

Northwest Defense

The Newsletter of the Northwest
Environmental Defense Center



NEDC Values Your Support

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Here Comes The Rain Again

It's that time of the year. If you see a visible plume associated with a pollution discharge into a

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Westwind is Almost Here!

It's Westwind season! NEDC is pleased to announce that we will again be hosting our annual meeting and retreat at Camp Westwind September 30 through October 2. As always, there will be lots of great speakers and NEDC alumni in attendance, sharing thoughts and observations about the wide range of projects they are currently working on.

local waterway, the parties responsible may well be violating the law. If you are aware of a specific industrial property or outfall that could use a closer look this rainy season, please give us a call at (503) 768-6673 or send an e-mail to nedc@lclark.edu.

We hope to see a lot of familiar faces there and would love to hear any exciting updates on how you've stayed involved in environmental law after school and after NEDC.

The cost for both nights is \$75, and the cost for one night is \$45. For more information, or to register, email us at nedc@lclark.edu.

Meet Our Newest Staff Member

Question and Answer with Cassidy Valenzuela

Where were you prior to Portland?

I'm from the Bay Area, where I lived until I completed my undergraduate degree in Communications and Environmental Studies from San Jose State University. I also studied advertising down in Orange County for a year before returning to the Bay Area to complete my undergraduate degree.

Why Portland?

I was looking for a graduate program that would give me a better understanding of environmental law and policy, without preparing me to litigate. When I learned about the Masters program at Lewis and Clark Law School, I was sold! I came to Oregon for the law school, but I stayed for the amazing Portland culture and atmosphere.

What do you have planned for NEDC?

NEDC gives me the opportunity to use my communications background, and expand upon my understanding of environmental law. I have experience working in local government and private industry and can say with confidence that the nonprofit sector is where I fit in best. I am excited about the work NEDC has done in the past, and I'm excited for the projects we have coming up that I get to be a part of. While living in Portland, I have loved getting out and exploring the natural beauty of the Pacific Northwest. Now, with NEDC, I get to work to protect it!

What projects are you working on this fall?

I have an increasingly diverse list of projects I am taking on for fall. One of the projects I



am most excited about includes working with Mark and a coalition of organizations and concerned citizens to bring air toxics reform to Oregon. Additionally, I am assisting NEDC's Project Coordinators to ensure this year is the best, most valuable one yet for our student volunteers. I also have a growing list of research projects and grant seeking opportunities that will keep me busy this fall.

How was your first NEDC board meeting experience?

The board meeting was exciting! I got to meet everyone and get a better idea of how NEDC operates from the inside. I was impressed at the diversity of the board and how there seemed to be at least one expert on every subject that came up that evening. I also enjoyed the dynamic of the group and how there were both student and attorney board members present. I am looking forward to getting to know each of the board members individually as my time with NEDC progresses.

Port of Vancouver Update

NEDC, along with Columbia Riverkeeper and the Sierra Club, continues to oppose the Port of Vancouver's decision to move forward with what would be the nation's largest "crude-by-rail" oil terminal . This fight has now moved to the Washington Supreme Court.

In 2014, we filed suit against the Port for approving a lease with Tesoro Corp. and Savage Companies to build and operate an oil-by-rail facility on the banks of the Columbia River. The facility would receive up to 360,000 barrels of crude oil daily. The oil would arrive at the facility on an average of four trains each day, each consisting of 120 tanker cars. The terminal would store up to 2,000,000 barrels of crude oil in large above-ground tanks before loading it onto tanker ships for transport down the Columbia River



We alleged that the Port violated Washington State's open public meetings law and the Washington State Environmental Policy Act. (SEPA) This summer, the Washington Supreme Court agreed to review both issues.

In June, the Court heard oral argument over our claims that it was unlawful for the Port to approve the lease before the completion of a comprehensive review of the project's potential impacts, the available alternatives, and necessary mitigation measures. This analysis is required under SEPA before a public entity, such as the Port, can take an action that may significantly affect the environment. There is no question that this project will have a significant impact on the region. As a result, the Port had many decisions to make regarding the scope and design of the project. Those decisions should have been

informed by the required environmental review which would have resulted in studies and disclosure regarding the human health and environmental impacts of the proposed terminal. The lease, however, fixed the conditions under which the Port will host the oil terminal, in violation of SEPA.

Later this fall, the Court will consider our second set of claims, under the Washington state Open Public Meetings Act (OPMA). Under these claims we have alleged that the Port Commission abused a loophole in OPMA to avoid public scrutiny of its decision to grant the lease for the terminal. Generally, OPMA requires that governing bodies of agencies make their meetings open to the public. RCW 42.30.030. The Port of Vancouver and its Board of Commissioners disregarded this requirement by repeatedly excluding the public while planning to develop the terminal. In fact, the Commissioners had already met behind closed doors numerous times to discuss essentially every aspect of the project before it was announced to the public. The Board even held a secret meeting with the project developers to discuss the proposal—including safety and environmental issues and other topics of great public concern. The Commissioners' extensive use of "executive sessions" effectively deprived the public of its ability to observe all deliberations regarding whether and how to allow the nation's largest crude-by-rail terminal to be developed on the banks of the Columbia River.

Our suit seeks to put a halt to this project until the public is able to understand and consider the full potential impacts of this massive facility, and then based on that information, is allowed to participate in the public process of deciding if it should happen at all. NEDC is being represented by Brian Knutsen of Kampmeier & Knutsen, PLLC in these cases.

An Exciting Summer for NEDC's Student Board Member, Chelsea

By Chelsea Punian

My name is Chelsea Punian and I am currently a 2L at Lewis & Clark Law School. I am originally from San Jose, California and completed my undergraduate degree in international relations with a minor in Science Technology and Environment Public Policy at Michigan State University in 2015.

I have always been incredibly passionate about protecting and preserving the environment. I was fortunate to study international environmental law in the UK for a semester and my choice to become a lawyer to effect positive change became even stronger after preparing senior research papers and case studies. During this research, I learned about the important work being done by organizations such as The Center for Food Safety (CFS). It was always a dream of mine to be able to clerk for them someday. One of my main criteria choosing a law school was the presence of a compelling environmental law program, where I could continue to focus on food and agriculture issues. Lewis & Clark impressed me with its wide range of environmental law programs offered through such organizations as NEDC. The opportunity to contribute to actual litigation and issues as a 1L was an empowering prospect that simply isn't available at

other schools. As the number one-ranked environmental law school in the country, Lewis & Clark was a natural first choice but it was the actual programs and opportunities present at the school that influenced me most in my choice. Living in the beautiful Pacific Northwest while attending law school was definitely appealing as well.



In my 1L fall semester, I was able to contribute to the drafting of comments concerning a CAFO operation here in Oregon and I also joined NEDC's board as a student board member. As a board member, I have the opportunity to interact with environmental public interest lawyers in the Portland community as well as help discuss various environmental issues and determine whether there are potential legal cases NEDC can bring in the Pacific Northwest and beyond.

The skills that I gained from helping draft various comments at NEDC helped me immensely in my summer job working for CFS. At CFS this summer, I was able to help contribute to and work on some amazing projects such as comments to the FDA about food safety and various memos about ensuring and enforcing a sustainable agriculture system. I also received a head start in researching statutes and agencies related to Administrative and Environmental Law (two classes that I am taking this fall). My favorite project was being able to have client interaction with people in the Midwest whose enjoyment of pollinators (such as endangered butterflies and bats) were being affected by neonicotinoid spray from soy and corn farming.

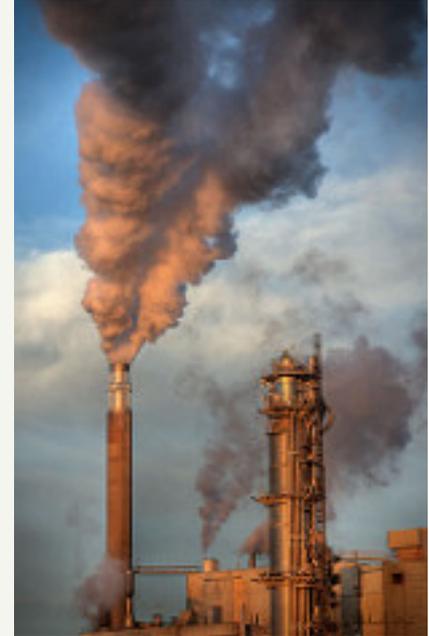
Throughout my time at CFS, I was also incredibly lucky to have Amy Van Saun, an alum of Lewis & Clark and a former NEDC project coordinator, as my boss and mentor. Not only was I able to assist with these amazing projects, but she made it possible to learn and enjoy every minute I was at CFS. In addition to her providing me with incredible insight into the world of environmental public interest law, we also enjoyed many a bagel run and bad song-offs. Amy, along with the work I was doing, made such an impact on me that I just had to stay on and continue to work during the Fall semester.

Currently, I am a member of the Environmental Law Review, working at the Earthrise Clinic and as previously mentioned, continue to work at CFS and remain an NEDC student board member. These activities would not have been possible without the opportunities afforded me through Lewis & Clark and the experience I gained from helping out with projects my first year at NEDC. I look forward to continuing to learn and contribute in the incredibly important area of environmental law and plan to make the most of the many opportunities that await me in this upcoming year.

NEDC Takes on Air Toxics Reform

Earlier this year, data from a [US Forest Service study](#) analyzing concentrations of toxic pollutants in moss scattered throughout Portland-area neighborhoods received widespread media coverage. The high readings that were trickling in from collected moss samples troubled researchers, but it was the geo-spatial representation of that data overlaid upon Portland neighborhood maps that finally raised alarm bells with the public and decision-makers.

Concentric circles of toxicity emanated outward from unidentified sources scattered across the city.



Neighbors living in or near these toxic hotspots were shocked to learn that not only did state agencies charged with protecting public and environmental health have no idea what sources were causing these hotspots, but that there was also no regulatory system in place to reduce or eliminate these toxic emissions. Oregon Governor Kate Brown responded by initiating Cleaner Air Oregon, a process to “align industrial air toxics regulations with human health”.

“The good news is that other states have already been doing this for decades so we won’t be starting from scratch”, said NEDC Executive Director, Mark Riskedahl. “The bad news is that industrial polluters in Oregon have grown quite accustomed to getting their way, and any new regulatory system is going to be the target of significant well-funded and well-coordinated opposition”.

NEDC is a member of the upcoming Cleaner Air Oregon advisory committee, and along with our partners Neighbors for Clean Air, OPAL Environmental Justice Oregon and others, we’ll be advocating for the following:

- Transparency and openness in all decision-making;
- An environmental justice-focused approach that prioritizes air toxics reductions in areas with vulnerable and historically marginalized communities;
- Adopting elements of successful air quality programs in other states while creating a future-oriented and iterative program that can accommodate high-quality independent science and new air monitoring technologies;
- Developing a reliable user-friendly publicly-accessible online database populated with current air pollution permits and accurate emissions data;
- Accurate facility-specific emissions inventories, monitoring and modeling to identify localized impacts, and ascertain health risks;
- Clear strategies for notifying neighbors about health risks and reducing risk to those neighbors

Upcoming Cleaner Air Oregon Forums

Pendleton

Wednesday, Sept. 28, 6p.m. to 8:30 p.m.
Pendleton Convention Center [Map](#)

Portland

Wednesday, Oct. 5, 6 p.m. to 8:30 p.m.
Oregon Convention Center, Oregon Ballroom
[Map](#)

Law Clerk's Perspective

By Hannah Lew

As NEDC's Law Clerk, I have gained an incredible amount of legal and environmental experience and have been able to work on several exciting projects. This summer I had the opportunity to work on one of the most publicized environmental issues of the year, Volkswagen's "Clean" Diesel catastrophe. Following claims brought by the US EPA, Volkswagen entered into a multi-billion dollar settlement agreement to mitigate the results of its Clean Air Act violations. In July, the U.S. Department of Justice, Environmental and Natural Resource Division released a partial consent decree outlining Volkswagen's settlement. Because thousands of Oregonians were negatively impacted by Volkswagen's actions, NEDC submitted formal comments as part of the notice and comment period for the consent decree. I had the privilege of writing this comment on behalf of NEDC and numerous other organizations, including OPAL Environmental Justice Oregon, Neighbors for Clean Air, North Portland Air Quality, Crag Law Center, and many others. By submitting this comment, NEDC, and our fellow commenters, intended to draw attention to the numerous communities affected by Volkswagen's actions and to emphasize the important environmental justice issues receiving less than full attention in the consent decree. Writing this comment was an amazing opportunity, not only because of the legal experience but also because it allowed me to feel more connected with the Oregon environmental community as a whole.



My favorite experience thus far also happened to be my most substantial assignment: working on NEDC's Port of Vancouver appeal with Columbia Riverkeeper and the Sierra Club. I was originally introduced to this case in early June, when I attended an oral argument in front of the Washington Supreme Court regarding the Port's violations of the Washington State Environmental Policy Act (SEPA). In this appeal we allege that in

preparing the Port's lease the Port Commission violated the Washington state Open Public Meetings Act (OPMA). OPMA requires the governing bodies of agencies to make their meetings open to the public in order to ensure public access to government decision-making. RCW 42.40.030. However, OPMA allows governing bodies to hold private "executive sessions," namely to discuss the "minimum selling or leasing price" of real estate. The Port Commission abused this exception by ignoring its narrow restrictions and claiming that the "executive sessions" held by the Port fell within their expanded interpretation of the exception.

My task was to research and review the legislative history of the OPMA exemption that allows for executive sessions and determine whether the Port's interpretation and application was truly consistent with the purpose of the exemption. I started the research with the impression that I would be collecting a fair amount of research which would eventually be distilled down to a paragraph or two. Much to my surprise, I found several recordings and memos that, when read together, directly supported our interpretation of the statute. Because of this support, I was given the opportunity to develop our argument and write the first draft of what eventually became a fairly substantial portion of the brief submitted to the Washington Supreme Court.

Working for NEDC has been an invaluable experience. It has given me incredible opportunities to work on important, current environmental issues and has helped me to substantially develop my legal analysis, writing, and advocacy skills. I will forever be grateful to NEDC for the countless doors that it has opened for me.

Stormwater Management

Stormwater runoff from roads and other impervious surfaces in developed areas is one of the largest threats to water quality in Oregon. Stormwater conveys large loads of 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. In urbanized areas, stormwater is directed to nearby streams and rivers through stormwater management systems, called municipal separate storm sewer systems, or MS4s for short.

As a result of the harmful impact these discharges can have on surface waters, the Clean Water Act requires municipalities to put into place the management measures necessary to prevent pollutants from reaching the water. These requirements are typically embodied in a permit issued by Oregon DEQ. Those permits must be renewed every five years, and each time, DEQ is required to determine what management measures are necessary to protect Oregon's waters.

This winter DEQ is preparing to issue new permits for Oregon's small and medium-sized towns. NEDC has been involved in this process for the past three years, pushing DEQ to craft a permit that establishes 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.

NEDC believes that while DEQ's proposed permits are a step in the right direction in achieving these mandatory objectives, it falls short of the mark. Generally, the permits fail to include the detail necessary to comply with the requirements of the CWA, will not ensure that the discharges for the regulated communities will comply with applicable water quality standards, and fail to impose the measures necessary to protect already degraded waterbodies.

The issuance of these permits provides an important opportunity for Oregon's municipalities to help achieve real improvements in water quality. As a result, NEDC will continue to advocate that DEQ, using the full extent of its legal authority, adopts permits that recognize and reduce municipal stormwater's considerable contribution to water pollution. Reducing this pollutant load is essential to meeting the long awaited goal of the Clean Water Act to once again have safe, fishable and swimmable rivers throughout the state.



Enforcement in Action

NEDC continues to enforce Clean Water Act permits throughout the Pacific Northwest. Over the past year NEDC has completed six enforcement actions.

These cases have targeted facilities in Eugene and Portland, and Chinook and White Salmon, Washington. NEDC focused its efforts on the types of facilities that if not managed correctly can have significant impacts on nearby streams and rivers.

As a result, these cases involved a familiar cast of characters, including a lumber mill, an auto dismantler, a gravel mine and a seafood processing facility, among others.

In addition to securing binding commitments from each of these facilities that will ensure compliance with their respective Clean Water Act permits, these enforcement actions generated over \$150,000.00 in payments to nonprofit organizations throughout the region to fund projects to improve and restore the waters impacted by the illegal discharges. With these efforts NEDC has helped protect the Columbia River and its estuary, the Columbia Slough, Johnson Creek, Amazon Creek, the Long Tom River, and the Willamette River.

Currently, NEDC has several ongoing enforcement actions against other seafood processing facilities in Washington. In addition, NEDC's project coordinators Morgan Staric and Danielle Elefritz have organized our students volunteers to begin working up new cases against several auto dismantling facilities in the region. Your support helps make these efforts possible.

Clean Water Permit Advocacy

Earlier this summer, working with our partners at Northwest Environmental Advocates, NEDC pushed Oregon DEQ to dramatically improve the current Clean Water Act general permit regulating pesticide applications that result in discharges to surface waters.

The permit is required for the use of any biological or chemical pesticides that may leave a residue in a water of the state.

NEDC and NWEA 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.

Our permit advocacy work also focuses on groundwater protection. 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. In some instances, directing stormwater underground rather than discharging it to surface waters can be an effective management option. However, unregulated or improperly managed UICs pose serious threats to the environment and human health, as discharges from UICs have the potential to contaminate groundwater sources. 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 through sensible and readily implementable permit conditions. 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 to 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 is 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.

Pedal Pursuit Recap

By Hannah Lew

As a student, there are few things more satisfying than watching your professors and mentors trek all over the city by bike, all the while trying to solve problems and riddles. Luckily, for students at Lewis & Clark Law School, NEDC hosts Pedal Pursuit, making that dream a reality.

Pedal Pursuit is NEDC's main fundraising event of the spring. The event is an adventure-style bike race that sends teams all around Portland in order to find and solve clues that will help them reach their next destination. Each stop features a new task, both physical and mental, that teams must work together to solve before they can continue on their adventure. This year featured challenges such as group yoga poses, donut eating, and puzzle solving.

After their day of exploration and problem solving, teams returned to the starting point for an after-party to celebrate and bask in their victory. Velo Cult, a local bar/bike shop, acted as a finish line where teams were welcomed with beer and food. Invigorated and exhausted, opposing teams came together over cold beers, tasty food and a shared passion for the environment.

There is really no better way to spend a day than by getting together with a group of like-minded, passionate individuals, getting outside and being active, and finishing up with good food and drinks, all for a great cause.

Keep an eye out for upcoming details
about Pedal Pursuit 2017!



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