

# NORTHWEST DEFENSE

The Newsletter of the Northwest Environmental Defense Center



FALL 2006

## Keeping the Muck out of the Water

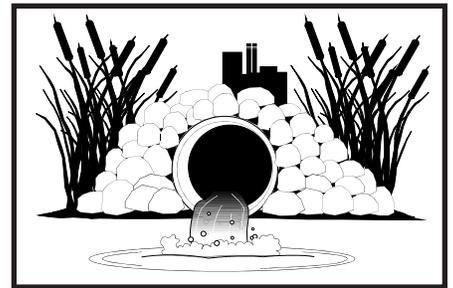
Pollution from industrial stormwater run-off remains one of the biggest water quality concerns across the country. NEDC has been working for years to insure industrial stormwater permits issued to industrial polluters in Oregon are as protective as they can be. This fall, NEDC student coordinator Lauren Goldberg spearheaded one of the most comprehensive permit commenting efforts NEDC has ever marshalled.

It started last year when, with assistance from NEDC board member/PEAC staff attorney Melissa Powers, NEDC was able to enter into a settlement agreement with Oregon DEQ over the terms of Oregon's industrial stormwater permits. NEDC patiently waited for Oregon DEQ to comply with the terms of that agreement, and remained flexible, perhaps to a fault, when the agency breached the terms of that agreement by missing critical deadlines. Our hope was that the end result would be a more protective and more open stormwater permitting process.

Though all stormwater permitting in Oregon had previously been conducted behind closed doors and out of view of the public, it was important to us that the public be afforded the opportunity to comment on permit applications. If a new industrial operation was moving in to a local community, it made sense to us that neighbors be afforded a meaningful opportunity to participate in a decision over whether that facility would be allowed to degrade local water quality. Water is, after all, one of our most precious public resources.

While it was arguably complying with the language of the settlement agreement, Oregon DEQ clearly acted contrary to the spirit of that agreement when it recently released over 100 separate permit applications in a single watershed for a short 14-day public review period. NEDC's dedicated corps of student volunteers sprung into action. After identifying 11 operations ranging from scrap yards to chrome plating facilities that represent industrial sectors prone to stormwater pollution problems, a dozen students descended upon Oregon DEQ's office to inspect files and review permit applications. Though the relevant documents are relatively uniform and less than detailed, the agency refuses to enter the modern technological era by making them available electronically. Unfortunately, the agency also often treats concerned citizens as posing an imposition during the in-person file review process.

The agency is presently reviewing the input we provided, and we will keep you updated on our further efforts to limit the environmental and public health risks of industrial stormwater pollution in Oregon.



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## “Salmon Plinko” debuts at the CRAG Carnival

NEDC students Gilbert Mears, Jane Steadman and Ellen Trescott built an environmental version of the classic carnival game, “Plinko,” for the Cascade Resources Advocacy Group's fifth year anniversary celebration on October 28th. Kids and adults alike loved the game, which challenges players to try their luck sending a “salmon” down the Willamette River. Dangers included toxic mixing zones, dams, Ross Island, and other human-caused impediments to migration and spawning. The game was built from scratch and embellished with toys, trees, and cardboard buildings. NEDC won a “best booth” award at the carnival, which featured many environmental groups that NEDC works closely with. The event was a wonderful coming together of students, families, and activists, and a great way to exhibit the creativity of NEDC's student members. Look for “Salmon Plinko” at future events!

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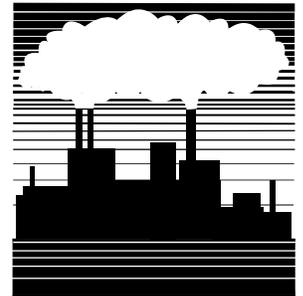
# Litigation Update

## *Owens Corning Case Resolved*

This summer, federal Magistrate Judge John Jelderks denied Owens Corning's motion to dismiss the *NEDC vs. Owens Corning* lawsuit, ruling in our favor on every issue. The company had moved to dismiss the case, arguing among other things that the Plaintiffs lacked standing to bring suit based on injuries that could result from the facility's emission of HCFC 142b, a potent greenhouse gas and ozone-depleting substance. In its May ruling, the court held that the Plaintiffs had standing to sue to seek redress for these global problems.

Dismissing arguments made by the company's law firm Perkins Coie, the court made clear that if the Defendant's tenuous theory that harm to all is harm to none was correct, then no person could challenge harm "to the Grand Canyon or Yellowstone National Park, or threats to the giant sequoias and blue whales, as the loss of those treasures would be felt by everyone."

The court's ruling is an important legal precedent for citizen groups bringing litigation related to climate change and ozone-depletion. Thanks yet again to our outstanding attorneys at PEAC for their great work on this case!



## *Mining Victory*

On August 7th, The U.S. Forest Service was required by federal Magistrate Judge Paul Papak to enjoin gold mining activity in the North Fork Burnt River watershed near Baker City in eastern Oregon. The Forest Service had unlawfully approved the mining in 2004 in violation of the Clean Water Act.

The court held that the Forest Service may not ignore or defer its responsibility to remedy existing water pollution "based on a misguided notion that the right to mine trumps federal and state law."

In a field trip to the affected area late this summer, NEDC executive director Mark Riskedahl and Law Clerk Bethany Cotton experienced first hand the ecological devastation caused by over 150 years of gold mining throughout the area. Mark and Bethany were pleased, however, to see that the public lands subject to the lawsuit were enjoying a reprieve. "Given that the price of gold was at a record high this summer, we expected to find evidence of considerable mining activity", said Mark. "Thankfully, the miners seemed to be respecting the court's order".

At one point during the trip, Mark and Bethany were confronted by a pistol-packing miner. "Once it was clear to him that we were from the city and weren't out in the woods trying to jump his claim, he seemed to relax a bit", said Bethany. "It is remarkable to see the damage that can be wrought upon the landscape when a Wild West mentality is coupled with a greed for gold".

NEDC, Hells Canyon Preservation Council and Earthworks are represented in this matter by PEAC attorney Melissa Powers, NEDC board member Brett Brownscombe and Roger Flynn of the Western Mining Action Project. For further information, or a copy of the court's decision, visit [www.nedc.org](http://www.nedc.org)

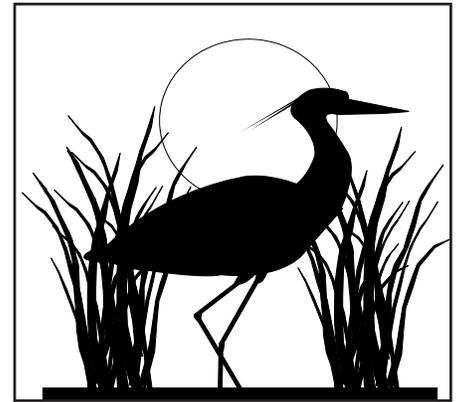
## Student Project Updates - Spring 2006

NEDC's student volunteers have been hard at work this Fall. We have a very motivated group of new volunteers who, with leadership from our committed Project Group Coordinators, have accomplished a great deal. Here's an overview of projects they've been working on:

### *Lands & Wildlife*

The Lands and Wildlife group has a great group of student volunteers this year! The group has commented on a number of proposals that will potentially affect endangered species. Our first project involved the Oregon Military Department's proposed weapons training ranges in the Boardman Bombing Range Complex, home to the Washington ground squirrel.

Comments were also submitted to the Fish and Wildlife Service regarding the proposed critical habitat designations for the Canada lynx, and students are working on a similar set of comments concerning a proposed 3,666,108-acre reduction to the critical habitat designation for the marbled murrelet. Forest issues remain another focus, including comments on proposed forest plans for the Idaho Panhandle National Forest and the Kootenai National Forest, some of the first plans written under the 2004 NFMA regulations—regulations that assert that forest plans may be categorically excluded from NEPA analysis. Students have also compiled comments on the proposed salvage logging of the Sharp Fire in the North Fork of the John Day Ranger District.



~ Katie, Austin and Natasha

### *Air & Water*

With the support of a dedicated group of NEDC student volunteers, the Air and Water Project Group focused on submitting comments and initiating enforcement actions to protect Pacific Northwest air and water quality. In defense of the Pacific Northwest's air, volunteers responded to the Title V renewals for the Georgia Pacific Pulp and Paper Mill in Toledo and Aqua Glass facility in Klamath Falls. Taking the lead in both of these efforts has

been Johannes Epke, a first year law student.

In the first weeks of school, student volunteers focused on protecting Columbia Slough water quality by commenting on proposed general industrial storm water permits. Specifically, students investigated eleven facilities' permits and evaluated if the permits met the requirements of the Clean Water Act (CWA) and Oregon law. Ultimately, NEDC submitted eleven comments urging the Department of Environmental Quality (DEQ) to obtain the necessary information to determine if a particular facility's discharge qualifies for coverage under the general permit. NEDC urged DEQ to reassess the proposed permits and create meaningful pollutant discharge limitations that meet the requirements of the CWA. Continuing efforts to protect Columbia Slough water quality, students are presently engaged in investigating CWA enforcement actions to bring industrial storm water dischargers currently in violation of pollutant discharge permits into compliance.

Early in the semester, PEAC clinical professor Melissa Powers met with students to explain the nuts and bolts of the permit system crafted under the CWA. Likewise, NEDC Executive Director Mark Riskedahl gave a presentation highlighting NEDC CWA enforcement actions on the Columbia Slough.



~ Lauren and Jay

## Project in Focus:

### Liz Crosson, NEDC Coastal Issues Law Clerk, Takes Aim at Overdevelopment

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This summer, NEDC decided to take a closer look at some of the pressing environmental issues facing the spectacular Oregon coast. Although Oregon has long been considered to be at the forefront of coastal conservation, the state finds itself in the midst of a coastal development boom. Coastal areas, inundated with large housing developments, are changing rapidly, compromising the ecological beauty that attracts people to the coast in the first place. The Oregon coastal environment supports sensitive wetland areas, unique species and highly erosive steep slopes, qualities less than ideal for large-scale housing and commercial development.

In addition to a specialized flora and fauna, the coast also has a unique management scheme. Subject to local land use laws, state laws and federal regulations, the coastal zone is managed in accordance with land management statutes, and is also required to follow Oregon's Coastal Zone Management Program (CZMP). The CZMP includes specific coastally significant statewide goals, as well as a territorial sea plan and a non-point source pollution plan. Managing the coastal zone separately from inland areas recognizes its unique characteristics and requirements.

I started working for NEDC on coastal issues this summer and have continued that work into the fall. My focus has been on water quality issues in the coastal zone and developing new tools to monitor coastal development. NEDC assisted concerned coastal residents in submitting a petition for reconsideration to the Oregon DEQ for a renewed NPDES water quality permit for the Georgia-Pacific pulp and paper mill in Toledo. The mill discharges millions of gallons of wastewater into the Pacific Ocean off Nye Beach in Newport, Oregon. The petition requested that DEQ require more complete monitoring of the discharge, as well as the millions of gallons of waste that is imported from the county landfill and incorporated into the industrial discharge. DEQ recently granted our petition to reconsider the permit.



In addition, I have worked with several first-year law students commenting on water quality permits along the coast for sewage treatment plants, dredging projects, and most recently, construction sites. NEDC hopes to develop new procedures to ensure that developers are complying with water quality permits for construction sites. Construction permits require that the sites comply with turbidity standards and monitoring requirements. Several students are currently researching these permits and discovering new ways to provide public input on the protection of Oregon's coastal waterways.

~ Liz

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### Westwind Retreat Enjoyed by NEDC Volunteers, Board Members and Friends

Westwind 2006 was a smashing success. The weather was on our side, giving those students new to Portland a fabulous introduction to the beautiful Oregon coast. Ralph Bloemers of the Cascade Resource Advocacy Group was our first guest speaker, entertaining and informing us about the struggle for Wilderness designation for Mt. Hood's Cooper Spur. The moon was bright on Friday night, and the conversation and beer flowed freely around the campfire. Saturday met us with sunny skies and almost no wind; adventurous members played on the beach, went for a hike, checked out the tide pools, and a few brave souls surfed or went for a swim. After lunch Board members and former law clerks discussed life after law school, and Shaun Goho, Associate Attorney with Earthjustice Seattle, gave a talk about the Roadless Rule and the recent court victory reinstating it. Then Dave Roberts, environmental journalist with Grist magazine, shared his thoughts on hope for the future of the environmental movement. After dinner Bill Eddie, attorney for Advocates for the West, discussed his work to regulate Concentrated Animal Feeding Operations in Idaho. Four students were elected to the Board of Directors, as was attorney Brett VandenHeuvel. All told over one hundred people attended the Westwind Retreat; to those of you who joined us, thanks for coming! To those of you who weren't able to be there, we hope you will join us next year, Oct. 12-14, 2007. Save the date!

## What Did I Do for Summer Vacation? Oh, where do I begin...

Once again, our student volunteers gained meaningful summer experience helping the environment in 2006. The skills learned while working on NEDC projects have helped many students land jobs with environmental organizations throughout the northwest.

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### **Katie Strong**

#### **Forest Service Employees for Environmental Ethics**

I had an amazing summer working as a legal intern with Forest Service Employees for Environmental Ethics' Staff Attorney, Marc Fink in Duluth, MN. Marc, a former NEDC Law Clerk, gave me a variety of projects and I had the chance to become good friends with NEPA and NFMA (The National Environmental Policy Act and the National Forest Management Act). Two of my major projects involved commenting on five national forest plans being promulgated under the new NFMA regulations and drafting a summary judgment motion for a case challenging illegal road building in the Tongass National Forest. And, to balance out the legal work, I guided kayak and rock climbing trips for Midnight Sun Adventure Company.

### **Natasha Bellis**

#### **Oregon Natural Desert Association**

Having had such an amazing experience with NEDC last year, I am pleased to return as a Lands and Wildlife Coordinator. A PILP stipend – and my work with NEDC - made it possible for me to spend this summer as a law clerk for Oregon Natural Desert Association (ONDA). Much of my work focused on protecting Oregon's desert from the degradation caused by livestock grazing by bringing grazing into compliance with the standards mandated by law and advocating for wilderness designation. ONDA offered a perfect environment for me to learn the essentials of administrative law while helping me to gain familiarity with integral environmental statutes.

### **Jamie Saul** **Earthjustice**

I spent my summer working with the Seattle office of Earthjustice, a public interest law firm that once served as the litigation branch of the Sierra Club. I spent much of my time on projects related to the recent listing of the Southern Resident Orca Whale under the Endangered Species Act. I also conducted legal research and drafted documents under the Freedom of Information Act and the Administrative Procedure Act, cornerstones of open and accountable government. Earthjustice has remarkably talented attorneys who have been leaders in environmental law for decades, and it was a privilege to work with them.

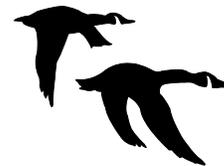
### **Ellen Trescott**

#### **Pacific Environmental Advocacy Center**

During the summer I worked for the Pacific Environmental Advocacy Center (PEAC), a small group of public interest lawyers in Portland who frequently bring cases on behalf of NEDC and similar organizations. They also run a law school clinic, which made for great feedback on the memos and motions I drafted, and most of PEAC's attorneys are on NEDC's board of directors. As a law clerk, I conducted research on issues of administrative law (surprise!), and on cases under the Clean Water Act and Clean Air Act. I worked on water quality standards for Oregon's rivers, and helped reform Oregon DEQ's proposed Clean Air Mercury Rule by submitting testimony and comments to the agency. I also researched the legality of exemptions from Clean Air Act pollution controls at a coal fired power plant in eastern Oregon. PEAC does a world of good for NEDC, law students, and the environment of the Pacific Northwest. It was an honor to work with such talented attorneys!

### **Lauren Goldberg** **Columbia Riverkeeper**

Thanks to PILP and funding provided by proceeds from a recent NEDC Clean Water Act settlement, I spent the summer clerking for Columbia Riverkeeper (CRK) in Hood River, Oregon. Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. As a law clerk, I focused on employing legal tools to protect Columbia River water quality: writing comments on proposed pollution discharge permits, drafting legal documents urging state agencies to protect Columbia River fish and wildlife, and advocating for agencies to adopt stronger environmental rules. Columbia Riverkeeper relies on the support of dedicated volunteers and, as a law clerk, I gained insight into engaging the public in environmental advocacy.



## Clean Air Mercury Rule (CAMR) Update

Over the summer NEDC commented both in writing and orally on DEQ's proposal for CAMR adoption. Seven NEDC staff members and board members provided testimony. DEQ's proposal did not go far enough to protect human health and the environment from mercury pollution and delayed installation of controls on the PGE Boardman coal fired power plant for over a decade. After significant public outcry, DEQ released a new proposed rule, which, though significantly improved, still did not provide for controls at the level and in the time frame that NEDC and experts around the country see as both possible and necessary.

The proposal also enables Oregon to participate in the first ever interstate trading program for a toxic pollutant. Along with other area environmental and public health organizations NEDC authored a Citizen's Proposal as an alternative to DEQ's proposed rule calling for an accelerated timeline, stricter pollution control levels, opting out of the federal trading scheme and installation of mercury monitoring equipment. Executive Director Mark Riskedahl presented the proposal to the Environmental Quality Commission, specifically arguing against trading. The EQC will likely make a decision at the December meeting. Stay tuned.

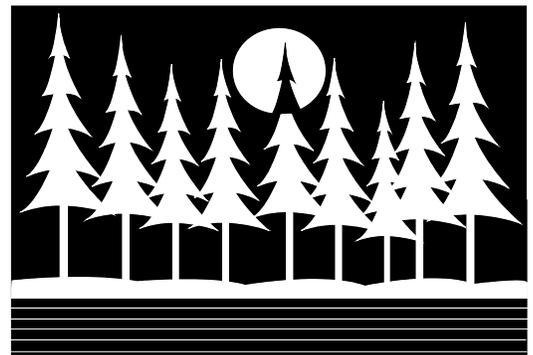
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### **NEDC Receives Generous Support from the Bullitt Foundation**

NEDC recently received a two-year general support grant from the Bullitt Foundation amounting to the largest commitment of foundational support in the organization's 37-year history. Please join the momentum behind our efforts to develop a sustainable funding base by renewing your membership today. Thanks to the Bullitt Foundation, and thanks to you, our generous members.



Keep up to date on NEDC's many successes at [www.nedc.org](http://www.nedc.org)