

NORTHWEST ENVIRONMENTAL ADVOCATES



December 2010

Winter 2010 Newsletter

Dear Friend:

With your help and support, our small organization continues to make big waves! Nationally, NWEA continues to tackle the discharges from ships that are killing off native species and to protect the Clean Water Act from attacks. Here, in the Northwest, NWEA continues to bring enforcement actions to clean up water pollution in Oregon and Washington while setting national precedents to help the rest of the country meet the goals of the Clean Water Act.

Knowing your concern about keeping water clean, protecting salmon habitat, reducing toxics in fish and drinking water, and protecting Northwest streams from logging you will be interested in some of our recent success stories – much of which is made possible by you, our members. And, your continuing support is both essential to our work and truly appreciated!

Reforming Oregon's Logging Practices: NWEA Lawsuit Sets National Precedent with Promise to Clean Up Coastal Watersheds

Oregon's logging practices for private lands are the worst along the Pacific coast. Federal agencies, such as the U.S. EPA and National Marine Fisheries Service, have testified for over 13 years that they need to be changed, pointing out the inadequate protection for fish and water quality from logging along streams, logging roads, and landslides. For years, organizations have demanded that logging practices be improved and scientists have demonstrated their inadequacy. But the Oregon Department of Forestry has refused and this "fox guarding the henhouse" situation has been aided by the silence of the Oregon Department of Environmental Quality (DEQ). NWEA decided action was needed to change the status quo.

In 2009, NWEA filed a daring lawsuit – the first of its kind. The suit, *Northwest Environmental Advocates v. Locke et al.*, which was settled this summer, sought to withhold federal grant funds from Oregon unless the state reformed its coastal logging practices. It was based on provisions that Congress included in the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requiring the federal agencies to withhold funds from states that fail to demonstrate they will control polluted runoff from sources such as logging.

NWEA negotiated a settlement in which the federal agencies agreed to make a final decision on Oregon's coastal plan by mid-2014. If they disapprove Oregon's plan, they will immediately begin withholding grant funds. Oregon agreed to use a novel approach NWEA developed in which DEQ will use an existing Clean Water Act program called Total Maximum Daily Loads

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(TMDL) to control logging pollution. (TMDLs are scientifically-based clean-up plans that DEQ prepares and which, to date, have had no effect on curtailing polluted runoff.) Under this approach, Oregon has agreed to prepare a new type of TMDL in coastal watersheds in which DEQ will identify the logging practices that are necessary to meet Oregon's water quality standards and issue enforceable orders to significant landowners. DEQ will demonstrate that it can use this approach to circumvent the inadequate logging practices established by the Oregon Department of Forestry in the Mid-Coast basin by June 2012. And it will create a schedule for using the approach for the remainder of Oregon's coastal watersheds.

NWEA's settlement strikes at the heart of the Clean Water Act's major weakness. When it passed the law, Congress allowed states to decide how to address the polluted runoff from sources such as logging, farming, and grazing. The states responded by doing nothing. As a result, the nation's waters are unsafe for people and fish and – according to EPA – getting more polluted. But when Congress passed CZARA it sought to induce states to control polluted runoff or literally pay a price in reduced grant funding. To date, Oregon has received over \$50 million in funding – or about \$3 million annually – despite its failure to conform with the law. NWEA will continue to monitor whether the agencies comply with the settlement, federal law, and to ensure Oregon's coastal logging practices are reformed.

NWEA was represented in the CZARA case by the Washington Forest Law Center, the Pacific Environmental Advocacy Center, and Stephanie Parent.

Ballast Water Discharges of Invasive Species: Decade Two of the Saga

After a decade of petitions and lawsuits, NWEA forced the U.S. Environmental Protection Agency (EPA) to issue a Clean Water Act permit to ships' discharging many types of pollution, from invasive species to chemical-laden wastewater. This was a hard-fought victory, including years of battling efforts in Congress to overturn the court decision. In *Northwest Environmental Advocates v. U.S. EPA*, a U.S. District court ordered EPA to remove a regulation in place since 1973 that had exempted the discharges from the Clean Water Act.

As a result of the court order, in the fall of 2008 EPA issued a national permit, known as the Vessel General Permit, to cover the discharges from ships across the country. Permits under the Clean Water Act normally require the use of clean-up technologies, requirements to meet state water quality standards, and requirements to monitor discharges and report the results to the government and the public. Unfortunately, EPA's permit was extremely weak in every regard. For this reason, NWEA returned to court for a third time to challenge EPA's continuing unwillingness to regulate discharges of invasive species in ballast water.

There are rays of hope. One of EPA Administrator Lisa Jackson's first public statements was her comment that the Vessel General Permit needs to be improved, telling the Associated Press that the permit "doesn't begin to address some of the concerns that are out there." As this newsletter goes out, NWEA is close to signing a settlement with EPA to resolve this lawsuit.

NWEA is represented in this third ballast water case by the Stanford Environmental Law Clinic and the Pacific Environmental Advocacy Center.

Protecting Oregon's Waters from Toxics Through Litigation & Advocacy

In April 2006, NWEA sued EPA for failing to approve or disapprove Oregon's 2004 water quality standards for toxics. (Water quality standards are supposed to protect human health and aquatic life and form the basis of every regulatory action taken under the Clean Water Act.) In Oregon, the standards were already 15 years out-of-date when the state revised them, despite federal requirements to keep them updated every three years. NWEA participated in the advisory committee leading to these changes but had failed to convince Oregon DEQ to address the effects of toxics on threatened and endangered species and wildlife. And, despite solid evidence of high fish consumption levels by Columbia River Tribes, DEQ had refused to use anything higher than the national average fish consumption level – 17.5 grams per day – that is factored into the calculations of acceptable levels.

DEQ finally reconsidered and decided to use a figure ten times higher – 175 grams per day – which would make the standards far more stringent. But the dischargers with permits demanded that DEQ include rules that would prevent them from having to meet these new standards. NWEA demanded DEQ include new rules to controlling polluted runoff without permits, sources not otherwise regulated under the Clean Water Act. In October 2008, Oregon's Environmental Quality Commission agreed with NWEA and told Oregon DEQ to move forward.

DEQ has used the last two years of advisory committee meetings to ignore the Commission's directive to control polluted runoff despite NWEA's significant efforts and the support of the municipal dischargers. Yet, DEQ has accommodated industry's demands to create new loopholes in the Clean Water Act that would set dangerous national precedents. Finally, this fall NWEA prepared a series of five letters setting out the legal and policy arguments against the loopholes and in favor of toxic controls DEQ has ignored. EPA got the message and told DEQ that some of its ideas were inconsistent with the law.

NWEA also had sued EPA in 2006 for failing to act on the Oregon standards. We settled *Northwest Environmental Advocates v. EPA* with EPA's agreeing to complete its action by certain dates. We repeatedly gave EPA extensions of time because DEQ promised to include regulation of polluted runoff in the standards, something not required under federal law. However, when it was clear DEQ had broken its promise, NWEA forced EPA to act and, in June, EPA disapproved nearly all of Oregon's human health standards.

NWEA filed a separate suit against the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for failing to complete consultations on the 2004 standards required under the Endangered Species Act to ensure the standards protect threatened and endangered species from toxics. In *Northwest Environmental Advocates v. NMFS et al.*, the agencies agreed to complete their reviews and to issue any requirements that are needed to address inadequate protection from toxic pollution by mid-2012. EPA will then make a decision on whether to approve or disapprove Oregon's aquatic life standards several months later.

NWEA has been represented by the Pacific Environmental Advocacy Center and Stephanie Parent in its toxics litigation.

Arsenic in Your Water . . . Yes, it's as Deadly as it Sounds

EPA will tell you under the Safe Drinking Water Act that 10 micrograms per liter of arsenic is acceptable. When you receive the annual mailer from your municipal drinking water source, they will report whether your drinking water is safe based on that level. What they don't tell you is that 10 micrograms per liter reflects the allegedly high costs of removing arsenic from drinking water. There is nothing safe about drinking arsenic levels at 10 micrograms! In fact, under the Clean Water Act, EPA recommends states adopt 0.018 micrograms per liter – based on a cancer risk of one person in a million, the risk level Oregon normally uses.

Oregon's existing in-stream arsenic standards are very low (0.0022 micrograms per liter) and natural levels of arsenic are considerably higher (up to 3 micrograms per liter), leading to concerns about how to regulate this pollutant. NWEA helped negotiate arsenic levels that represented a practical solution and pushed for a rule to regulate human sources of arsenic *below* the adopted standard, a unique and precedent-setting solution. The proposed level (2.3 micrograms per liter) was based on a risk level of one cancer in ten thousand people, the highest risk level EPA allows under the Clean Water Act. But the negotiation was premised on DEQ's having told the committee that arsenic was only a concern in drinking water, not fish consumption, a "fact" that turned out to be false. In the public comment period, NWEA demonstrated how DEQ had misrepresented the science and DEQ has withdrawn and is now reconsidering its arsenic rule.

From Public Comments to Lawsuits, NWEA is Working for You!

As always, please feel free to e-mail me with questions about NWEA's work: nbell@advocates-nwea.org. I am happy to explain any of the projects we're working on or send you original documents. And, over the next few months, check out the changes we will be making to our website which will give you more timely and helpful access to information about our activities: www.NorthwestEnvironmentalAdvocates.org.

Please remember that Northwest Environmental Advocates does a lot with very few resources so we count on you for financial support. Contributions are tax deductible and much appreciated!

Sincerely,

Nina Bell
Executive Director

P.S. In seeking to enforce the law, NWEA guarantees you an old-fashioned lean operation – giving you highly credible and energetic advocacy without fancy slogans and glossy magazines. That means that your financial contribution supports getting what you want done. I hope that you will consider making a tax-deductible contribution to NWEA. We can guarantee you that your contribution will be put to good use!