



# NORTHWEST DEFENSE

The Newsletter of the Northwest  
Environmental Defense Center

WINTER 2016

## OUT OF THE STORM

November 8, 2016 was not a great day for American Democracy. In the weeks that have followed in its wake, an ill-tempered, mean-spirited President-elect and his transition team have issued one significant anti-regulatory signal after another. As evidenced by the recent decision to appoint fossil-fuel advocate and climate change denier Scott Pruitt as the head of the U.S. EPA, the environment, and particularly climate change, are squarely on the incoming Administration's regulatory rollback agenda.

Thankfully, the Executive branch of the American democratic system, even when headed by a President with an unabashedly authoritarian style of leadership, is constrained by numerous very powerful countervailing forces.

Public support for environmental protection is deep and strong. In poll after poll, Americans express concern about clean water and air, endangered species and climate change. In fact, Pew polling on Dec. 8 found that more Americans continue to say stricter environmental laws and

regulations are worth the cost (59%) than to say they cost too many jobs and hurt the economy (34%).

The recent election cycle was many things, but it certainly wasn't an anti-environmental mandate. In fact, it was a clear wake-up call that the protections and liberties we all so dearly appreciate, and far too often take for granted, require vigilant safeguarding.

State and federal law are replete with powerfully pro-environment statutory language that, over the course of decades, has supported the evolution of a complex body of environmental regulations. These laws and regulations can not be swept away with a magic wand, and history is filled with examples of failed anti-environment initiatives.

Professor William Buzbee of the Georgetown University Law Center argued compellingly in a Dec. 8 New York Times opinion piece that environmental protection has sci-

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## REDUCING POLLUTION IN MUNICIPAL STORMWATER

Among Oregon's best attributes are our lush green forests and the incredible diversity of fish populations in our many streams and rivers. And it is our well documented rain that feeds and supports these wonders. In the more developed areas of the state, however, those essential rain and snow storms can cause problems if we are not vigilant. In fact, stormwater runoff from urbanized areas is one of the largest threats to water quality in Oregon. Collected and directed through management systems, called municipal separate storm sewer systems, or MS4s for short, this runoff picks up toxic pollutants like heavy metals, oil and grease, pesticides, and organic compounds that degrade water quality, harm fish and wildlife and threaten the use and enjoyment of local streams and rivers.

The Clean Water Act requires cities and counties to manage this runoff to prevent pollutants from reaching nearby streams and rivers. In Oregon these communities are broken into two groups, the larger towns and cities, Phase I communities, and the smaller towns and populated counties, Phase II communities. Both sets are required to have and comply with permits, issued by Oregon DEQ that establish what management measures are necessary to protect Oregon's waters.

There are 31 Phase II communities in Oregon. These cities and counties are home to roughly a third of Oregon's population. In each of these communities, the local waters are considered impaired, or degraded, as a result in part of the impacts of the stormwater runoff flowing off the roads and other impervious surfaces in developed portions of these areas. As a result, there can be no question that these cities and counties must take the steps necessary to protect their local waters by reducing or eliminating the release of pollutants to these waters.

To ensure this happens, NEDC has been working for more than three years pushing DEQ to craft a permit that estab-



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lishes specific, clear, measurable, and enforceable terms detailing what is required to reduce the discharge of pollutants from urban areas to the maximum extent practicable, protect water quality, and help recover the most imperiled streams and rivers. Underlying our efforts is the belief that the proper and effective management of stormwater runoff is necessary to protect water quality, recover Oregon's iconic fish and wildlife populations and to secure the use and enjoyment of our streams and rivers, now and into the future.

**Alumni Stoplight:** NEDC's efforts to make sure that DEQ writes a lawful and protective permit recently received a boost from the new EPA regulations on permits for MS4 Phase II communities. This regulation was the result of a case brought by the Environmental Defense Center and others in 1999 and a settlement recently negotiated with EPA by NEDC alum and EDC staff attorney Maggie Hall.

*(Out of the Storm...Continued from page 1)*

ence, data, statutory requirements, Supreme Court precedents, existing regulations, and major state progress in its favor, concluding that under the Constitution and rule of law, change by presidential fiat is not an option.

He's right. We love clean water, clean air, and the beautiful web of life that comprises the Pacific Northwest. Even with the Republican majority in Congress, the law and the weight of public opinion is on our side. With your support, we'll keep fighting.

# OREGON PERMIT BACKLOG

The first step to fixing a problem is admitting the problem exists. The Oregon Department of Environmental Quality has a major problem. The Department is responsible for issuing permits under the Clean Water Act to limit the discharges of pollutants from factories and stormwater runoff from streets, construction sites and industrial facilities. The permits are the primary mechanism for protecting and recovering Oregon's waters. These permits must be reviewed, updated, and reissued at least every five years to ensure their terms and conditions reflect the latest technology for reducing pollution and protect water quality.

Currently, over 75 percent of the permits for industrial facilities and nearly all of the permits covering stormwater runoff from streets and highways are out of date. As a result, Oregon has the unwelcome distinction of being a nationwide leader in expired permits. These permits have been allowed to linger on under an exception to the five year review process as "administratively extended" permits. Some permits have languished in this regulatory purgatory for more than two decades.

NEDC believes that Oregon's failure to renew permits in a timely manner is not only unlawful, but is putting Oregon's waters and citizens at risk. As a result, we were encouraged earlier this year when the Department began a new effort to to understand the causes of the backlog and to correct it. Any hopes we had for that process, however, faded quickly as we began to realize DEQ failed to recognize or accept the most fundamental failure of its NPDES permit program—namely its consistent failure to write NPDES permits that comply with the Clean Water Act, state law, and the federal and state implementing regulations. We believe that until the Department acknowledges both its shortcomings and the very real challenges it faces on this front, and until it takes steps to ensure Oregon's permits fully and properly implement federal and state law, any process to "improve" the NPDES program will simply end in failure.



Hoping to push this process back on track before it is too late, NEDC, working with our partners at the Earthrise Law Center, Northwest Environmental Advocates and Columbia Riverkeeper, participated in several workgroup meetings and sent a formal letter recently to the Oregon Environmental Quality Commission urging the commission to oversee the changes necessary to ensure the protection and recovery of Oregon's waters. You can find that letter on our website. We'll keep you updated as this issue progresses.

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# WATER QUALITY UPDATES

## PESTICIDE PERMIT

Working with our partners at Northwest Environmental Advocates, NEDC has been pushing Oregon DEQ to improve the current Clean Water Act general permit regulating pesticide discharges. We submitted comments noting several distinct flaws with the permit that must be addressed before DEQ can continue to authorize these potentially harmful practices. In short, DEQ must ensure that the permit results in meaningful protections for Oregon's waters. To accomplish this, DEQ must add specific terms and conditions to the permit limiting and controlling the use of pesticides near surface waters that will result in compliance with established water quality standards, help restore already degraded waters, and protect the most sensitive uses of those waters, including threatened and endangered species. In addition, DEQ must require potential permittees to register for the permit (a basic requirement that is notably lacking for the current iteration), and prepare clear and specific management plans that describe how the applicators will comply the permit's conditions.

## RIGHT BELOW OUR FEET- UNDERGROUND INJECTION CONTROLS

NEDC has continued its focus this year on protecting groundwater. Throughout Oregon, municipalities and industrial facilities regularly use drywells, also known as underground injection controls or UICs for short, to manage polluted wastewater or stormwater. Sometimes, directing stormwater underground rather than discharging it to surface waters can be an effective management option. However, improperly managed UICs pose serious threats to the environment and human health, as these discharges have the potential to contaminate groundwater sources, which are or may become sources of drinking water. Potential

groundwater contaminants include heavy metals, toxic organics, nutrients, pesticides, salts, and microorganisms, such as E. Coli.

As a result, the issuance of UIC permits, as required under the Safe Drinking Water Act, presents an important opportunity to achieve real protections for groundwater. To achieve this goal, Oregon DEQ must design and issue permits that comply with the underlying state and federal regulations and are protective of Oregon's groundwater. Regrettably, recently proposed and issued permits have fallen short in many respects. From failing to require the use of reasonable management practices to reduce or eliminate the discharge of pollutants to groundwater, to failing to issue lawful permits to each facility that must be regulated, DEQ has continued its history of failing to take seriously its responsibility to regulate discharges to groundwater.

NEDC has been working for years to put DEQ on the right track. That work will continue as the agency continues to work through the significant backlog of unpermitted and illegal UICs. NEDC Project Coordinator Tyler Lobdell has been heading NEDC's efforts to push DEQ to write clear, effective, and enforceable permits. Over the past year, Tyler has directed and overseen students as they have researched the legal and factual issues surrounding the permitting of stormwater UICs. Building on this work, Tyler and the NEDC volunteers will continue to track and comment on new proposed UIC permits.

## HIDDEN IN PLAIN SIGHT - INDUSTRIAL STORMWATER RUNOFF

While some see the transition from fall to winter as the time to put the boats away for the season, it is when the

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**Thank you for  
your support!**

NEDC is able to fight for the preservation of the Pacific Northwest thanks to the ongoing support of individuals like you. From protecting resources like the Columbia River, to ensuring clean air is a right for all Oregonians, to mentoring the next generation of environmental advocates, your contributions help NEDC continue our mission.

# BACK IN COURT TO STOP MINING COMPANY'S POLLUTION OF THE BOISE RIVER

NEDC and the Idaho Conservation League have reopened our lawsuit against the Atlanta Gold Corporation, alerting the Court to nearly 500 new violations of the Clean Water Act at the company's mine upstream of Boise, Idaho.

In 2012, the U.S. District Court of Idaho ruled in our favor, finding that Atlanta Gold discharged excessive amounts of arsenic and iron into the Boise River headwaters. The Court ordered Atlanta Gold to reduce its pollution levels and pay a \$2 million penalty to the U.S. Treasury. Despite the Court's order, Atlanta Gold has failed to make penalty payments according to schedule and continues to pollute in violation of its Clean Water Act permit.

Our recent court filings ask the Court to hold Atlanta Gold in contempt of court for failing to follow the 2012 order. The filings seek further penalties for Atlanta Gold's new Clean Water Act violations and ask the Court to order Atlanta Gold to develop and implement a new plan to reduce its pollution and comply with the law by August 1, 2017.

For many years, Atlanta Gold has failed to properly control polluted water flowing from the company's mine. The company took over management of the historic mine site in the 1990's and conducted additional underground exploration in hopes of developing a new mine. Discharge records indicate that this additional exploration significantly increased the pollution discharging from the site, and the Court confirmed that Atlanta Gold is responsible for cleaning up this pollution.



As noted by Federal District Court Judge Mikel Williams in his 2012 ruling, Atlanta Gold demonstrated a "history of attempting to delay compliance until it had its mine up and running."

As documented in Atlanta Gold's own monitoring reports and reported to the Court in our recent filings, Atlanta Gold has discharged unlawfully high levels of arsenic and iron 497 times since December 15, 2012. That is the day the Court ordered the company to come into compliance with its Clean Water Act permit limits,

which are designed to protect water quality in Montezuma Creek, a headwater tributary to the Boise River.

NEDC and ICL returned to court because the company has shown no signs that it will take the steps necessary to protect Montezuma Creek or the Boise River. The Boise River provides over 30% of Boise's drinking water, in addition to providing valuable fish and wildlife habitat, and serving as the recreational hub of the region.

NEDC is represented in this case by our Staff Attorney Andrew Hawley, and Bryan Hurlbutt and Laird Lucas at Advocates for the West.

To learn more about great work our NEDC alumni are doing at the Idaho Conservation League and Advocates for the West, find them at <http://www.idahoconservation.org/> and <http://www.advocateswest.org/>

## Make it a regular thing!

Show NEDC your support by committing to an annual donation in whatever amount works for you. For a monthly donation in any amount, you will provide NEDC with ongoing support to protect the natural environment.

## One and done!

By making a one-time donation today, you ensure NEDC will have the tools to continue unconditionally fighting for our environment and natural resources.

## A legacy of environmental protection!

Including NEDC in your will is a powerful way to leave a lasting impact on the Pacific Northwest.

To learn more about how to donate or what your donations will help support, visit us at <http://nedc.org> or email [nedc@iclark.edu](mailto:nedc@iclark.edu)



*"NEDC has been the source of my environmental law inspiration this semester. As a 1L, having a chance to work on substantive legal work was incredibly empowering. My project was to expose car dealerships who assist individuals in "rolling coal." In the process of my evidence gathering, I spoke with an auto part salesman who told me how his shop sells parts to help people remove emissions control devices from their trucks so they can emit huge plumes of diesel smoke! As part of my NEDC project, we put together a report listing dealerships in Oregon who sell parts to tamper with or disable a vehicle's pollution control system. As a first year law student I had a chance to assist NEDC's lawyers in taking legal action against dealerships and auto body shops who evade the law. Thank you NEDC for engaging me in important environmental work!"*

**-ANNA TADIO, STUDENT VOLUNTEER**

## WE LOVE OUR VOLUNTEERS

Since late this Summer, NEDC has had the pleasure of working with some of Lewis and Clark Law School's most dedicated environmental students. Our volunteers are essential in allowing us to successfully protect of the natural resources of the Pacific Northwest. So, what have they been up to over the last few months?

Our air toxics volunteers produced research that helped guide our Executive Director, Mark, through the initial phases of Cleaner Air Oregon. This team worked together to produce legal memos and write-ups on why air toxics are worth regulating, the economic stability that regulation provides, what air toxics should be regulated, and if there are any barriers that might prevent Oregon's regulation.

To further address clean air, several volunteers tackled the issue of "rolling coal" by conducting preliminary research and highlighting auto mechanics potentially responsible for these dirty (and illegal) diesel engine modifications.

With respect to clean water, students spent time tracking and commenting on proposed Clean Water Act section 404 permits, while others produced summaries for scrap metal properties that have been identified as sources of pollution. Further, NEDC volunteers assisted in gathering vital information on local fish hatcheries to review for Clean Water Act compliance. This team served as NEDC's clean water watchdogs and produced numerous summaries to assist us in preventing the degradation of our region's waterways.

On the agriculture front, a handful of our volunteers spent the last few months gathering preliminary research on Oregon cannabis production operations. NEDC hopes to get an early start on ensuring the production of marijuana is done sustainably and without detriment to Oregon's natural environment.

Talk about a semester well spent! Our organization was lucky to have such a solid group of volunteers this semester and we hope to see many of them working alongside us going forward!

**Volunteers:** Kacy Manahan, Tyler Lobdell, Lucy Yates, Ben Kirsch, Andrew Linden, Morgan Staric, Darrell Henderson, Sangye Ince-Johansen, Lani Petrulo, Danielle Elefritz, James Burton, Sage Ertman, Kadin Pasley, Deni Replogle, Ross Stansberry, Max Yoklic, Anna Tadio, Pavlo Stavrou, Brigit Rollins, Ashlyn White, Paige Fennie, Carolyn Griffin, Teresa Smith, Christina Collier, Licia Sahagun, Alison Roth, Cooper Rodgers, Nick Tealer, Tess Jacobsen, and Keenan Ordon-Bakalian.

# OREGON AIR TOXICS REGULATORY REFORM

NEDC's participation in the new air toxics regulatory reform effort, Cleaner Air Oregon, is in full-swing. Thus far, we've attended several full-day advisory committee meetings, and spent many hours collaborating with a wide range of awesome public health, neighborhood organization, academic, local government and environmental justice representatives involved in the process.

Throughout the early stages of this process, we've been impressed by the level of competence and professionalism demonstrated by Oregon state government. Staff with both Oregon DEQ and the Oregon Health Authority have tackled complex scientific questions, surveyed strategies used by other states, synthesized a massive volume of complex information, and provided it in well-presented condensed portions to the advisory committee over a tight time-frame.

When the Portland air toxics controversy erupted onto the scene earlier this year, it quickly became obvious that Oregon was far behind other states in regulating and controlling the emission of toxic air pollutants. There is simply no system in place to identify which sources are emitting which pollutants, let alone any mechanisms to require and demonstrate reductions of those pollutants over time. Other states have been doing this for decades. How did we fall so far behind?

Observing the Cleaner Air Oregon Advisory Committee discussions provides an insightful window into how we ended

up here in the first place. Early in the process, old guard industrial toxic polluters began echoing three untenable themes: 1) everything is fine the way it is; 2) change is really hard; and 3) innovation costs too much. Though we have seen this recur time and time again in other contexts, it is particularly disappointing to hear it yet again concerning toxic air pollution.

Extensive research as well as state and federal agency cost-benefit analyses over recent decades has repeatedly shown that the cost of environmental regulation is more than offset by a broad range of economic, public health and jobs-related benefits. This is particularly the case for air pollution regulations.

We will continue to push back against resistance to change from the industrial sector, and thanks to support from the Meyer Memorial Trust, we'll be working during the upcoming year with partners at Neighbors for Clean Air and Portland State University to combine the scientific, legal research and neighborhood organizing advocacy necessary to drive meaningful air toxics regulatory reform in Oregon.



*(Water Quality Updates...Continued from page 4)*

storm clouds are the darkest that NEDC's Executive Director starts thinking about getting out into the field or into a kayak. From experience, Mark knows that the winter rains unleash a threat that has been hiding in plain sight all summer long. Over those dry months the yards and parking lots of industrial facilities (the factories, shipping centers, scrap yards, and the like) have been collecting dirt, oils, chemicals and other pollutants. When the rains come, these contaminants are picked up in the stormwater and carried to nearby streams and rivers.

With the current Oregon industrial stormwater permits nearing the end of their five year terms, Oregon DEQ is in the process of revising the minimum standards facilities must meet to reduce the pollutants running off their sites. This process presents an important opportunity for

the State to assess the current status of our waters and to set requirements necessary to ensure those waters are protected. NEDC will be pushing the Department to take a hard look at what has, and has not, worked under the current permit, and to make the changes necessary to move us towards the goal of clean water.

In the meantime, NEDC continues to enforce the existing permits. Through Mark's work on the water and biking through industrial areas, and work by NEDC staff, students and volunteers reviewing files at the regulatory agencies, we regularly find violators and bring enforcement cases. These cases result in changes at the facility to reduce or eliminate the discharge of pollutants and require the companies to pay for work to remediate and protect the waters they may have harmed.

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## 3<sup>RD</sup> ANNUAL PEDAL PURSUIT

Though winter is upon us, spring is right around the corner. Pedal Pursuit 2017 planning is in full swing and now is the time to start putting together your perfect team. If you haven't had the opportunity to participate in this Portland scavenger hunt by bike yet, now is the time. Groups of five members bike around the city searching for clues and completing challenges all to ultimately end up at the final destination to enjoy a cold beverage, good food, and environmental chit chat. This year is looking to be the most fun and challenging Pedal Pursuit yet so mark your calendars! Visit our website or the Pedal Pursuit Facebook page for more details.