



Northwest Defense

The Newsletter of the Northwest Environmental Defense Center

Spring 2003

Letter from the Student Directors

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While spring is typically a time of looking forward to new beginnings, spring also triggers a time of reflection for those of us leaving law school. While the future of NEDC is brighter than ever before, this past year has also been a time of tremendous growth that has set the table for NEDC's future successes. It is our hope that the positive changes occurring now will continue and result in a stronger organization in the future. Sustained organizational growth will take patience and steadfastness on the part of students, the Board, and members, but the potential rewards for NEDC are great.

This past year has ushered in an era of incredible growth in terms of volunteerism and quality of work. More than fifty sets of comments prepared by NEDC students and reviewed by NEDC Board members were submitted to local, state and federal decision makers this year. Students also participated in and developed a record number of lawsuits this year thanks to the added direction that comes from having an executive director. But perhaps most importantly, an incredible number of students gave their time and efforts to help NEDC achieve its fundraising goals through the Clean Water Act Conference Banquet and to help Team NEDC achieve its goals in this fall's Portland Marathon (stay tuned for more on this!).

We wanted to take this opportunity to specifically thank a few people whose dedication and leadership made all this possible, and made our jobs as Student Directors that much easier. Thank you to the outstanding NEDC project coordinators—Laura Hartt, Kelly McMahon, Erin Tobin in Lands & Wildlife; Dona Hippert and Eric Walts in Air & Toxics; and Chandra Middleton, Kate Lariche, and Megan Mackey in Water & Wetlands. A special thank you to Laura, Dona and Megan, who will be graduating this year after putting in three years of tireless efforts for NEDC. We also wanted to thank Ryan Sudbury, NEDC's law clerk, whose organizational skills, determination, and ability to juggle a million things at once have helped NEDC in more ways than he probably knows. And last, but certainly not least, we wanted to thank NEDC's Executive Director, Mark Riskedahl, and NEDC Board members for their direction and oversight on these many NEDC projects and their continued patience as NEDC continues to bolster its future prospects.

In the past three years, NEDC has seen tremendous organizational changes—from no Executive Director to an interim, part-time E.D. to a full time E.D. this year. This transition has been accomplished smoothly and to the benefit of both the students and the organization.

Coalbed Methane Development in Oregon

In July 2002, Coos County issued CDX Gas Corporation of Dallas, Texas permits to drill test wells along Oregon's southern coast. The test wells, to be drilled in the summer of 2003, could determine the future of coalbed methane (CBM) development in Coos Bay. Should the wells reveal marketable amounts of methane, CDX plans to sink over 300 wells on 29,000 acres of land leased from the county. Proponents of CBM development in Coos Bay insist the economically depressed county will only benefit, portraying a scenario that brings in millions of dollars annually, while simultaneously providing clean energy to U.S. markets. However, officials in many western states where CBM development has taken hold, are quick to caution that the development does not come without a cost.

CBM is one of the least polluting fossil fuels, and has been dubbed "clean energy" for its ability to burn many times cleaner than coal. But there is a dirty side to the clean energy myth—extraction and production. CBM development creates numerous surface impacts including the construction of miles of roads and pipelines, well pads and compressor stations. These activities destroy and fragment wildlife habitat and create tremendous noise and air pollution. The single most devastating impact of CBM development, however, is its extraction through a process called "dewatering."

Dewatering involves pumping large volumes of sodium-laden groundwater to the surface, releasing pressure that holds the gas in underground coal seams. The methane then migrates to the surface, where it is collected and piped to a compression station. An average CBM well pumps 15,000 gallons of groundwater to the surface each day, creating serious water quantity and quality problems.

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Oregon Shipyards Evading Regulatory Oversight

Abrasive blast waste containing pesticides, sanitary waste, paint overspray containing heavy metals, contact cooling water, waste water from pressure washing laden with acutely toxic chemicals- these are the types of wastes Congress deemed essential to regulate and control when it passed the Clean Water Act over 30 years ago. The state of Oregon apparently feels otherwise. Financially strapped and deeply understaffed, the Oregon Department of Environmental Quality (DEQ) has followed the path of least resistance and simply chosen, in many instances, not to regulate the water pollution generated by Oregon shipyards at all. This policy is in stark contrast to the efforts of Oregon's neighboring coastal states, who treat the water pollution generated by this sector of industry with the heightened degree of scrutiny and oversight it deserves.



After successfully resolving a Clean Water Act lawsuit earlier this year against Cascade General, the largest shipyard in Oregon, NEDC received numerous tips that other shipyards across the state were flying completely below the regulatory radar screen. NEDC immediately responded with a field visit to one of the facilities in question, a large shipyard on the Columbia River in Troutdale. NEDC Executive Director, Mark Riskedahl, describes what he found when arriving at the site, "I couldn't believe it- I expected a small family-operated marina, but what I saw was a full industrial shipyard, and a crew of workers sand-blasting paint off the hull of an Army Corps of Engineers dredging vessel. That the shipyard's operations were entirely unregulated under the Clean Water Act by Oregon DEQ was disconcerting to say the least".

The antifoulant paints that shipyards strip from the hulls of ships prior to repainting regularly contain large volumes of biocidal agents, including copper, and sometimes Tributyltin or TBT. TBT has been characterized as the single most acutely toxic constituent ever purposefully introduced by humans into the marine environment. The biocides prevent barnacles and other aquatic organisms from taking up residence on ship hulls, but they have also been implicated in the large-scale die-offs of creatures ranging from endangered mussels to sea otters and larger marine mammals. They are also extremely resistant to natural degradation in water. Asked to what degree biocidal agents and other by-products of the Oregon shipyard repair and maintenance industry persist in sediments adjacent to these facilities, the Water Quality Manager for Oregon DEQ's Northwest Region responded, "we honestly have absolutely no idea".

Oregon DEQ's lack of information about the threat that water pollution from this sector of industry presents, and its historical lack of regulatory oversight are particularly troubling given that EPA provided a grant to Oregon several years ago to address this problem. Oregon DEQ developed a manual of best management practices for voluntary implementation, but stopped short of developing water quality permits that incorporated these practices as enforceable measures. As a result, the practices have been largely disregarded. NEDC is committed to bringing Oregon shipyards into compliance with the Clean Water Act, and will be conducting further outreach efforts this Spring to encourage this sector of industry to finally step up to the plate and assume the basic and essential costs of environmental compliance.

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With these changes come new worries (including funding - please join or renew your NEDC membership today!!!) but also new benefits like increased continuity and improved student involvement in litigation and strategy. Like the spring, it is the time to embrace these recent changes and appreciate the opportunities that a fresh start brings by looking forward to NEDC's 'green' future. As those of us graduating this spring move on to the real world and join the ranks of the ever-growing list of NEDC members, we will certainly look back on our time with NEDC as among the most educational and inspirational influences in our legal careers. And, above all, we look forward to a future of clean water, clean air, and sustainable ecosystems in the Pacific Northwest!



Tyson Smith and Scott Nicoll - Co-Student Directors

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Lands and Wildlife
Laura Hartt
Lands and Wildlife
Dona Hippert
Air and Toxics
Eric Walts
Air and Toxics

NEDC
10015 SW Terwilliger
Blvd.
Portland, OR 97219
(503) 768-6673 phone
(503) 768-6671 fax
<http://www.nedc.org>

In the **Lands and Wildlife** group this year, the Bush Administration's wholesale regulatory changes to forest planning, grazing, and the public participation process was a primary focus of our commenting efforts. We commented on proposed changes to the National Forest Management Act (NFMA) planning regulations; the appeal, notice, and comment procedures under NFMA; changes to BLM's administrative appeal process, the Aquatic Conservation Strategy and Survey and Manage components of the Northwest Forest Plan, and the most recent version of the Administration's grazing regulations.

We have also made it a priority to watchdog salvage logging proposals in Oregon, and have provided scoping comments already on at least six salvage timber sales in the state. The most important time to be involved, however, will be this summer when EIS's for many of these projects will be issued. If folks are interested, please let us know because it will be a critical time to provide our feedback.

On the wildlife front, student volunteers have been involved in several important projects, including commenting on the proposed bull trout recovery plan and designation of critical habitat; the Lewis River Habitat Conservation Plan; and EPA's proposal to require section 7 ESA



consultation for registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act. NEDC's wildlife work also went beyond the ESA. For example, with the assistance of Professor Mike Blumm, NEDC submitted extensive comments on the recent proposal by the Northwest Power Planning Council to reduce mainstem flows along the Columbia River. Students also commented on the USDA's environmental assessment of the impacts of continued use of lethal methods to control black bears that damage timber on private lands. Thanks so much to all of the volunteers who put in their time and effort with Lands & Wildlife - it really helped us to accomplish an amazing

Air and Toxics has had a fun and productive year. Eric and I are very happy to have had the opportunity to work with such a terrific group of folks. Thanks is also due the Board, Student Directors and Executive Director for their tremendous support this year. We're also pleased at the level of interaction between the three groups this year. Recently, a guest speaker addressed a combined meeting of all three project groups on the subject of EPA's duty to regulate pesticides in harmony with the Endangered Species Act (in this case with regard to pesticides' effects on salmon). We joined with the Lands and Wildlife group in writing comments on EPA's proposed rules regarding the implementation of this policy.

Several members of the group will also be testifying and submitting written comments at an upcoming public hearing on an air quality permit for Wah Chang Albany, a huge industrial air pollution source in the central Willamette Valley. We are actively contemplating challenging Wah Chang's past air quality violations with a Clean Air Act citizen suit. We're hoping that DEQ will strengthen the monitoring requirements in the new permit so that we won't need to litigate to force



the facility to comply with the law. Additionally, Hanford just published its second EIS, so we may be looking into that extremely toxic situation again in the near future. And we'll continue the progress we've made in putting together resource handbooks on all of the above issues.

Finally, I'd like to say how much I've enjoyed working with Air and Toxics during my academic career. NEDC has been one of my best experiences at the law school by far. We may not have the big bucks on our side, but I'm continually amazed at the great collection of minds and hearts that are drawn to this group. Thanks for the memories!

Coalbed Methane Development in Oregon *Cont'd from Pg. 1*

The vast amounts of water withdrawn depletes regional aquifers, drying up underground reserves that provide local communities with fresh irrigation and drinking water. The extracted groundwater contains dissolved methane and sodium levels 30 times that found in surface water, presenting another serious problem, disposal. Federal and state agencies have only begun to address the serious environmental problems associated with CBM wastewater disposal.

In April of 2003, the 9th Circuit held that the discharge of unaltered CBM groundwater to surface waters constitutes the discharge of pollutants under the Clean Water Act (CWA). The Court's decision could have resounding effects, requiring CBM wells to obtain and comply with state issued permits regulating their discharge.

This will be of particular importance in Coos Bay, where absent any permitting authority the county and state previously relied on CBM development companies to monitor themselves.

Would You Rather Receive the NEDC Newsletter By Email?

NEDC is instituting a new program to help cut down on excess paper. We are going to offer members the option to receive the NEDC newsletter by email. If you would rather receive the electronic copies of the NEDC newsletter please send an email to msr@nedc.org.

Know Someone that Might Like to Receive the NEDC Newsletter or Become a Member?

For the past few years NEDC has stepped up its outreach programs in order to keep more people informed about environmental issues in the Northwest. If you know someone who might be interested in receiving our newsletter, or becoming a NEDC member, please send us an email at: msr@nedc.org.

In the **water group** this year, students pressured industry to clean up facilities and comply with the Clean Water Act through the generation of dozens of comments on proposed NPDES permits as well as TMDLs. One set of student comments led to the initiation and recent settlement of a Clean Water Act citizen suit against Permapost, a wood treating facility in Hillsboro, Oregon. Permapost had violated numerous provisions of its NPDES permit for many years and was contaminating a tributary of the Tualatin River with arsenic, chromium and pentachlorophenol. As a component of the settlement, Permapost will be installing the technology necessary to prevent permit violations in the future, as well as contributing over \$10,000 to a local wetlands preserve.

Several students helped NEDC play a leading role in addressing the adverse water quality effects of large scale animal production operations in Oregon this year. Additionally, graduating student Bubba Cook completed a report on the adverse environmental effects of salmon hatcheries in Oregon. Bubba also launched a marine project within the Water Group which focused on commenting on wildlife issues regarding the Marine Mammal Protection Act and application of the Endangered Species Act to Gray Whales and Orcas, as well as producing an informational pamphlet on the hazards of marine fisheries. Finally, students submitted comments on the Bush administration's advanced notice of proposed rulemaking intending to clarify the definition of "navigable waters". Thanks to



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



#4340

