

National Environmental Law Center

Summer 2006

Offices in Boston, Seattle and San Francisco

Vol. 12, No. 1

The Report of the National Environmental Law Center



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R.I. Lawsuit Targets Air, Water Pollution

Westerly, RI—On August 24, 2005, NELC attorneys filed suit in federal district court in Providence against Bradford Dyeing Association, Inc. (BDA), which operates a large textile finishing plant in Westerly, R.I. The suit was filed on behalf of the Rhode Island Public Interest Research Group,

environmental practices at the decades-old mill, where more than 200 employees dye, print, coat and finish military fabrics for the Department of Defense.

For years, nearby residents have complained of being forced indoors by the powerful odors emitted



Upstream of the BDA factory, a child's rope swing hangs on the Pawcatuck River, but locals describe the river downstream of the plant as an unusable "dead zone".

Toxics Action Center and Sierra Club.

The lawsuit alleges that, over the past five years alone, BDA has committed thousands of violations of its wastewater discharge and air pollution control permits. The case is believed to be the first citizen enforcement suit in Rhode Island history brought to enforce both the Clean Air and Clean Water Acts.

Since filing the case, NELC has discovered additional evidence of substandard

from BDA's factory. Some recount incidents during which the stench was so bad it forced people working at area homes to leave.

Meanwhile, canoers and kayakers regularly report that the normally pristine Pawcatuck River is a "dead zone" immediately downstream of the BDA plant, nearly devoid of visible aquatic life.

The suit charges that, according to the company's

NELC Challenges Dioxin Waste Site

Zilwaukee, MI—On May 3, 2006, NELC attorneys filed suit against the U.S. Army Corps of Engineers, the Department of Housing and Urban Development, and the County of Saginaw, Michigan, for their failure to study the environmental impacts of the Army Corps' proposed dredging of dioxin-contaminated sediments from the Upper Saginaw River and the disposal of these sediments on a floodplain in Zilwaukee, Michigan.

The suit was filed in federal court, on behalf of plaintiffs Environment Michigan and the Lone Tree Council, to enforce the National Environmental Policy Act (for more on NEPA, see page 5).

NELC was alerted to the ill-conceived project by a Zilwaukee resident alarmed by the Corps' proposal to dump dioxin-contaminated dredge spoils next to people's homes without comprehensive review of potential environmental and human health hazards.

The Corps' plan is to construct a 3.1 million-cubic-yard, 281-acre "dredged material disposal facility," or "DMDF"—that is, an open dump site—in Zil-

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NELC Challenge Tightens Permit for Seafood Processor

Portland, OR—Detailed written comments submitted to the Oregon Department of Environmental Quality (DEQ) bore fruit this spring, as



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Pacific Seafood is rerouting its fish processing wastewater into the Columbia River, above. NELC is closely following the permit review process.

“Pacific Surimi planned to begin discharging into the Columbia River without fully understanding or addressing all the environmental ramifications.”

—NELC Attorney Joe Mann

NELC continued its efforts to strengthen pollution limits on seafood processors discharging wastewater into the Skipanon and Columbia rivers.

NELC has worked on various fronts to protect the rivers since filing suit against three Pacific Seafood Group subsidiaries in July 2002 on behalf of Oregon Public Interest Research Group and two Warrenton-area residents.

The federal lawsuit targets the facilities’ chronic non-compliance with the Clean Water Act. Last spring, after DEQ turned a blind eye to the illegal discharge of surimi wastes (surimi

is a fish paste used in various food products), NELC stepped in and secured a court-ordered injunction against Pacific Surimi Co. to prevent further discharge into the Skipanon River.

Following that success, NELC closely monitored Pacific Surimi’s application for a National Pollutant Discharge Elimination System (NPDES) discharge permit.

In early 2006, NELC learned that DEQ was planning to accede, without putting adequate safeguards in place, to Pacific Surimi’s plan to simply reroute its wastewater discharge from the Skipanon River into the Columbia River.

DEQ was prepared to accept the company’s perfunctory analysis of water quality data and to overlook the potential impacts of the high strength surimi wastewater on aquatic health—despite the fact that Pacific Surimi was being sued by NELC for years of water pollution violations.

“Pacific Surimi planned to begin discharging into the Columbia River without fully understanding or addressing all the environmental ramifications,” said NELC attorney Joe Mann. “The company’s proposal was unacceptable.”

NELC immediately be-

gan working with local environmental groups to press DEQ for a re-examination of the proposed permit limits and for an in-depth study on how the relocated discharge would affect aquatic health in the Columbia River.

NELC attorneys requested a meeting with DEQ officials, and when they were granted that meeting in late March, they brought along an environmental engineer to address the deficiencies in the company’s water quality analysis.

On April 11, DEQ issued a “Final NPDES Permit Evaluation Review Report” for Pacific Surimi.

In response to the issues raised by NELC, DEQ determined that “the best way to resolve these technical differences... is to require additional monitoring.”

Accordingly, DEQ added additional water quality monitoring requirements and studies to the final permit.

NELC is in the process of commenting on the company’s proposed water quality study, and the Clean Water Act enforcement suit against Pacific Surimi and its parent company, Pacific Seafood Group, is scheduled to go to trial in October 2006. ♦

A History Of Protecting The Saginaw River

Midland, MI—NELC has been working in the Saginaw Bay area for over a decade, starting with a successful Clean Water Act enforcement suit against Dow Chemical Company to address deficiencies in Dow's wastewater treatment system at its manufacturing complex in Midland.

NELC attorneys, representing local residents and Public Interest Research Group in Michigan (the forerunner of Environment Michigan), filed suit in 1995 after discovering that Dow had been discharging illegal amounts of phosphorous and pesticide chemicals into the Tittabawassee River, which flows into the Saginaw River and eventually into Lake Huron's Saginaw Bay.

The suit was resolved by a consent decree in 1997, under which Dow paid a \$1 million penalty (most of which funded local environmental projects) and committed to over \$30 million in upgrades to its antiquated wastewater treatment system.

In 1998, Dow informed NELC that it could not meet a May 2000 deadline in the consent decree to remove and treat on-site the massive quantities of dioxin-contaminated solids that had accumulated in the three large "tertiary treatment" ponds Dow used as part of its wastewater treatment system.

The ponds sit close to the banks of the Tittabawassee, well within the flood plan, and high rains could move the solids into the river.

The solids in the treatment ponds contain high levels of dioxins, a group of chemicals that can be dangerous even at minute concentrations and can persist in the environment for decades.

In July 2001, NELC attorneys, working with a cadre of local and statewide citizen groups, reached a multi-faceted agreement with Dow both to address the risks posed by the historically contaminated treatment

ponds, and to discourage the company from creating dioxin wastes in the future.

While this past work has helped reduce Dow's contribution of dioxins to the Saginaw Bay area, Dow's legacy of pollution has contaminated the river sediments for miles downstream of the factory.

This concern has prompted NELC to get involved again – this time in Zilwaukee, MI, to stop a poorly designed and potentially dangerous Army Corps dredging project involving dioxin-contaminated sediments (see page 1). ♦

New Staff Attorney Joins NELC

Boston, MA—Attorney Theresa Labriola joined NELC's litigation team in March. She combines a strong legal background with a demonstrated commitment to environmental protection.

"Our natural resources play an important function as a shared resource within our communities," noted Theresa. "We can't allow anyone to degrade public resources for profit."

After graduating from Cornell University, she

joined AmeriCorps, where she worked with the Hudson Riverkeeper, a group dedicated to reducing pollution in the river. Her work inspired her to study environmental law at Vermont

Law School. Before joining NELC, Labriola served a clerkship at the Massachusetts Superior Court and worked for the Natural Resources Defense Council in New York City. She then practiced law at Altman & Citron LLP, a firm specializing in civil rights and employment litigation. ♦



Recent Litigation At A Glance



MICHIGAN - NELC filed suit to force the Army Corp of Engineers to prepare an Environmental Impact Statement before disposing of dioxin-contaminated sediment from Upper Saginaw River, 5/06.



OREGON - NELC submitted comments to the state DEQ challenging Pacific Surimi's proposal for a new wastewater discharge permit, leading DEQ to require additional water quality studies and monitoring, 11/05.



RHODE ISLAND NELC filed suit against Bradford Dyeing Association, Inc., for violations of the Clean Water and Clean Air Acts, 8/05.

Settlement negotiations in progress, 6/06.

NELC Challenges Dioxin Waste Site (cont.)

“The Corps asserts that dioxin levels in the Upper Saginaw are not high enough to warrant additional review before proceeding with the dredging and disposal project.

“However, in 2004 the Corps found dioxin levels in the channel it plans to dredge that were 131 times higher than state law allows for residential exposure.”

1. Dioxins are highly toxic chemical by-products associated with a wide range of adverse health effects in both wildlife and humans. Believed to be dangerous in even minute concentrations, dioxins persist in the environment for decades after being emitted.

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waukeee and Frankenlust townships. The dump site will hold material to be dredged over the course of the next 20 years from the Upper Saginaw River, for the purpose of improving navigation for ship traffic.



The Army Corps of Engineers proposes dredging dioxin-contaminated sediments from the Upper Saginaw River and disposing these sediments on a floodplain in Zilwaukee, Michigan. Above, a navigational river dredging operation.

NEPA requires federal agencies, like the Army Corps, to prepare a rigorous environmental impact statement (EIS) before embarking on any “major” project that may “significantly” affect the environment.

In 2005, the U.S. Environmental Protection Agency sent a letter to the Army Corps strongly suggesting that, in order to fulfill its obligations under NEPA, the Corps needed to conduct additional review of dioxin

levels in the dredged material before finalizing the project. The Corps ignored EPA and did no further environmental studies. NELC stepped in when it became clear that state and local agencies would also fail to require a thorough review of the environmental and

The Corps asserts that dioxin levels in the Upper Saginaw are not high enough to warrant additional review before proceeding with the dredging and disposal project. However, in 2004 the Corps found dioxin levels as high as 11,812 parts per trillion in the river channel it plans to dredge; that number is 131 times higher than state law allows for residential exposure.

Poor Planning

Because the dredge spoils are contaminated, the proposed placement and design of the DMDF dumpsite raise serious environmental concerns.

First, the 281-acre site is located on a Saginaw River floodplain. EPA commented that the earthen walls planned for the facility are not sufficient to prevent the release of contaminated sediment during even routine flood events.

Second, the site is next to the Crow Island State Game Park and a bald eagle nesting area. The bald eagle is listed as threatened under the Endangered Species Act.

Third, while most toxic waste dumps use impermeable bottom layers to seal in the toxic materials, the proposed disposal basin will be lined only with pre-existing clay deposits. This clay layer has significant cracks that could allow toxic pollutants to seep into local groundwater.

human health impacts of the project. Significant quantities of dioxins have been found in sediments sampled from the Corps’ proposed dredging sites.¹

Dioxins have been linked to birth defects, immunodeficiency, and some forms of cancer. The dioxins in the Upper Saginaw likely came from Dow Chemical Company’s facility in Midland, MI (for more on NELC’s work in Midland, see page 3).

Fourth, the Army Corps does not intend to cover the dump site with clean material that would prevent the wind-blown drift of toxic materials into surrounding areas.

Moreover, the perfunctory environmental assessment the Corps did perform was confined solely to the disposal site. The Corps failed to analyze the environmental impact of the 20-year dredging project itself, which could stir up dioxins, furans, PCBs, and metals left by a long history of industrial pollution and send them downstream.

Despite the large size and scope of the project, the presence of toxic pollutants in the river sediment, and the site's precarious location, the Army Corps claims the dredging and disposal will have no significant impact on the environment.

Put simply, explains NELC Attorney Stephanie Matheny, "The Corps will be violating NEPA if it moves forward with the dredging and disposal of thousands of tons of dioxin-contaminated wastes from Upper Saginaw River without preparing an environmental impact statement."

With this lawsuit, NELC hopes to force the Army Corps to prepare a study of all the environmental impacts to the river from the proposed dumpsite before any dredging begins.

Litigation Update

In a May 3 court filing in U.S. District Court in Bay City, NELC attorneys sought an immediate injunction preventing the



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Gulls nest on a dredge disposal facility in Saginaw Bay, Lake Huron. The Army Corps of Engineers does not intend to cover the proposed dump site with clean materials that would prevent wind-blown drift of toxic materials into surrounding areas.

Corps from beginning construction of the dump site. Chief Judge Bernard A. Friedman heard arguments on the motion in Detroit. Judge Friedman ruled that, since the Corps stated that it would not deposit sediments in the DMDF until the summer of 2007 at the earliest, construction of the storage basin alone would not cause "immediate ir-

reparable harm" to human health or the environment. However, Judge Friedman allowed the case to proceed before District Court Judge David M. Lawson in Bay City, so that NELC's claims can be resolved before dredging begins. NELC will seek a ruling on the merits of the case, and a permanent injunction until a full EIS is prepared. ♦

"Despite the large size and scope of the project, the presence of toxic pollutants in the river sediment, and the site's precarious location, the Army Corps claims the dredging and disposal project will have no significant impact on the environment."

What Is NEPA?

The National Environmental Policy Act of 1969 (NEPA) was the first law in the U.S. to integrate environmental concerns within a comprehensive national policy. NEPA applies to federal agencies and the programs and projects they fund.

It imposes a general requirement that the federal government take environ-

mental concerns into consideration when making decisions, and it imposes a specific requirement on federal agencies contemplating a "major" action "significantly affecting the quality of the human environment."

Before taking such an action, the government must prepare a detailed statement on the environmental impacts of the action and any reasonable alterna-

tives to the action. Then the public must have an opportunity to review and comment. When the public has not been involved in a project's decision making process, or when a "major" project has wrongly been exempted from NEPA's requirement that a rigorous environmental impact statement be prepared, affected citizens may sue to halt the project until the required assessment has been performed. ♦

Anna Aurilio, U.S. PIRG Legislative Director

Anna Aurilio, the legislative director of U.S. PIRG, got her start in environmental work with NELC as a staff scientist. Anna works in Washington, D.C., guiding a staff of advocates and lobbying on critical environmental issues at the federal level for the national lobbying office of the state PIRGs.



Why did you choose to work in the environmental movement?

My mom is a huge nature lover and always took us hiking, skiing and swimming. When I was eight, some local teens destroyed our playground and I organized my buddies to clean it up. Later, I moved to Woburn, Mass., home of *A Civil Action*. I naively assumed that after such a high-profile case, our government was protecting us from pollution. When I realized that wasn't the case, I knew I needed to work to protect the environment.

What was it like working for NELC as your first job?

Well, it wasn't what I expected. I had started graduate school working on a physics Ph.D. because I wanted to use my science background to make the world a better place. I gave up on that because it was taking too long to save the world with physics. My first task with NELC was to read

the Clean Water Act—the entire document. Going from physics equations to dense legal statutes was a big transition, but working with NELC was really exciting. I was challenged and given a lot of responsibility. We had just three staff members back then, and we were taking

on major corporate polluters. As I worked, I found more and more reasons why NELC's work is so critical. One of my roles with NELC was to file requests for information at regional EPA offices, and sometimes EPA blocked access to the records. I learned to fight for my rights, and to be persistent.

What was the most memorable case you worked on with NELC?

I sometimes got anonymous tips, late at night, from people who knew about companies that were polluting but who couldn't do anything about it. Sometimes these were frustrated government employees who had been trying to clean up polluted places, but their higher-ups were failing to come through with results—usually for political reasons.

One tip came from a scuba diver. He'd been in the Taunton River in southeastern Massachusetts, and he told me that chemicals discharged from a

factory were turning the river different colors. It turned out that the factory was owned by ICI Americas, a huge multinational chemical manufacturer, and they were dumping into a brook that led into the Taunton River.

I checked the file, and found out that the company's wastewater discharge permit had not been updated since the 1970s. That meant they only measured things like pH, temperature, and rate of discharge. In other words, their permit was so archaic they didn't have to test their waste for toxic chemicals. Every time EPA had tried to issue them a new permit, the lawyers for the company stopped them. When EPA finally required ICI to test its wastewater, the stuff—even diluted 100 times—was so toxic it immediately killed fish. NELC went on to reach a settlement with ICI Americas that included payment of a \$700,000 penalty.

How is NELC able to take on such huge corporations?

Take water pollution, for example. Under the Clean Water Act, companies have to obtain a permit before they can discharge pollutants, and then they have to report monthly on the amount of waste they discharge. EPA and state environmental agencies are supposed to oversee this system.

“While going to high school in Woburn, Mass., home of A Civil Action, I naively assumed that our government was protecting us from pollution. When I realized that wasn't the case, I knew I needed to work to protect the environment.”

Working with NELC, I found numerous cases of complete inaction by EPA. In other words, the polluters had reported to EPA that they were polluting, but EPA and the state governments had done nothing in response. But thanks to a provision in the Clean Water Act that allows private citizens to enforce the law when government agencies don't, NELC is able to take that kind of information and make something happen.

We sued a paper company in Massachusetts that was dumping illegal amounts of toxic waste into the Connecticut River, where Atlantic salmon recovery efforts were happening. I found five years' worth of letters that the state and EPA had written to the paper company, but no real action had been taken.

Writing letters back and forth was the most that the state and EPA were going to do to address the problem. But when NELC got involved, the company knew they would have to do more than answer letters. We took them head-on in court and forced them to clean up. That's what made the difference for that waterway.

What is the role of litigation in the environmental movement today?

Litigation is a critical tool for the environmental movement. With a Congress and an administration that want to move backward, not forward—who not only don't want to strengthen current laws, but also slash funding for enforcement—citizen litigation is sometimes our last defense against ram-

pant pollution. One thing I learned at NELC is that polluters have enormous power in the law-making process. Their lobbyists are frequently able to carve out exemptions and loopholes in new legislation through backroom deals like the "ear-marks" we hear so much about today. Using litigation to enforce the good laws that are still on the books is frequently the only way environmentalists can face the country's biggest polluters on an even playing field.

When I worked at NELC, I sat down with the lawyers for polluting companies who had an entire routine worked out to deal with environmentalists. First, they would claim the violations were just lab errors. Then they'd claim that their clients were being unfairly targeted. As a last resort they would argue that their toxic wastes weren't really dangerous.

They'd put us off as long as they could, but NELC has an amazing success rate for a good reason. Their litigators and researchers are dogged, they do their

homework, they don't listen to excuses, and they use the courts to force polluters to clean up when government agencies are unable or unwilling.

What is your proudest accomplishment so far?

Having my daughter, Renata. But on the environmental side, I'm really proud of the success I saw on the cases I worked on with NELC. Those cases got me hooked on taking on big challenges and winning. After I moved on to working with U.S. PIRG in the 1990s, I was part of a lobbying coalition that helped cut half a billion dollars in federal subsidies for the nuclear and oil industries, and shift funding to clean, renewable energy programs instead.

I'm also proud of what we've kept Congress and the Bush Administration from doing. We've stopped Congress from allowing drilling in the Arctic National Wildlife Refuge, year after year after year. And we stopped new drilling off the coasts, too. ♦

"With a Congress and an administration that don't want to enforce the laws, citizen litigation is sometimes our last defense against rampant pollution."



Anna Aurilio, Legislative Director of U.S. PIRG, stands up for the environment at the national level. She got her start at NELC.

National Environmental Law Center

National Environmental Law Center Report is the report of the National Environmental Law Center, a nonprofit, nonpartisan research and litigation organization working to stop polluters through legal action and pollution prevention policies.

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R.I. Lawsuit Targets Pollution

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own monitoring reports, BDA has been discharging illegal levels of toxic metals into the Pawcatuck River for more than five years. In addition, BDA has consistently failed to meet standards governing the overall toxicity of its effluent, and has discharged wastewater containing fecal coliform bacteria at levels more than 5,000 times that allowed by its permit.

In April, 2006, NELC arranged for a wastewater engineering expert and an air pollution control expert to inspect BDA's factory. Their findings confirmed NELC's suspicions: BDA has run its wastewater treatment system without the most basic information needed to establish an accurate assessment of its operations, and its outdated air pollution controls are in desperate need of an upgrade.

Publicly available records show that BDA discharges approximately three-quarters of a million gallons of industrial wastewater into the Pawcatuck River each day, and emits approximately one million pounds of pollutants into the air each year, including hazardous air pollutants and volatile organic compounds.

The Pawcatuck River downstream of the BDA factory is on the Rhode Island list of impaired waterways because of biodiversity problems.

"It has become very clear that environmental conditions at BDA are as bad as they are because the company has been operating with no meaningful oversight from state or federal regulators," explained Senior Attorney Josh Kratka. "BDA has taken advantage of this regulatory vacuum."

NELC's lawsuit has drawn the attention of the Rhode Island Department of Environmental Management (RIDEM) and the U.S. EPA. Shortly after the suit was filed in federal court, RIDEM issued its first ever notice of violation to the company for discharges of fecal coliform bacteria. Several weeks later, EPA sent two biologists to the Pawcatuck River to inspect the company's outfall. In a Nov. 2005 follow-up letter to RIDEM, EPA described observing a "boil created [in the river] by Bradford Dyeing's submerged discharge...The water clarity appeared to be negatively impacted for some distance downstream..."

NELC has asked U.S. District Court Chief Judge Ernest C. Torres for a court order requiring BDA to achieve strict compliance with Clean Air Act and Clean Water Act permits and regulations, and to pay a monetary penalty for past violations.

The company has recently indicated a willingness to address its environmental problems and settlement negotiations to this end are ongoing. ♦



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