

NORTHWEST DEFENSE

The newsletter of the Northwest Environmental Defense Center

Winter 2008



GREENING OUR CITIES

Stormwater runoff from the built environment presents one of the most significant threats to the ecological integrity of our region's watersheds. As population trends across the Pacific Northwest continue to mirror a global shift towards increased urbanization, the infrastructural elements that make up the places we call home play an ever-larger role in the health of our watersheds and the communities that rely upon them.

Changes to the urban environment during the next several decades will dwarf those we have already witnessed over the course of our lifetimes. New development and redevelopment will both play major roles in this transformation. A recent study by the Brookings Institute estimates that 42 percent of land currently considered "urban" in the United States will be redeveloped by 2030. In other words, nearly half of what will comprise the built environment in 2030 doesn't even exist yet.

It is critically important that low impact design and green infrastructure building principles form the foundation of the upcoming urban development and redevelopment boom. Envision urban landscapes dotted with green roofs, green alleys, pervious pavement, networks of vegetated bioswales and rain gardens. Smart design choices make for cleaner, safer and more vibrant urban communities. They also protect water quality.

Roads, bridges, shopping malls, industrial properties, and, in fact, almost the entirety of the urban environment in most cities were initially built with the intent of routing stormwater runoff

directly to the nearest waterway. Stormwater flows off of roofs, over streets and parking lots, through residential neighborhoods and across heavily contaminated industrial properties, picking up a wide range of pollutants before eventually discharging through outfalls to the nearest river or stream. Little thought has historically been given to how stormwater can be treated as a resource, rather than a liability. It is time for that to change.

One of the most compelling tools that the state of Oregon has at its disposal in order to ensure that future development is increasingly protective of water quality is Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permitting. All of Oregon's

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"Nearly half of what will comprise the built environment in 2030 doesn't even exist yet."

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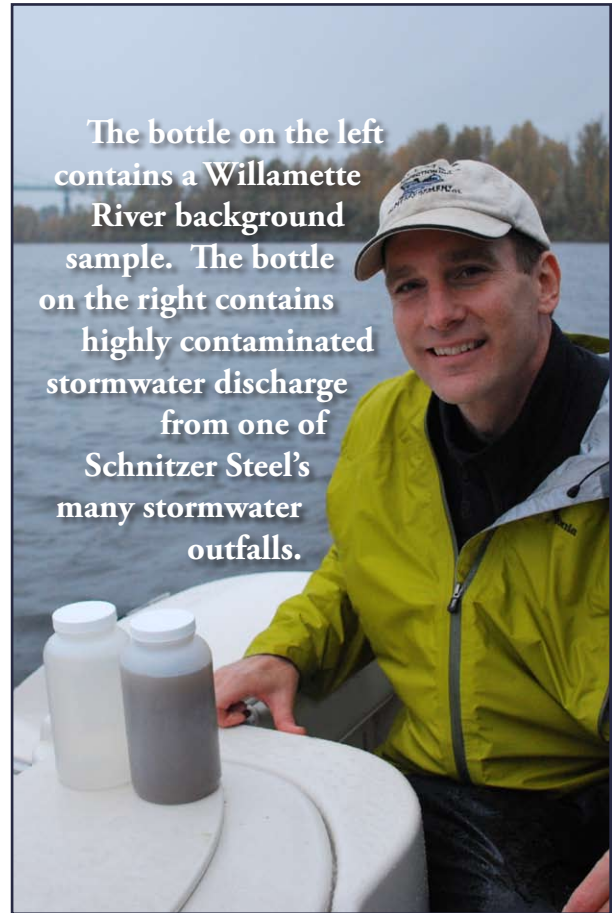
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NEDC's LATEST INDUSTRIAL STORMWATER TARGET

NEDC has been concerned for quite some time about the heavily contaminated stormwater that flows off of Schnitzer's Steels expansive property on the east bank of Portland Harbor. As the scrap metal market faces the same sharp downturn that has been affecting so many other sectors of the world economy, Schnitzer's mountain of scrap has continued to grow higher and higher. The archaic stormwater control technology Schnitzer uses to deal with contaminated stormwater flowing through and off its main scrap piles, as well as from off other portions of its property have proven wholly ineffective at preventing the discharge of toxic pollutants directly to the Willamette River every time it rains.

Lab analysis performed on samples we have collected (confirmed by data self-reported by Schnitzer) has shown some of the highest levels of lead, zinc and other toxic contaminants we have seen from any industrial property in the many years of water quality monitoring we have performed throughout the Portland metropolitan area.

We will shortly be initiating an enforcement action against Schnitzer that will require the



The bottle on the left contains a Willamette River background sample. The bottle on the right contains highly contaminated stormwater discharge from one of Schnitzer Steel's many stormwater outfalls.

company to finally deal with this problem, and we look forward to updating you on our progress.

Polluted Runoff from Forest Roads

On November 19th, Paul Kampmeier with the Washington Forest Law Center in Seattle argued NEDC vs. Brown before the Ninth U.S. Circuit Court of Appeals. This case attempts to remedy the harmful effects of polluted runoff from logging roads that is channeled and then conveyed through ditches and culverts directly into Oregon coastal rivers. Our sampling of sediment-laden runoff from two logging roads paralleling the Trask and Kilchis Rivers showed that levels of total suspended solids in the discharges were routinely well above background levels in the receiving stream. In some cases, these sediment levels exceeded background levels in the receiving stream by more than 2000%.

Oregon's state rules governing forest practices have very under-protective road construction, maintenance, and abandonment standards, and also contain woefully inadequate provisions related to water quality protection. Although EPA has exempted logging roads from National Pollutant Discharge Elimination System (NPDES) permitting, the case seeks to declare this exemption unlawful. A favorable decision will have wide-ranging implications well beyond Oregon. Chris Winter at the Crag Law Center is co-counsel with Paul on this case.

GRAVEL EXTRACTION IN OREGON'S CHETCO RIVER

In November, NEDC continued its advocacy surrounding gravel mining on the Chetco River. First year volunteers Tara Gallagher and Benjamin Cecil, with guidance from law clerk Lizzy Zultoski commented on Tidewater Contractors' applications for two 1200-A permits, which would cover stormwater discharges from the facility's gravel mining operations.

NEDC's comments highlighted the deficiencies of the stormwater permits in general, and the permit applications in particular, as reasons why DEQ is precluded from issuing the permits. Tidewater's applications were deficient in many respects, including the failure to submit erosion or sediment control plans, and the statement of contradictory facts about stormwater outfalls. Additionally, the applications ignored significant pollutants associated with gravel mining, including nitrate and nitrite nitrogen, which are harmful to many fish species. In the absence of enforceable limitations on the discharge of these and many other pollutants, DEQ cannot ensure that these operations will comply with water quality standards.

The Chetco River is listed as water quality-limited for temperature, habitat modification, flow modification, and potentially sedimentation. Tidewater's discharges and operations will further impair these parameters. Increased sedimentation is a limiting factor for the survival of threatened coastal Coho salmon, as the National Marine Fisheries Service emphasized in the 2007 Biological Opinion on gravel mining in the Chetco. DEQ has not acquired adequate data to determine whether the river is water quality-limited for sedimentation, yet the agency continues to permit activities which result in the discharge of sediment to the river.



DEQ can not continue to issue permits for gravel mining on the Chetco River that ignore the industry's pervasive impacts on water quality and threatened fish species. If these activities move forward, NEDC will watchdog both the agency and the industry, while advocating for protection of the Chetco and compliance with the law.

Working to Reduce Toxic Emissions from Industrial Boilers

One of the air pollution reduction efforts NEDC will be focusing on during the upcoming several months will be to ensure industry in Oregon complies with new emission standards for Hazardous Air Pollutants (HAP) under the Clean Air Act. At issue are the MACT standards for boilers promulgated by EPA in 2004, but which

were vacated by the D.C. Circuit Court in June, 2007. Fortunately, drafters of the Clean Air Act included a Plan B when it came to standards for HAP emissions, called the MACT "Hammer". The MACT Hammer states that, when EPA fails to promulgate a standard by the statutory deadline, sources are required to submit to the regional permitting authority an application for a case-by-case MACT standard determination.

The MACT Hammer gives sources 18 months from EPA's missed deadline to submit these

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(Greening Our Cities...Continued from page 1)

largest cities are required to obtain and comply with the terms and conditions of state-issued MS4 NPDES permits. The Oregon Department of Environmental Quality (DEQ) will be renewing these permits throughout 2009, and NEDC intends to be engaged in the process every step of the way.

In November, we helped form a wide-ranging coalition of other conservation organizations concerned with these permits, submitted extensive comments to Oregon DEQ on a draft permit template on behalf of the coalition, and met with DEQ staff to raise our concerns with the permit renewal process thus far.

Our new Conservation Director Andrew Hawley has spent a substantial portion of his first month on the job focusing on MS4 permitting, and has developed considerable expertise on the subject during that time. Andrew also received help working up our comprehensive comments on DEQ's draft template from NEDC law clerk Lizzy Zultoski and NEDC student volunteers Kristen Monsell, Benjamin Luckett, Clarke Thurmon, Tony Hsiao, and Marcel Gesmundo.

NEDC is committed to ensuring that DEQ writes MS4 permits that protect water quality, encourage creative and innovative use of low impact design and green infrastructure principles, require adequate monitoring, and place high expectations on municipalities across the state to dramatically reduce volumes and concentrations of stormwater pollutants flowing out of municipal storm sewer outfalls into Oregon's rivers and streams. We'll keep you updated on our progress.

ROGUE RIVER NAVIGABILITY

Last month, NEDC joined the Northwest Steelheaders and the newly formed Rogue RiverKeeper by intervening in support of the state of Oregon in a challenge by Rogue River riparian property owners to the state's recent navigability determination concerning a stunningly beautiful 89-mile stretch of the Rogue River. A hearing has been scheduled for next spring. NEDC is represented in this matter by Thane Tienson of Landye, Bennett, & Blumstein LLP.

Stormwater Runoff From Roadways

By NEDC LAW CLERK LIZZY ZULTOSKI

NEDC has recently turned its attention to one of the largest sources of stormwater pollution, roadways. This focus is necessary to comprehensively address water quality impacts from stormwater, in light of our ongoing advocacy surrounding industrial and municipal sources. Stormwater runoff from roadways has concentrations of pollutants higher than any other land use, according to a US EPA 2005 study of national NPDES permit monitoring data. In particular, stormwater runoff from roadways has the highest levels of suspended solids, oil and grease, and dissolved copper, causing a host of water quality problems.

These stormwater pollutants degrade our waterways and adversely impact fish species. For example, scientific studies have increasingly linked stormwater runoff from roadways with Coho salmon mortality in urban streams. In particular, dissolved copper disrupts the chemosensory systems of fish, making it a limiting factor in the survival and recovery of threatened anadromous fish species. Dissolved copper levels are especially high in waterways receiving runoff from roads, because copper is released from vehicle brake pads and tailpipe exhaust onto roadways.

**NEDC'S ENFORCEMENT WORK TOPIC
IN EUGENE WEEKLY COVER STORY**

The Eugene Weekly's cover story on November 26 focuses on the environmental enforcement agenda of Oregon's incoming Attorney General, John Kroger. The story also discusses NEDC's Clean Water Act enforcement work, and spotlights the ability of a "small non-profit" to "out-police Oregon DEQ". The story includes several quotes from NEDC Executive Director Mark Riskedahl. For a link to the full story, visit www.nedc.org.

Roadways within Oregon are regulated by a variety of state, county, and city agencies. State highways are the largest collection of roadways that are managed by a single entity—The Oregon Department of Transportation (ODOT). ODOT has jurisdiction over 8,100 miles of state highways, which account for 9% of the roads and 60% of the daily traffic in Oregon. Stormwater runs off from these highways and enters waterways through municipal separate storm sewers (MS4s), drainage systems, and direct discharges, all which are regulated under the Clean Water Act National Pollutant Discharge Elimination System MS4 permit.

ODOT has not fulfilled its mandatory duties under the MS4 permit, highlighting its failure to adequately address stormwater runoff from its roadways. As DEQ focuses on redrafting and renewing the MS4 permits for municipalities, the agency should not ignore ODOT's noncompliance under its individual MS4 permit. ODOT cannot continue to shirk its basic Clean Water Act responsibilities while other public and private entities across the region employ progressive stormwater management techniques.

New NEDC Student Volunteer Perspective

BY ANZIE NELSON

When I attended my first day of law school in Ohio, I thought I'd be surrounded by bright, ambitious, and dedicated students. Oh, was I naïve. It seemed everyone had come straight out of undergrad, attending law school because they didn't know what else to do. For that first year, I struggled to spark any environmental interest among my fellow students. Our small Environmental Law Society had speaker panels, clean-up days, electronics recycling drives, and fund raisers. Sadly, attendance was slim, rarely garnering more than 8 students. The typical response was that there was no time for environmental issues and law school took top priority.



Arriving at Lewis & Clark was like a dream. I was enamored with all the different environmental groups. Everyone was taking action, unintimidated by the heavy workload of law school. It was no longer necessary for me to beg for participants, people jumped right in.

Whether it knew it or not, NEDC swallowed me in one gulp. Each Tuesday, I was delighted merely to be in the presence of students willing to volunteer their busy time, contributing pieces to a cause more important than a mere grade. The dedication was contagious. Throughout this semester, I tried to dabble in a little bit of everything. For the water group, I researched outstanding resource water designation in Oregon (or lack thereof). I followed Kristen Monsell to DEQ to see how file reviews worked. I wrote a comment on a landfill's 1200-Z stormwater permit and later an exciting draft 60 day notice of intent to sue. For the agriculture group, I helped write a comment on GE Papaya for the Florida Organic Growers. At the moment, I'm working on a longer term project for the air group regarding the federal New Source Performance Standard for paper mills

I am grateful that I no longer sit at a lonely table in Ohio, and am instead surrounded by students more committed than me. It is NEDC's presence on campus that continually reminds me why I came to law school. Without NEDC and its volunteers, I don't think I would have pushed myself as hard to do what I love.

NEW FACE IN THE NEDC OFFICE

Last month, Andrew Hawley ('03), joined NEDC as our first-ever Conservation Director. Andrew worked for several years for Defenders of Wildlife in Washington, D.C. before returning to Portland to join Team NEDC. Welcome back Andrew!

NEW DIRECTORS ADDED TO THE NEDC BOARD

Two new attorney board members were added to our board of directors at NEDC's recent annual meeting at Westwind. Gary Kahn, renowned and revered partner at Reeves, Kahn and Hennessy, rejoins the board after a several year absence. Also joining the NEDC board is the young, energetic, hard-working Dan Mensher ('07), staff attorney at the Pacific Environmental Advocacy Center. If you see a guy wearing a vibrant pink jersey and cycling very fast through the streets of Portland, it is likely to be Dan. Be sure to give him a friendly wave and welcome him to the board.

Welcome to two new student board members as well: First-year law students Nate Hausman and Elizabeth Lieberknecht.

Many, many thanks in parting to Brett Brownscombe ('00) for his dedicated years of service as an NEDC board member. Brett retired this year. His relentlessly positive demeanor, impassioned commitment to public interest environmental law, thoughtful input, and much-celebrated board meeting patience and endurance will all be deeply missed.

PROJECT GROUP UPDATES

Air Group

NEDC Air Project Coordinators Johannes Epke and Mitchell Tsai harnessed the wealth of student interest and enthusiasm this semester to get involved in several projects to protect and clean up the air in the Pacific Northwest. NEDC volunteers have commented on several proposed air permit renewals for wood processing and chemical production facilities, as well as a significant modification of the PGE Beaver/Port Westward Title V permit. In addition to raising several issues and concerns regarding the permits, NEDC volunteers gained valuable commenting experience and are ready for more.

In addition to permit commenting, we have been working with community groups to combat major air pollution sources in the Portland metropolitan area. One such facility, ESCO Steel in NW Portland, has generated significant opposition in the neighborhood by emitting noxious odors and depositing heavy metal-laden dust on the neighborhood. NEDC volunteers have gotten involved to help the local Northwest District Association Health and Environment Committee create a strategy to force ESCO to clean up the emissions from this nearly century old facility. Sharon Genasci, chair of the NWDA Health and Environment Committee, visited a weekly NEDC meeting to show her film, "What's in our Air?" and share her experience and answer questions.

Many thanks to the bright and enthusiastic group of student volunteers this semester, including Lyndsey Bechtel, Randall Szabo, Sakae Sakai, Roberta "Bobbie" Traverso/Estes, John Krallman, Anzie Nelson, Adrienne Delcotto, and Dawn Stevenson.

Sustainable Agriculture Group

The Sustainable Agriculture Project's major project this semester was submitting extensive comments to the US Department of Agriculture (USDA) regarding the deregulation of the first genetically engineered (GE) tree to be grown in the mainland United States. We worked closely with an organic advocacy organization in Florida to help USDA understand why it needs to take a closer look at the potential impacts of GE Papaya trees on organic agriculture, human health, and the environment.

Our project group has also recently begun working with the Farmers Legal Action Group (FLAG), compiling a tangle of local, state, and federal regulations for on-farm food

processing. The result of this compilation will be a handbook setting out the requirements for on-farm processing of value-added products. Reducing the miles food travels promotes community food security by strengthening the link between farmers and consumers, plus it reduces carbon emissions, thus benefitting our environment.

Water Group

During the fall semester, the water group was involved with a wide range of exciting projects. We filed public comments on a number of facilities that were consistently violating their stormwater discharge permits, including the Hampton Lumber Mill in Willamina, Oregon and the Ennis Paint facility in Salem. The water team also commented on several construction projects including an expansion of the Coca-Cola bottling plant in Wilsonville and a metals recycling facility in Hillsboro. The construction comments expressed NEDC's concern that the runoff from these projects would degrade the quality of the receiving waters. The permit violations at the Hampton Lumber and Ennis Paint facilities were sufficiently egregious that NEDC will be sending 60-day notices of intent to sue both before the end of this semester. In addition, we submitted comments on the Newport Dock expansion project, including comments on 401 certification and 404 permit applications. The primary purpose of these comments is to ensure that the project is carried out in a way that will not degrade sensitive salmon habitat.

Several students helped comment on the template for Oregon's Municipal Separate Storm Sewer (MS4) permit. NEDC hopes these comments will eventually lead to a permit that is protective of water quality, and also encourages progressive land use practices that will minimize stormwater pollution. The water group has also continued its work to designate the upper Rogue River as an Outstanding Resource Water under Oregon's antidegradation policy. NEDC has partnered with the newly formed Rogue Riverkeeper in this effort and hopes to make further progress in the coming semester. Thanks to everyone who lent their efforts to these projects!



Lands and Wildlife Group

This semester, NEDC student volunteers partnered with the Student Animal Legal Defense Fund (SALDF) on a proposed Endangered Species Act Section 7 consultation rule change, submitting comments objecting to the Bush administration's

(Lands & Wildlife Group...continued from page 6)

attempt to water down the consultation requirement. Students also worked with SALDF to protest the attempted delisting of the Northern Rocky Mountain population of the Grey Wolf. Volunteers also filed a scoping comment on the Rogue River-Siskiyou National Forest Travel Management Plan that argued for reducing the road network for both environmental and budgetary reasons.

NEDC board member Stephanie Parent worked with a group of students this semester in developing comments on the proposed revision to the Habitat Conservation Plan for the Elliot State Forest. Students researched and commented on the lack of alternatives in the draft EIS, inadequacy of proposed mitigation measures, changes to riparian buffers, and potential impacts on the spotted owl. Lands and wildlife coordinators led a fieldtrip to the Elliot State Forest. Josh Laughlin, Conservation Director of Cascadia Wildlands Project toured participants through 150-year old stands of forest currently slated for harvesting as well as through recent clear cuts nearby. The coordinators would like to thank the many student volunteers who gave their time, energy and brainpower to these critical issues.



(Industrial Boilers - MACT hammer...continued from page 3)

case-by-case applications. The latest date by which the MACT Hammer can be construed to have fallen with respect to industrial boiler emissions, even under the most industry-friendly reading of the statute, is January, 2009. In anticipation of this rapidly-approaching deadline, NEDC has initiated a dialogue with DEQ air program staff, and has developed a legal strategy to ensure both that industrial polluters get their applications in, and that DEQ issues timely permits with adequate standards.

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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.

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NEDC T-SHIRTS!



American Apparel T-Shirts are complimentary with your generous donation of \$100 or more. T-Shirts are also available for \$14.

MALE: Select Blue or Grey in M, L, XL sizes.

FEMALE: Select tank-top style in Yellow or Blue in S, M, L sizes. Also available in traditional t-shirt style made of organic cotton in Tan in sizes S and M

M or F Style _____ Size _____ Color _____

Please indicate what size, color, and style you would prefer.

WESTWIND RECAP

BY THE STUDENT DIRECTORS

We had another excellent weekend in October for our annual retreat at Westwind. Nearly 100 students, board members, families and friends came out to this idyllic spot on the Oregon coast for a fun-filled weekend of playing on the beach, yoga, surfing, delicious food, music, educational talks, and great company.

Once again the sun kept us warm throughout the day and the bonfire on the beach kept us warm at night. There was a great series of talks on environmental law topics covering grazing in Oregon's high desert lands, liquefied natural gas, life after law school, oil and gas exploration in Alaska, and new ideas on ways to fight global warming. This year we had a live bluegrass band, the Sodbusters, which was a huge success. Brent Foster, executive director of Columbia River Keeper, led a nature walk up onto the bluffs overlooking the ocean. The nature hike, beauty of the beach untouched by development, vast ocean, and seals and bald eagle sightings allowed participants to reconnect with what many of us work so hard to protect. Many thanks to Lizzy for organizing such a wonderful weekend. **Next year's Westwind retreat is October 2-4, 2009. We hope to see you there!**

NEDC/PEAC Annual Holiday Celebration & Fundraiser

December 5, 2008 at 6:30 pm

Location:

Zaytoon, 2236 NE Alberta Street

Join us to celebrate another year of outstanding results! The evening will include door prize drawings, signature cocktails, and a delicious menu prepared by law school alum and chef extraordinaire Tim Murphy. Come visit with NEDC and PEAC staff and students, and contribute to the success of both organizations.

We hope you can join us!

Please RSVP if possible:

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