

NORTHWEST DEFENSE

The newsletter of the Northwest Environmental Defense Center

Fall 2007

Big Polluters: Two Oregon case studies

More often than not, Oregon's Department of Environmental Quality (DEQ) tends to follow industry's lead when it comes to matters of environmental and public health. This is problematic when industry is not interested in bearing the full costs of the pollution it generates, but works quite well when industry is willing to do the right thing. A closer look at the respective approaches of two of Oregon's biggest polluters shows the difference that committed corporate leadership can make.

Mercury is a particularly potent and persistent neurotoxin. Despite this fact, the Ash Grove cement plant in Durkee, the only cement kiln in the state, has released thousands of pounds of this pollutant into the eastern Oregon air for many years.

The Durkee plant is not only the largest source of mercury emissions in Oregon, it is one of the largest stationary sources of mercury emissions in the entire nation. In fact, recent estimates show that the plant emitted well over a ton of mercury in the past year alone.

Oregonian reporter Michael Milstein first highlighted the problem with Ash Grove's mercury releases by writing several in-depth stories on the subject. Local politicians, health care professionals, tribal members and fishermen began speaking out about the risks of continued mercury emissions at the plant. Last year, NEDC and Columbia Riverkeeper formally requested that the Oregon DEQ tackle this environmental



problem head on. Members of DEQ's oversight body, the Environmental Quality Commission, also made clear that the issue needed to be addressed. But it was strong leadership from a surprising source, Ash Grove Cement Company itself, that recently started the plant down an aggressive path towards mercury reduction.

At the request of the company, Oregon DEQ convened a task force to address mercury emissions from the plant. NEDC Executive Director Mark Riskedahl, a member of the task force, has been impressed thus far with the company's approach to solving the problem. "Ash Grove officials are not just paying lip service to this serious matter," said Riskedahl, "they have invested significant funds to quantify the problem and resolve it." Though the final control strategy has not yet been agreed upon, Ash Grove has made a commitment to insure that the Durkee plant becomes the first cement plant in the country to

(Continued on page 6)

In This Issue:

| | |
|---|--------|
| Hazardous Air Pollutant Emissions..... | Page 2 |
| Lands and Wildlife Project Group | Page 3 |
| Industrial Agriculture & Environmental Justice..... | Page 3 |
| Westwind 2007! | Page 4 |
| Campus Greening | Page 4 |
| Student Summer Experiences | Page 4 |
| Water & Air Project Groups..... | Page 5 |
| Coastal Issues & Permit Commenting Guide | Page 7 |
| NEDC on the Web | Page 8 |

Board of Directors

Karl Anuta

President

Don Potter

Vice President

Karen Russell

Treasurer

Peggy Hennessy

Secretary

Brett Brownscombe

Bart Brush

Dona Hippert

Allison LaPlante

Stephanie Parent

Melissa Powers

Laurie Rule

Brett VandenHeuvel

Student Board

Members

Perrin de Jong

Tarah Heinzen

Erica Maharg

Chris Parta

Carey Whitehead

NEDC

10015 SW Terwilliger Blvd.
Portland, OR 97219

p. 503.768.6673

f. 503.768.6671

www.nedc.org

Hazardous Air Pollutant Emissions from Oregon's Plywood, Veneer and Particleboard Industry

This fall, Oregon DEQ has the opportunity to implement the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for plywood and composite wood products facilities to protect Oregonians from hazardous air pollutants when the Oregon wood products industry is required to comply for the first time with the technology based NESHAP known as maximum achievable control technology (MACT). Unfortunately, it appears that DEQ is poised to once again favor the economic interests of polluting facilities, many of which have operated for decades with no pollution controls, over the public interest.

Finding the existing program lacking, Congress amended the Clean Air Act's hazardous air pollutants program in 1990 to include a technology based plan intended to accelerate progress in significantly reducing toxic pollution. Unfortunately, agency delay has interfered with Congress's plan for a speedy clearing of the air of toxic pollutants, despite Congress's inclusion of a "MACT hammer" date by which facilities had to comply with MACT. EPA tried to protect industry from the MACT hammer, but the Sierra Club challenged EPA's action and the agency ultimately settled for a schedule that resulted in the new plywood MACT standard making compliance mandatory on October 1, 2007.

The MACT standard requires that plywood facilities reduce air toxics, many of which are known to cause cancer, from their processes by 90% using one of three compliance options, production based compliance, emissions averaging across the plant, or add-on pollution control equipment. The impending October 1, 2007, deadline lead a number of Oregon wood products facilities to request "minor source" designation through "Plant Site Emissions Limits" (PSELs) for air toxics. DEQ set the PSELs for these facilities right at the threshold of

the limit for "minor sources" – 9 tons per year of any single hazardous air pollutant, and 24 tons per year of all hazardous air pollutants. A major source is one with potential emissions of 10 tons per year or 25 tons per year, respectively.

In addition to allowing these facilities to narrowly escape the MACT standard with permit limits very close to the major source thresholds, DEQ's approach to permitting minor sources is seriously flawed. Thanks to excellent work by PEAC attorney Aubrey Baldwin, NEDC recently submitted comments on several permits that do not contain sufficient emissions and operating limits, or adequate testing, monitoring and recordkeeping provisions to ensure that toxic emissions from the sources remain below major source levels. NEDC has also asked DEQ to follow its own regulations and make necessary information available for informed citizen participation, and to require sufficient information from the applicant to enable DEQ to undertake an appropriate review of the applicant's claims.

DEQ also appears ready to extend the MACT compliance deadline for major sources until October 1, 2008, for the vast majority of sources in Oregon's plywood and composite wood products industry. NEDC



plans to participate in the public process planned for extension requests to ensure that the facilities' claims of inability to install controls are scrutinized sufficiently and are, in fact, legitimate.

Lands and Wildlife Project Group

NEDC will be commenting on the USFS proposed expansion of Off-Highway Vehicle trails within the Mt. Hood National Forest and will be assisting local environmental group Bark with legal research in developing a strategy to legally challenge the plan if the Forest Service continues to move toward implementation.

Lands & Wildlife group members are also assisting the organization Big Wildlife in researching and developing a litigation strategy for challenging the Oregon Cougar Management Plan. The plan, which contains provisions requiring significant culling of cougar populations, is flawed with respect to the need for such action, and contradicts generally accepted science-based management practices.



The Oregon Military Department is proposing to engage in activities that would affect the last remaining population of the Washington ground squirrel, a candidate species under the federal Endangered Species Act (ESA) and an endangered species under Oregon's ESA. A group of dedicated NEDC volunteers is researching possible strategies under the federal and state ESAs should the project be approved. Additionally, they are in the process of drafting an emergency petition to finally list the squirrel under the federal ESA.

Finally, group members will be commenting on a recent settlement between the timber industry and the Bush Administration, which has resulted in the opening of large tracts of old growth forest on BLM land to logging.

Industrial Agriculture and Environmental Justice

This year, students in the Factory Farm Project Group are creating a citizen's guide concerning new Concentrated Animal Feeding Operations (CAFOs). Additionally, the Factory Farm Group plans to comment on Oregon's soon-to-be-announced revised CAFO General Permit. Because Oregon eliminated its unlawful agricultural exemption from the Clean Air Act in last year's session, students will also likely research Clean Air Act requirements for large-scale agricultural emissions in Oregon, as well as keeping tabs on federal legislation to exempt factory farms from CERCLA and EPCRA reporting requirements.

NEDC is also working on two Environmental Justice Projects. First, students are assisting Crag Law Center with research on the North Slope Borough case, which involves Shell oil exploration in Alaska and native subsistence hunting rights. Closer to home, students are assisting the newly-formed Groundwork Portland, a group devoted to developing brownfields (contaminated sites), to learn more about legal liability surrounding the acquisition and clean-up of contaminated property.

Staff

Mark Riskedahl

Executive Director

Kristen Monsell

Law Clerk

Student Director

Bethany Cotton

Lauren Goldberg

Liz Crosson

Katie Strong

Lands & Wildlife

John Caldwell

Neal Clark

Johannes Epke

Air

Tarah Heinzen

CAFOs/Water

Erica Maharg

Water

Gilbert Mears

Air & Water

Julie Nimnicht

Coastal Law Clerk

Harrison Putnam

Water

Jane Steadman

Lands & Wildlife

Lori Ann Byrd

Sustainable Agriculture

Casey Barnard

Environmental Justice

Project Group

Coordinators

Natasha Bellis

Liz Crosson

Lauren Goldberg

Katie Strong



Student Summer Experiences

Westwind 2007!

Join NEDC for our annual retreat at Westwind on the Oregon Coast

Each year NEDC hosts its annual retreat at Camp Westwind, located on the rugged Oregon Coast. Throughout the three-day event, we conduct environmental workshops, hold our annual board meeting and board member elections, and introduce law students from all over the country to environmental legal issues pertinent to the Pacific Northwest through a series of informal presentations from environmental attorneys.

Nature hikes, the beauty of the undeveloped beach and the vast ocean allow participants to reconnect with what many of us work so hard to protect. You can sleep in one of many rustic cabins or pitch a tent on the beach and fall asleep to the sound of waves crashing upon the shore. There will be games of ultimate frisbee and early morning yoga. We will also have a menu of delicious vegetarian and mostly organic cuisine, as well as local micro-brewed beers.

We hope to see you there. This year's annual retreat at Westwind is October 12-14, 2007. If you are unable to attend, but would like to cast a vote in the board elections that will take place at our annual meeting, please call Kristen at 503-768-6673 or e-mail her at kmonsell@nedc.org.

Campus Greening

By Perrin de Jong

NEDC students are coordinating a campus-wide environmental audit process to identify areas of resource waste on campus, and potential solutions. The effort is designed to culminate in a campus-wide appeal to the students, faculty, and administration to endorse the findings and recommendations of the audit process, and move forward with implementing its best ideas.

We plan to seek the input of the entire campus community early in the process, so that we can generate the widest possible buy-in from the beginning from all the relevant stakeholders. We welcome any volunteer help that others can offer. To get involved, please contact Perrin de Jong at dejong@lclark.edu.

By Jane Steadman

Thanks to a PILP stipend, I was able to spend my summer clerking with the Oregon Natural Desert Association (ONDA), a public interest organization dedicated to preserving and protecting the public lands of eastern Oregon. Much of my work focused on using the Endangered Species Act and Clean Water Act to lessen the impacts of public lands livestock grazing on the delicate ecosystems and species of the high desert.

ONDA provided me with an experiential learning environment that allowed me to utilize my background in biology and environmental studies while enhancing my knowledge of natural resource law and policy. I look forward to using the skills I gained through my clerkship with ONDA in my position as a Lands and Wildlife Project Coordinator this year.

By Gilbert Mears

I had the pleasure this past summer to have worked at the Portland office of Columbia Riverkeeper under talented L&C alum, Brett VandenHeuvel. I spent the majority of my summer doing research, composing memoranda, and drafting documents regarding the Liquefied Natural Gas terminal proposed along the Columbia at Bradwood Landing.

In addition to the days at the office, I accompanied other Riverkeeper staff members on multiple occasions to Astoria to coordinate with the public in our opposition to the terminal, as well as to attend and offer oral comments at Planning Commission hearings. Other occasional excursions included traveling to facilities to which CRK had already sent 60-day notices for stormwater discharge violations.

It was interesting to see the post-notice negotiation process unfold and the dynamic effect of the 60-day period on this process. In all, I feel super-fortunate to have worked with Columbia Riverkeeper this summer.

By Katie Strong

This summer I had the wonderful opportunity to work with Advocates for the West in Boise, Idaho. While I focused primarily on grazing in BLM Wilderness Study Areas ("WSAs"), I was exposed to numerous other cases and legal issues. For example, I was fortunate enough to be in Boise during oral argument on a petition to list the sage grouse under the Endangered Species Act. Also, I participated in

Water Project Group

The Water Project Group is working on a number of issues this term, including projects dealing with the Clean Water Act's Section 401, NPDES permits, and antidegradation policy. First, the Water Project Group is working on a joint project with the Coastal Project Group that involves investigating potential violations of Section 401 certifications. Section 401 of the federal Clean Water Act provides that an applicant for a federal license or permit to conduct any activity that may result in a discharge to a state's waters must apply for and receive a water quality certification issued by that state. The state may grant a Section 401 certification if the proposed project will not cause a violation of water quality standards. NEDC plans to augment Oregon DEQ's efforts to verify that the projects which have received Section 401 certifications are not contributing to violations of water quality standards for Oregon's waters.

Student members Emily Auerbach, Jeffrey Crider, Louis Geltman, Rachel Hoffman, Alexandra James, Andrea Kopecky, Ben Lockett, Pat Sherwood, and Clarke Thurmon recently submitted comments on nine facilities applying for coverage under the NPDES Industrial Stormwater General Permit (1200-Z permit). The 1200-Z permit regulates industrial facilities that discharge stormwater from a point source to surface waters or to conveyance systems that discharge to surface waters. These comments called attention to patterns of noncompliance that several of the facilities have shown and also addressed site-specific problems that suggest that Oregon's waters would be better protected if these facilities were covered under individual permits, rather than using the one-size-fits-all approach to permit coverage.



In the enforcement realm, students, otherwise known as the “Kayak Crusaders,” are once again getting back on the water to take water samples of potentially problematic facilities. Additionally, the Water Project Group has compiled a list of facilities to investigate based upon review of DEQ files, and will be taking steps in the next coming weeks to assess whether or not these facilities have a history of noncompliance and need further action.

Finally, the Water Project Group is continuing to investigate Oregon's antidegradation policy, and specifically looking into which Oregon waterbodies are potential candidates for Outstanding Resource Waters. Students are excited about digging into Oregon water quality issues and learning more about the state's amazing water resources.

Air Project Group

The Air Project Group is currently working on several interesting and diverse projects. With the help of PEAC attorney Aubrey Baldwin, we submitted comments on proposed permit modifications for several plywood facilities across the state (see related article).

NEDC is also examining a proposed permit modification by Boeing to increase VOC emissions related to airplane coating at its PDX facility. Because the facility will emit considerably more VOCs than before, it has triggered New Source Review and will be required to install Best Available Control Technology (BACT). Boeing has proposed that BACT for the expanded operation will involve no pollution controls, despite the fact that available technology can reduce VOC emissions by over 90%. In preparation for permit commenting, NEDC students are researching technological options for Boeing.

NEDC is actively engaged with Oregon's approach to controlling regional haze, and is also researching how Oregon's neighboring states are implementing Best Available Retrofit Technology (BART). In 1999, EPA adopted the Regional Haze Rule to address the problem of visibility impairment. A key provision of this rule called for the implementation of BART by facilities built between 1962 and 1977, a class of facilities which has otherwise largely avoided the substantive technological control requirements of the Clean Air Act. Finally, NEDC intends to participate in Oregon DEQ's rulemaking process concerning reporting of greenhouse gas emissions.

(Big Polluters...Continued from page 1)

install mercury capture and control technology, and the company has agreed to do so on a very aggressive time frame.

The Ash Grove case study demonstrates how proactive Oregon DEQ is willing to be when a big polluter is on board with environmental regulation. By contrast, the corporate owners and operators of Oregon's second largest major source of mercury emissions, the PGE Boardman coal-fired power plant, dragged their heels and hemmed and hawed despite public outcry last summer over the plant's mercury emissions. PGE initially fought against installing mercury capture and control technology, despite the fact that the technology is field-tested, cost-effective, commercially available, and has

been required of power plants in other states. Oregon DEQ initially took PGE's claims at face value, and it was only after considerable public pressure was applied that PGE committed to reduce mercury emissions to a protective level within a reasonable timeframe.

PGE is presently slogging down a similar path with respect to the Boardman plant's emissions of pollutants such as NOx and SO2.

The Boardman plant is the largest stationary source of SO2 and NOx in Oregon, emitting five to six times the amount of these pollutants emitted from the next highest source in the state. Pollution from the plant definitively causes visibility impairment in parks and wilderness areas around the region and in the Columbia Gorge. PGE has known for many years that controlling the emissions of these pollutants is not only feasible, but has been required of other power plants in other states. Though the company has begrudgingly expressed a willingness to consider installing an SO2 scrubber on the plant at some point in the distant future, it refuses to commit to installing state-of-the-art NOx control technology.

Meanwhile, air quality in the Columbia Gorge continues to suffer. In fact, haze levels in the Gorge are worse than in any other non-urban area in the entire western United States. PGE Boardman's emissions

are a significant contributor to that problem. What will it take for PGE, the operator of Oregon's only coal-fired power plant, one of the biggest and dirtiest sources of air pollution in the state, to follow Ash Grove's lead? It is time for PGE to commit to installing state-of-the-art pollution control technology at the Boardman plant. It is the right thing to do.



(Student Summer Experiences...continued from page 4)

strategy meetings with groups as diverse as The Wilderness Society and the Idaho Conservation League.

In addition to working with fantastic attorneys and honing my legal skills, I also had opportunities to network with environmentalists throughout the Intermountain West at numerous conferences and camping trips. Thanks so much to NEDC for preparing me so well to take advantage of all this summer had to offer!

By Casey Barnard

With the support of a PILP stipend, I spent the summer in Portland working for OPAL (Organizing People, Activating Leaders). OPAL is a grassroots organization formed in 2005 to organize low-income, people of color communities around environmental justice issues.

For the first half of my PILP project, I researched the feasibility of establishing a legal clinic based around environmental justice needs. In the area of urban renewal funding and brownfield redevelopment, I specifically researched: what tools and resources are available that might offset gentrification and displacement (such as inclusionary zoning, real estate transfer tax, etc.); national urban renewal models and policies; and the use of Tax Increment Financing (TIF) as a means of funding urban revitalization.

This research led to more questions than answers and I plan to continue addressing those questions through my work with NEDC and Environmental Justice Advocates (EJA) at Lewis & Clark Law School. I also drafted a Freedom of Information Act (FOIA) request to the EPA, which asked for information about how environmental justice is addressed in the region.

NEDC provides hands on learning experiences for law students

"I had no idea what I was in for when I agreed to take on my first NEDC commenting project. I went to DEQ extremely excited to get my hands dirty in environmental law, but what I found was far from what I expected.

The facility I investigated had not complied with permit requirements since 2001, simply paying fines and ignoring the fact that it was required to send in reports dealing with water quality sampling. This facility's compliance history is so egregious that one wonders why it is being granted yet another permit when it never bothered to comply with the prior permit. Good thing NEDC is around to watchdog the process."

-Alexandra James, first year student

Coastal Issues and New Coastal Permit Commenting Guide

By Julie Nimnicht

As NEDC's coastal issues law clerk this summer, I concentrated on pollution problems associated with construction in light of surging development along Oregon's coast. Measure 37, passed by Oregon voters in 2004, renders many of Oregon's progressive land use regulations unenforceable. Coastal counties have been hit hard by this Measure. As of April 2, 2007, more than 1,400 claims had been filed in coastal counties, implicating over 174,000 acres of undeveloped land and potentially opening it to commercial and residential development. The coastal region is home to the wettest habitats in the state, with the average annual precipitation ranging from 60 to 180 inches. The terrain varies, from wide-open wetlands to steep forested mountainsides, making the area particularly susceptible to the harmful effects of polluted stormwater.

Construction sites are often unchecked sources of stormwater runoff leading to erosion and sedimentation of nearby waterways. Under the Clean Water Act, a developer must obtain an NPDES permit before beginning construction to regulate the site's stormwater runoff. Oregon's 1200-C Construction Stormwater General Permit fails in many respects to insure developers comply with federal law. The Permit contains inadequate monitoring requirements, unenforceable benchmarks and suggested

erosion and sediment prevention practices that fall short of the aims of the Clean Water Act.

I researched 1200-C permit applications, and submitted comments on a large residential construction project located just south of Westwind, the pristine site of NEDC's annual retreat in Lincoln County. I also created a guide highlighting coastal water quality issues to help students and community members navigate the 1200-C permitting process and submit comments to the DEQ urging stricter compliance and monitoring requirements. Development on Oregon's coast will only increase, and if stormwater pollution from construction sites is not curbed, there will be detrimental effects for Oregon's precious waterways and the aquatic and terrestrial species that rely upon them.

This year I will work with NEDC volunteers to comment on 1200-C construction permit applications in coastal counties, as well as NPDES permit renewal applications for sewage treatment plants, another large source of stormwater pollution. The coast is dotted with small towns that rely on antiquated sewage treatment facilities, many of which are located within a few miles of the ocean. The population has exploded in many coastal locations, but few of the overburdened sewage treatment facilities have expanded capacity, making overflows and spills a common occurrence in the winter months, leading to closed beaches at popular recreation areas due to contamination.



Support NEDC Today!

Date: _____
Name: _____
Address: _____
City: _____
State: _____ Zip: _____

Please make your check payable to "NEDC"

- ___ \$1,000 Partner
- ___ \$500 Environmental Steward
- ___ \$100 Natural Resources Associate
- ___ \$50 Family Membership
- ___ \$25 Student/Senior Membership



NEDC has a strict privacy policy; we will not share your contact information with anyone, and membership with NEDC will not generate unsolicited requests from other sources.

Please send donations to:
**NEDC, 10015 SW Terwilliger Blvd.
Portland, OR 97219**

Visit NEDC on the Web at www.nedc.org



NEDC's website now provides even more resources and information for members, students, and interested parties. The "*Student Resources*" portion of the website includes a Guide to Permit Commenting, which provides a brief overview of administrative law and explains how citizens can influence agency decisions, including permits under the Clean Water Act and Clean Air Act.

For those interested in commenting on Oregon coastal water pollution permits, NEDC has developed two guides: the *Sewage Treatment Plant Citizen's Guide* and the *Construction Stormwater Run-Off Citizen's Guide*. You will also find a guide to reading and commenting on Clean Water Act NPDES permits prepared jointly by the Prairie River Network, the Clean Water Network, and the River Network. The website shares a range of model comments addressing Clean Water Act Permits, Clean Air Act Permits, and Lands and Wildlife concerns. Also new to the site is a *Google Calendar*, which NEDC uses to share information on upcoming events. Check out NEDC's website at www.nedc.org

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



NONPROFIT ORG.
U.S. POSTAGE
PAID
Portland, Oregon
Permit No. 438