem health, as well as the diversity of plant and wildlife species which include the spotted owl and the red tree vole.

Comment to list the Yellowstone Cutthroat Trout under the ESA

Nine NEDC student volunteers researched scientific support for a comment to USFWS to list the Yellowstone Cutthroat Trout, a subspecies of cutthroat trout, as endangered or threatened under the ESA. The comment was submitted following a lawsuit by the Center for Biological Diversity and Earthjustice, which compelled FWS to continue to gather information to determine if the fish should be listed. NEDC's comments focused on the causes of the dramatic reduction in the Yellowstone Cutthroat's range, resulting from hybridization with introduced rainbow trout, whirling disease, and other factors, and provided new information to support listing not previously in the administrative record.

The Lands & Wildlife group also hosted three speakers this semester: Dan Rohlf of PEAC gave a talk on salmon, Kristin Ruether of ONDA spoke about grazing, and PEAC attorney (and NEDC board member) Susan Jane Brown gave students an introduction to the Healthy Forests Initiative. Throughout the semester, student volunteers have worked on a variety of other projects to ensure important lands and wildlife issues were on the table in agency decision-making. The Lands & Wildlife project coordinators would like to thank all the student volunteers for their excellent and enthusiastic work this semester.



~ Sherry Bosse, Chris Shull, and Jessica Walz

You're invited! NEDC / PEAC "Art and the Environment" Benefit Party and Silent Auction

Join NEDC and the Pacific Environmental Advocacy Center (PEAC) for an evening of excellent wine, hors d'oeuvres, and festivities. The highlight will be a silent auction featuring the work of talented local artists. Proceeds will directly benefit NEDC and PEAC's important work to protect the environment. You can learn more about PEAC, and view many of the art pieces to be auctioned, at: www.peaclaw.org.

*December 9th, 6pm - 10pm, Billy Frank Jr. Conference Center (Ecotrust Building)
721 NW 9th Avenue (Pearl District). Admission is \$20 per person.
Please RSVP to emckay@lclark.edu.*

Project Group Updates

Air & Water

Clean Air Act permit comments

The Air & Water group has focused much of its time this fall researching and commenting on proposed regulations and permits issued by Oregon DEQ and the U.S. EPA. Katherine Lin and Jared Kahn commented on two different proposals for changes in regulations on National Emission Standards for Hazardous Air Pollutants (NESHAPs) at the federal and state level. Katherine developed a fact sheet for concerned local citizens, and drafted comments on behalf of NEDC concerning a Clean Air Act Title V operating permit renewal for the Georgia-Pacific Toledo facility on the central Oregon coast. (*see article on page 1*) Jared commented on two Clean Air Act permit renewals that propose emissions increases that should have undergone Prevention of Significant Deterioration (PSD) review. Katherine Lin provided essential research concerning Oregon's flawed New Source Review program to support the article by NEDC's executive director Mark Riskedahl that appeared in the fall newsletter

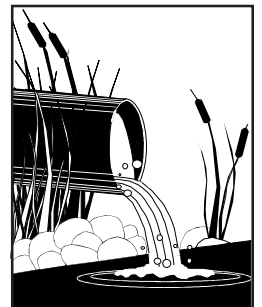
DEQ's proposed 303(d) de-listing

DEQ has proposed removing numerous stretches of Oregon's waterways within the state from the 303(d) list. Section 303(d) of the Clean Water Act requires the state to list those waters which are not meeting water quality standards, and to create a plan for cleaning them up. DEQ removed numerous stretches from the list through a de facto rule change that enabled the agency to utilize insufficient data. We expressed concern over the fact that DEQ did not perform a Use Attainability Analysis as required by law before removing designated uses from several of the stretches. David Theriault, Kailei Feeney, Erika Holsman, Shannon Rush, Jared Kahn, and Kevin Kerr conducted extensive research that raised numerous concerns about river miles that contain discharging facilities, and the repercussions of allowing an increase in discharges if the river miles are not protected by water quality standards.

Additional Commenting and Research

Student Board Member Liz Crosson, along with Jared Kahn and former NEDC Project Coordinator Alex Fidis (now with USPIRG), will be submitting comments on the proposed EPA regulations to stop pesticide testing on pregnant women and children. We are hoping that the comments will encourage the EPA to close loopholes in the proposed rule that would still allow pesticide testing on vulnerable populations. Sarah Melton and Jared Kahn submitted comments on proposed changes to DEQ's Environmental Enforcement Rules, which questioned numerous shortcomings. Several students also commented on a Clean Water Act Section 401 certification for a PGE hydro project on the Clackamas River. NEDC also submitted extensive comments on DEQ's revision of the 1200-C general stormwater permit for construction operations. Finally, Lizzie Brodeen, Morgan Wyenn, Margo Snow, Kristin Seewald and Sara Hart helped research and draft Clean Water Act 60-day notices against multiple industrial stormwater permit holders in the Columbia Slough.

The group also hosted several speakers this semester. Melissa Powers, PEAC staff attorney and NEDC board member, spoke about the Owens Corning litigation and provided tremendous guidance for NEDC's comments submitted on DEQ's 303(d) de-listing proposal. In addition, Dave Kauth, Senior Program Consultant for Oregon DEQ, Program Operations Section of Air Quality, spoke on the New Source Review program in Oregon, and Allison LaPlante, staff attorney with PEAC and also an NEDC board member, spoke about current legal efforts that seek to improve Oregon's water quality standards.



~ Jared Kahn, Kevin Kerr and Katherine Lin

NEDC Story in Sunday Oregonian

NEDC was the subject of an in-depth profile on the front page of the *Sunday Oregonian* on November 13th. In researching the article, reporter Michael Milstein accompanied executive director Mark Riskedahl on a water-sampling expedition on the Columbia Slough. The article highlighted many of NEDC's recent and historical successes in the enforcement of environmental laws, including last year's suit against Modesto Tallow. The article also featured comments by several business executives who had been on the receiving end of an NEDC Clean Water Act citizen suit; each of them noted their appreciation for NEDC's collaborative approach to pollution prevention. The article also highlighted the continuing failure of DEQ to adequately protect water quality in Oregon. NEDC has received a large volume of calls and letters of thanks and congratulations in response to the article (including three supportive letters to the editor, printed on Tuesday, November 15).

(continued below...)

Northwest Environmental Defense Center
10015 SW Terwilliger Blvd.
Portland, OR 97219

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(continued from above)

In response to the article, we received inquiries from new volunteers interested in kayaking and helping us to conduct water quality monitoring. We received a gift-wrapped box of surgical gloves sent by a member for when our "good deeds" require us to get "dirty." We also received a call from a major property owner in the Columbia Slough watershed who simply wanted to thank us for helping to clean up messes created by some of his tenants. He conveyed surprise over a recent visit he had made to one of the properties. The tenant had been the target of a recent NEDC Clean Water Act citizen suit, and he described the change in the appearance of the site resulting from our enforcement work as being a "night and day" difference. Piles of scrap materials at the site are now orderly and stored under cover, the site is regularly swept and kept free of debris and spills, and industrial activity is no longer taking place outside exposed to the elements. We will continue to highlight success stories of this sort in upcoming newsletters, as they are a big part of what makes the work we do both fun and rewarding. You can read the entire article on our website; simply visit www.nedc.org and follow the link to 'News and Current Events.'