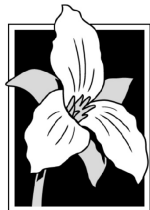


# NORTHWEST ENVIRONMENTAL ADVOCATES



December 2011

*Winter 2011 Newsletter*

Dear Friend:

With your help and support, in 2011 we continued our strong advocacy for the environment and public health and we have big plans for next year! Recent events point to the importance of staying the course and maintaining pressure on decision-makers. For example, just last week, NWEA's lawyers presented our case before a federal court on a case that has taken a full six years to reach oral argument. Two weeks earlier, Portland Mayor Sam Adams noted it was NWEA's lawsuit against the City of Portland 20 years ago that started the city's program to remove raw sewage from the Willamette River.

Knowing your concern about keeping water clean, protecting salmon habitat, reducing toxics in fish and drinking water, and protecting human health, I will highlight some of our recent success stories – much of which is made possible by you, our members. **Your continuing support is both essential to our work and truly appreciated!**

## **After Six Years ... Our Day in Court on Oregon's Temperature Water Quality Standards**

**S**almon and steelhead are the Pacific Northwest's "canary in the coal mine," making river temperatures the equivalent of the poisonous gas that killed the canaries. Looking at rising stream temperatures is like holding a mirror up to the logging, farming, ranching, development, and water removals that have fundamentally altered the water on which these cold-water species depend. The excess heat means fish have to work harder and eat more, and levels of fish disease rise dramatically. While large objects such as dams have obvious harsh effects on salmon, their actual habitat is the temperature of the water. And more waters violate water quality standards for temperature than any other pollutant in Oregon. **NWEA has been working for safe temperatures to protect salmon, steelhead, and bull trout through its lawsuits.**

Oregon adopted new temperature standards in 2003, pursuant to a court order in an earlier NWEA lawsuit that successfully challenged the state's 1996 temperature standards. However, the new Oregon standards are similarly flawed, for example by:

- setting higher-than-optimal temperatures for salmon,
- exempting the very pollution sources that warm most of Oregon's streams, and
- allowing Oregon to essentially erase its standards once the Department of Environmental Quality (DEQ) decides predicted temperatures are "natural."

**All of these provisions and more were challenged in NWEA's new Clean Water Act lawsuit which also sued the federal government under the Endangered Species Act.**

It was truly galling to listen to the government's attorney argue that the Environmental Protection Agency (EPA) approved the temperature standards that mean one thing when EPA and Oregon have been acting since 2004 as if the standards meant something entirely different. That's what they call in the legal profession being "disingenuous" though "lying" might be the better word.

*NWEA is represented in the Temperature Standards case by Allison LaPlante, Dan Mensher, and Dan Rohlf of the Pacific Environmental Advocacy Center (PEAC) at Lewis & Clark Law School.*

## **After Twenty Years ... Portland Has Cleaned Up (Most of) Its Raw Sewage Discharges to the Willamette River**

In November, the City of Portland celebrated having completed the "Big Pipe" project intended to keep most of Portland's raw sewage from entering the Willamette River. **This 20-year project was triggered by NWEA's 1991 lawsuit.** Many people have asked how it feels to see the tail end of this long project and our response is two-fold. First, yes, we take credit for starting this project and we're very happy it was completed. The Willamette River and the Columbia Slough are a lot cleaner than they were 20 years ago.

However, nobody should rest on their laurels! The city's combined sewage and stormwater are now shunted to the Columbia River via a sewage treatment plant that treats some of the waste in a very cursory manner. As a result, the city has failed to consider its obligation to remove toxics from its discharge, despite the fact that toxics from throughout the Columbia River Basin are causing harm to fish and wildlife in the estuary downstream. Choices to minimize the levels of treatment at the sewage treatment plant and choices to avoid the maintenance actions that are necessary to prevent pollution from entering the sewage system in the first place will eventually catch up with the City of Portland through permitting problems or enforcement actions. **Given the federal government's abrupt dropping of its objections to this situation, and DEQ's continued indifference, the next steps may very well have to be NWEA's.**

*NWEA was represented in the City of Portland case by three attorneys from Perkins Coie – Craig Johnston, Pat Parenteau, and Mary Woods – all of whom are now law professors.*

## **Helping Neighbors Fight Sewage Sludge Spread Near Oregon's Umqua River**

While the sewage treatment plant in Roseburg, Oregon is small compared to the City of Portland, they have at least one thing in common: the sewage sludge produced by the process is dumped on farmland. Dumping sewage sludge (called "biosolids" in the trade) on land is the solution promoted by the federal government since dumping the waste in the ocean was banned in 1992. **Neighbors abutting one ranch where the Roseburg Urban Sanitary Authority (RUSA) sprays sewage sludge asked for NWEA's help, concerned about the effect of sludge on their health and their drinking water.** RUSA, the Oregon DEQ,

and the U.S. EPA all told the neighbors and staff of elected representatives that the operation at the Hayden Ranch was in compliance with federal and state law. DEQ rudely dismissed the concerns of residents who have been sprayed with sewage sludge while walking down a road. However, in responding to NWEA's public records requests, DEQ realized that – contrary to its representations – RUSA did not have legal authority to dump sewage sludge on the Hayden Ranch. Scrambling to paste over its mistake, DEQ then issued a site authorization letter without providing the required opportunity for public comment.

In November, **NWEA petitioned DEQ to reconsider its illegal site authorization letter.** The petition explains that DEQ might want to consider the problems with this site given its rather obvious lack of suitability for sludge dumping. Specifically, this land is extremely wet, making it a pathway to moving sewage sludge pollutants to both groundwater and the nearby Umqua River.

Sewage sludge contains toxic pollutants such as arsenic, lead, and zinc, along with human pathogens such as E. coli and salmonella. There are, in addition, completely unregulated pollutants such as pharmaceuticals and flame retardants, as well as excessive nutrients that cause algae blooms. In contrast to EPA's regulations on water pollution and hazardous wastes, EPA's regulations on sewage sludge dumping are woefully inadequate to protect farm land and home gardens (through bagged fertilizer). One result is that California has a patchwork of full and partial bans on sewage sludge dumping. But in Oregon and Washington (except Wahkiakum County, which is defending a partial ban in court), residents are currently at the mercy of this sham of a regulatory program that allows residents to be assaulted by airborne sewage dust, water pollution, and, sometimes, horrible odors.

*NWEA is represented in this case by Bryan Telegin and the Pacific Environmental Advocacy Center (PEAC).*

## **Washington's Commercial Nuclear Reactor ... Another Fukushima?**

**D**ecades ago, NWEA sought to prevent the operation of the only one of five reactors to be completed by the Washington Public Power Supply System (WPPSS). The debt-plagued construction effort with the unfortunate acronym ("Whoops") crumbled, leaving only the WPPSS No. 2 reactor at Hanford to begin operation. Renamed the Columbia Generating Station (CGS), the reactor is located in one of the most pro-nuclear regions of the country. NWEA's past efforts to prevent its operation netted some slashed tires courtesy of local reactor supporters.

After the nuclear meltdown at the Fukushima Dai-ichi nuclear reactors in Japan, NWEA sought to participate in the process to extend the operating license of the CGS reactor. The Fukushima reactors are all General Electric boiling water reactors with what is termed a Mark I containment system. The CGS reactor at Hanford is a Mark II. The current 40-year operating license expires in 2023 and Energy Northwest, which operates the reactor, is seeking a 20-year license extension.

Working with intervenors in reactor licensing proceedings across the country, NWEA first filed a petition with the Nuclear Regulatory Commission (NRC), asking it to create an organized plan to address Fukushima in all these proceedings. The Commission ignored the petition. Then, again

in tandem with other groups, NWEA filed a petition seeking legal status in the operating license extension proceeding for the CGS reactor. Twice the panel of NRC judges has rejected NWEA's effort to discuss Fukushima-related issues insofar as they concern the CGS reactor.

Our premise was simple: while the Atomic Energy Act grants the NRC virtually unfettered discretion to determine whether reactors are safe enough, the National Environmental Policy Act (NEPA) – the law known for requiring Environmental Impact Statements – requires the agency to disclose the environmental impacts of a federal action *before* taking it. Stated another way, the NRC can take years if not decades to incorporate the “lessons learned” from the Fukushima accident into how U.S. reactors are required to operate and how we determine if they are safe, but NEPA requires an evaluation of the risks to human health up front, as in now.

**Although the NRC has a rule that says a member of the public cannot wait more than 30 days to file an issue in a licensing proceeding, the panel of NRC judges determined that NWEA's raising issues about Fukushima is “prematurely advanced”!** Despite this somewhat predictable setback, NWEA has other plans to address the unsafe operation of the CGS reactor.

*NWEA thanks Diane Curran of Harmon, Curran, Spielberg + Eisenberg for assistance.*

### **From Lawsuits to Advisory Committees, NWEA is Working for You!**

As always, please feel free to e-mail me with questions about NWEA's work: [nbell@advocates-nwea.org](mailto:nbell@advocates-nwea.org). I am happy to explain any of the projects we're working on or send you original documents. And, check out update to our website which will give you more timely and helpful access to information about our activities: [www.NorthwestEnvironmentalAdvocates.org](http://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!