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## The Report of the National Environmental Law Center



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## R.I. Settlement To Clean Up Air, Water

**Providence, RI**—On Nov. 6, 2006 U.S. District Court Chief Judge Ernest C. Torres approved a groundbreaking consent decree that settles NELC's lawsuit against Bradford Dyeing Association, Inc. (BDA). Read about the details on page 3. The suit was brought by NELC attorneys to enforce the Clean Air and Clean Water acts at the company's

health projects, and spend at least an additional \$75,000 to reduce its emissions of pollutants associated with global warming and acid rain to well below permitted levels.

NELC filed the lawsuit in August 2005, on behalf of the Rhode Island Public Interest Research Group (RIP-IRG), Toxics Action Center,

## Equal Access To Justice

**Washington, D.C.**—In November 2005, NELC joined more than a dozen citizen groups in opposing a proposed court rule that would have made it more difficult for public interest groups—but not business interests—to challenge federal agency actions in the District of Columbia Circuit Court of Appeals, which handles more of these cases than any other court.

The court took the opposition to heart, and modified the controversial provision on June 19, 2006.

At stake was equal access to the courts for those with a legitimate grievance about government agency actions or decisions. The rule would have singled out public interest petitioners, requiring them to produce detailed evidence of their legal "standing" to challenge an agency's actions, whenever they filed suit.

The issue is a vital one for environmental groups, as lawsuits have historically been an essential tool for compelling the EPA to perform its duties.

The final rule treats all parties equally: businesses and public interest groups alike must demonstrate standing, but only when it is not already apparent from the administrative record before the court. ♦



Theresa Labriola

**NELC Senior Attorney Joshua Kratka rebukes the Rhode Island Department of Environmental Management for giving Bradford Dyeing Association a "free pass" to violate the Clean Air and Clean Water acts..**

southwestern Rhode Island textile mill.

Under the settlement, BDA must implement numerous upgrades to its decades-old textile finishing mill, hire outside consultants to study environmental compliance issues and recommend further upgrades, and either achieve swift compliance with pollution limits or pay stipulated penalties for violations.

BDA must also pay \$75,000 to establish a fund for local environmental and public

and Sierra Club, alleging thousands of violations of federal environmental laws that state regulators had ignored.

"This settlement represents a tremendous achievement for the residents of Bradford, Rhode Island, who have suffered from noxious air and polluted water for far too long," said NELC Paralegal Sarah Bergman, who worked closely with those living near the factory.

BDA employs more than 200 workers who dye, print,

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## Federal Judge Cites Pacific Seafood For Wastewater Monitoring Violations

**Warrenton, OR**—In September 2006, Judge Ancer L. Haggerty of the United States District Court for Oregon ruled that Pacific Coast Seafoods Company



LaBerte

Pacific Seafood failed to do representative monitoring of its discharges, as required by its Clean Water Act permit.

*“The Federal court found that Pacific Coast Seafoods had violated various wastewater discharge limits in the permit on over 600 days of operation, and NELC attorneys believe that a number of additional violations would have been confirmed had Pacific Coast Seafoods conducted its wastewater monitoring in the manner required by its permit.”*

had failed to comply with requirements regarding wastewater monitoring and reporting at its seafood processing facility in Warrenton, Oregon. Pacific Coast processes various seafood products at the facility, including shrimp, crab, whiting, cod and halibut. It shares the facility with its affiliate Pacific Surimi Co., and both are owned and operated by Pacific Seafood Group, the third largest seafood processor in the country.

NELC attorneys filed suit against Pacific Coast and Pacific Surimi in July 2002, on behalf of the Oregon State Public Interest Research Group (OSPIRG) and two Warrenton-area residents, for chronic non-compliance with the Clean

Water Act. Among other claims, the lawsuit alleged that Pacific Coast was not meeting wastewater discharge limits applicable to many of its seafood processing lines, and was violating water quality standards in the Skipanon and Lower Columbia Rivers.

In October 2004, NELC attorneys added several new claims to the lawsuit, including allegations that Pacific Coast had systematically avoided taking samples of its wastewater on days when its more pollutant-intensive seafood products were being processed, and had routinely failed to sample and report the levels of biochemical oxygen demand (BOD) in its wastewater. BOD is a measure of the oxygen-depleting character of wastewater.

Pacific Coast’s wastewater discharge permit, which is issued by the Oregon Department of Environmental Quality (DEQ) under authority granted by the Clean Water Act, explicitly requires that BOD be monitored and that monitoring be representative of the wastewater actually discharged.

In March 2005, the federal court found that Pacific Coast had violated various wastewater discharge limits in the permit on over 600 days of operation, and NELC attorneys believe that a number of additional violations would

have been confirmed had Pacific Coast conducted its wastewater monitoring in the manner required by its permit.

In July 2006, three months before the scheduled trial date in the case, the parties agreed to place the monitoring issues before the court for disposition in a “summary bench trial,” a proceeding in which the judge rules on the issues on the basis of written evidence and arguments submitted by the parties.

NELC attorneys argued that Pacific Coast had violated the permit’s monitoring provisions on 60 separate occasions. Pacific Coast’s defense relied heavily on a series of telephone communications with a DEQ employee, in which the company allegedly was told that its monitoring practices were perfectly acceptable.

“Off-the-cuff interpretations by agency personnel can be misleading, because there’s no guarantee that the employee is actually speaking for the agency,” explained NELC Staff Attorney Joseph Mann. “Moreover, if DEQ meant to officially relax the permit’s monitoring provisions, it is not authorized to do so during a casual phone call: the law requires that the public be notified and given an opportunity to comment

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# Details Of Bradford Dyeing Association Settlement

Here are the details of the settlement in the case against Bradford Dyeing Association, Inc. (BDA). NELC resolved the case in November (see page 1).

### Clean Water Act:

#### 1. Plant Upgrades:

(a) Outside consultant will study wastewater treatment system, improve operation, and recommend upgrades. Approximate cost of studies: \$60,000.

(b) Possible upgrades: separate septic system to address fecal coliform violations, more frequent sludge removal to remove heavy metals.

#### 2. Compliance:

(a) Monthly compliance reports to plaintiffs.

(b) BDA must comply with all permit limits, and pay substantial automatic penalties for future violations—for each daily violation, for each monthly average violation, for each toxicity violation—until nine consecutive months of compliance are achieved for each pollutant.

### Clean Air Act

#### 1. Plant Upgrades:

(a) Opacity: Re-tool boilers and retrain personnel to reduce particulates

(soot) from main smoke-stack. Approximate cost: \$50,000.

(b) Opacity & Odor: Install "smoke abater" device to reduce particulates and burning plastic odor from textile finishing processes. Approximate cost: \$200,000.

(c) Odor: Increase height and exit velocity of exhaust stacks to improve dispersion of acetic acid fumes. Approximate cost: \$50,000.

(d) Odor: Improve management of sludge ponds to reduce raw sewage odors.

#### 2. Compliance:

(a) Monthly compliance reports to plaintiffs.

(b) Main stack: BDA must achieve 98.5 percent or greater round-the-clock compliance with opacity limit. Roof stacks: BDA must achieve 100 percent compliance with opacity limit during all unannounced visits by independent monitoring consultant.

(c) Substantial automatic penalties for future violations—for each opacity violation, for each odor violation—until nine consecutive months of compliance are achieved for each stack.

(d) Plaintiffs retain right to go into court to enforce

odor limitations if plant upgrades are ineffective.

### Additional Payments:

BDA must pay financial sanctions for past and future violations, as follows: \$75,000 (plus any stipulated penalties) to establish Bradford Area Environmental Fund, for

environmental projects to benefit local air quality and/or the Pawcatuck River watershed.

At least \$75,000 toward new air pollution controls to reduce emissions of greenhouse gases, nitrogen oxide, and sulfur dioxide further below levels required by law. ♦

## NELC Welcomes Adia Bey

Adia Bey joined NELC this fall as the new paralegal and administrator.

a campaign to reduce industrial air pollution in 2003.

She received her B.A. from Columbia University, where she studied Anthropology and Environmental Science.



Since then, Adia has conducted field research on natural resource management in East Africa and environmental justice in the South Bronx.

Adia began working for social justice as a youth activist and peer educator endeavoring to prevent gun violence in Chicago.

As the latest member of the NELC team, Adia will assist attorneys in representing citizen groups and developing new cases to hold industrial polluters accountable for the harm done to communities and natural habitats throughout the country. ♦

As a canvasser and field manager for Illinois Public Interest Research Group (Illinois PIRG), she helped fundraise for

## EPA's Draft Dioxin Reassessment Confirms Health Risk

*"2,3,7,8-TCDD, also called dioxin, is among the most toxic anthropogenic substances ever identified."*

*-National Academy of Sciences*

**Member information:**

EPA's report and related documents are available online at:

<http://www.epa.gov/ncea/pdfs/dioxin/nas-review/>.

Additional information about dioxin is available at:

- <http://ejnet.org/dioxin/>
- "Dying from Dioxin" by Lois Gibbs.

Dioxins are a group of hundreds of highly persistent organic compounds. According to the National Academy of Sciences, one prominent dioxin chemical, 2,3,7,8-TCDD, is "among the most toxic anthropogenic substance[s] ever identified."

This remarkably blunt state-

to dioxins, and the "background" dioxin levels found in average Americans closely approach the levels at which adverse effects might be expected to occur.

3) Dioxins mimic human hormones, and their non-cancer effects include adverse impacts on human reproduction and fetal and

substantially from a peak in the early 1970s.

However, dioxins persist long after they have been created and released. Currently, up to half of human exposure to dioxins results from the re-release into the environment of dioxins that were produced years ago.

For typical Americans, 95 percent of dioxin exposure comes from the food we eat. Because dioxins are fat-soluble and do not easily metabolize, they bioaccumulate (increase in concentration) as they move up the food chain to humans.

Dioxins are present at elevated levels in fish, meat, and dairy products, particularly in high-fat foods such as butter and cheese.

Unfortunately, many people are exposed to additional, concentrated sources of dioxins. American soldiers and the people of Vietnam were exposed to dioxin-contaminated Agent Orange, used as a defoliant during the war. Times Beach, Missouri, was declared a Superfund site and abandoned after dioxin-contaminated oils were used for dust control.

The town of Midland, Michigan, and the Tittabawassee and Saginaw Rivers are contaminated with high levels of dioxins from the nearby Dow Chemical plant. See related article on page 6.♦



**Dioxins are not intentionally produced. They are the unintended by-products of processes involving chlorine, such as waste incineration, chemical and pesticide manufacturing, and the bleaching of paper (above).**

ment prefaces the Academy's scientific review of EPA's reassessment of the health risks posed by dioxins, a long-delayed process that began 15 years ago.

Three of the most important conclusions of EPA's draft reassessment are:

- 1) Many dioxins are likely human carcinogens and the general population may face a greater than 1 in 1,000 increased risk of contracting cancer as a result of dioxin exposure.
- 2) There appears to be no "safe" level of exposure

early-childhood development, and suppression of the immune system.

Dioxins are closely related to furans and certain forms of polychlorinated biphenyls (PCBs). Unlike PCBs, however, dioxins are not intentionally produced. Instead, they are the unintended by-products of processes involving chlorine, such as waste incineration, chemical and pesticide manufacturing, and the bleaching of paper.

In recent years, the level of dioxins released to the environment has decreased

# EPA Fails To Regulate Water Intake Structures

**Boston, MA**—On June 16, EPA decided against setting environmental standards that would protect fish from being killed by intake structures at many of the largest industrial facilities in the country, even though such regulation is required by the Clean Water Act.

On June 30, NELC filed a petition on behalf of the Massachusetts Public Interest Research Group (MASSPIRG) asking the First Circuit Court of Appeals in Boston to overturn EPA's decision.

Industrial facilities withdraw billions of gallons of water each day from rivers, lakes, oceans and estuaries in order to control the temperatures of various industrial processes. Without proper technology, these structures will continue to kill billions of fish, eggs, larvae and other aquatic organisms by entraining them through the plants or impinging them against intake screens.

The Clean Water Act requires EPA to determine the "best technology available" to prevent this destruction of aquatic life, and to promote regulations consistent with the use of such technology. In two earlier rule-making decisions, EPA required new facilities to install recirculating cooling water systems (which do not draw water and organisms from the wild), and required a



Without proper technology, cooling water intake structures will continue to kill billions of fish, eggs, larvae, and other aquatic organisms.

limited number of existing power plants to make other efforts to reduce the impingement and entrainment of aquatic life.

Now, in Phase III of its cooling water intake regulations, EPA has decided not to set national standards for existing facilities in the pulp and paper, petroleum and coal, chemical and primary metals manufac-

turing industries, which together use approximately 40 billion gallons of cooling water per day.

EPA's decision not to abide by the Clean Water Act here has wide-ranging consequences. The damage caused by these cooling water intake structures is significant. And worse, the grounds for EPA's decision would set a bad precedent:

*"The damage caused by cooling water intake structures from manufacturing facilities is significant, yet the EPA has decided not to set standards for existing facilities, which together use billions of gallons of cooling water per day."*

EPA based its decision not to regulate on a cost-benefit analysis, which is at odds with policies Congress has directed EPA to use to implement the Clean Water Act.

Similar challenges to EPA's decision have been filed in three other circuit courts, and the cases are currently consolidated in the Fifth Circuit Court of Appeals in New Orleans. ♦

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on such proposed changes before they take effect."

On Sept. 26, the court issued an opinion finding Pacific Coast liable for all of the alleged monitoring claims. Regarding the BOD violations, the court found that "Pacific Coast's permit plainly requires monthly monitoring of BOD with no stated exception" and that "DEQ lacked authority to amend Pacific Coast's permit without submitting the

modification to public notice and comment."

Regarding the representative monitoring violations, the court found that the company's position "would defeat the purposes of the [Act] by allowing Pacific Coast to manipulate the sampling dates such that it only samples species productions that do not violate the effluent requirements."

"When dischargers fail

to accurately monitor and report their wastewater discharges, the system for enforcing limitations on water pollution fundamentally breaks down, and vital information is forever lost to government regulators and concerned citizens," said NELC Litigation Director Charles Caldart. "The judge sent a clear message to seafood companies—and to DEQ—that the monitoring requirements of the Clean Water Act are too important to be ignored." ♦

## Interview With Lone Tree Council's Michelle Hurd Riddick

*"This site is not safe for the dioxin-contaminated sediments the Corps plans to take from the Saginaw River. The Corps owes it to the public to fully evaluate its environmental impacts. Their 'drive-by' environmental assessment is just not good enough."*

*- Michelle Hurd Riddick*

*Michelle Hurd Riddick is a volunteer with the Lone Tree Council, a Bay City, Michigan environmental organization. Lone Tree Council is a co-plaintiff with Environment Michigan in NELC's current lawsuit challenging the Army Corps of Engineers' decision to dredge dioxin-contaminated sediments from a long stretch of the Saginaw River, and place them into a new 281-acre disposal site without first preparing an environmental impact statement.*



**How did you become involved in the issue of dioxin contamination in your community?**

I received a phone call in 2001 from an activist with the Michigan Environmental Council. He had been told by someone at the Michigan Department of Environmental Quality that they had found high levels of dioxin contamination in the Tittabawassee River. Once we finally were able to get documentation of this, he asked me if I could help them out "for a while." That was five years ago, and I have been working on the issue ever since.

At the time, I was driven primarily by my tremendous appreciation for the Great Lakes. Some of my best memories of childhood were of family vacations on Lake Huron and trips to the Mackinaw Bridge. When I learned that the Tittabawassee

River was contaminated, it only made sense that the dioxins were going down the Tittabawassee, into the Saginaw River, and right out to Saginaw Bay and Lake Huron. Now that I have learned more about the dangers of dioxins, I am also concerned about the impacts on public health.

**Where did these dioxins originate?**

Nearly all of these dioxins are from the Dow Chemical facility in Midland, primarily from its past production of herbicides. Dow has been discharging dioxins into the Tittabawassee River and emitting them into the air through its incinerator stacks. Considerable dioxin contamination also occurred when the Tittabawassee overflowed its banks during heavy rainstorms, washing dioxins from Dow's property all along the river.

**Why did Lone Tree Council decide to sue the Corps of Engineers over its Saginaw River dredging disposal project?**

This disposal site is not safe for the dioxin-contaminated sediments the Corps plans to take from the Saginaw River when it performs navigational dredging. The disposal site is in the Saginaw River floodplain and is right next to a state game preserve. Given the obvious

problems with the site, we think that the Corps owes it to the public to fully evaluate its environmental impacts. The Corps' "drive-by" environmental assessment is just not good enough. It is little more than a cursory look at the project, and is filled with overly-optimistic assumptions that have not been borne out.

For example, in the comments on the draft environmental assessment, local residents asked the Corps to do a hydrogeological survey to confirm its claims that the facility would not need a liner to prevent groundwater contamination. The Corps did not do a study until after the site was purchased—and that study found groundwater just a few feet below the surface, as well as numerous breaks in the clay layer that could allow dioxins to reach this groundwater. The project has been under construction for more than six months and the Corps still doesn't have a real plan for how to deal with this problem.

The Corps has also played down the level of dioxins in the sediments. The reality is that they don't really know, and they don't plan to take samples when they dredge. The Corps reported the average contamination level as 109 parts per trillion (ppt) in a 1999 survey of the navigational channel, but the reported level rose to 808 ppt in its 2004 survey. Despite this

increase, the Corps did not propose a single change to the design or management of the project. The state allows a maximum of 90 ppt for residential exposure, and that number will probably be reduced after EPA completes its dioxin reassessment (see page 4).

**Does Lone Tree Council support navigational dredging?**

We have always supported the Corps' navigational dredging. Ships on the river are better for the environment and the community than additional trucks on the road, which use more gasoline and cause wear and tear. However, the dioxin-contaminated sediments from the navigational channel should be treated like any other hazardous waste. They should go to a licensed landfill outside of the floodplain, one that provides wastewater treatment, air and water monitoring, a liner to protect groundwater, and leachwater reclamation. These are Dow's dioxins, so Dow should be paying the cost to properly dispose of them.

It is really shocking to contrast the Corps' plan here with what Dow is required to do to contain dioxin-contaminated sediments at its Midland landfill. Dow has a multi-million dollar system to contain groundwater on its site.

But if the Corps can just put toxic wastes into an unlined slurry pit in a floodplain without adequate environmental review, why can't Dow—or any other party—do the same thing?

**Lone Tree Council has been monitoring Dow's planned remediation of dioxin contamination in the Tittabawassee and Saginaw Rivers. What does that project entail?**

For the moment, the scope of that project is unclear. In the current phase of the remediation, Dow is supposed to clean up the most contaminated sediments from both rivers above the Saginaw River navigational channel. But Dow will also be responsible for cleaning up floodplain soils—many homes in Midland are contaminated and it's unclear what will be done about it. Also, future phases of the cleanup should involve the rest of the Saginaw River, including the navigational channel.

**Where will those contaminated materials be placed?**

Unfortunately, the ne-

gotiations with Dow are happening under the cloak of a confidentiality agreement so the public has not been told the full truth. Lone Tree Council recently received a number of documents through a Freedom of Information Act request to EPA, and they confirm that Dow has an interest in using the new Corps facility as a disposal site.

Recently, Dow admitted its interest publicly, and even acknowledged having provided several hundred thousand dollars to the project. Saginaw County, which is the local sponsor of the Corps' project, denies that Dow will use the facility.

But, as far as we know, the Corps' dump is the only option currently on the table for Dow. This is a serious concern, because the facility was not designed for highly-contaminated wastes. ♦

*"The Corps has played down the level of dioxins in the sediments. The reality is that they don't really know."*

*- Michelle Hurd Riddick*



Michelle Hurd Riddick

**The site of the 281-acre Dredged Material Disposal Facility (DMDF), a massive unlined landfill that the Army Corps of Engineers is planning to use for disposal of dioxin-contaminated sediments from the Saginaw River.**

## 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. Settlement To Clean Up Air, Water

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coat, and finish fabrics for the Department of Defense and other clients. For years, residents in the area have complained that powerful chemical odors from the factory sometimes force them to stay indoors.

Canoers and kayakers have also reported that the normally pristine Pawcatuck River turns into a "dead zone" immediately downstream of the BDA plant.

The lawsuit charged BDA with discharging illegal levels of copper, lead, fecal coliform bacteria, suspended solids, and other pollutants into the Pawcatuck River for more than five years. The company's own monitoring reports told the story of its flagrant disregard for pollution limits.

"State and federal environmental regulators have given BDA a free pass for years," explained Senior Attorney Josh Kratka. "By requiring the company to significantly upgrade air pollution and water pollution controls, this settlement demonstrates the important role that citizens can and often must play in enforcing our environmental laws."

As a result of the lawsuit, NELC researchers and experts were able to gain access to BDA's factory to inspect pollution control systems. What they found was an outdated, poorly-run operation, where plant managers lacked the most basic information needed to control pollutant levels.

The Rhode Island Department of Environmental Management had issued orders as long ago as the early 1990s requiring BDA to find the source of excess copper (a highly toxic heavy metal) in its wastewater, but no such study was done.

Under the consent decree, BDA will now have six months to complete this and other needed studies of its wastewater treatment system.

NELC also obtained copies of daily printouts from BDA's continuous opacity monitor, which measures the amount of fine particulate matter (soot) emitted from the company's oil-burning boilers. Although these records revealed hundreds of violations of BDA's Clean Air Act permit, state and federal regulators never took enforcement action. In fact, it appears they had never even seen these printouts.

The NELC consent decree sets a strong precedent. It will impose interim monitoring requirements on BDA's smokestack emissions that are stricter than those in effect anywhere else in Rhode Island.

"This multi-faceted settlement agreement is designed to bring BDA into sustained compliance with the Clean Air and Clean Water acts through pollution control upgrades, enhanced monitoring, and automatic penalties for future violations," Kratka added.

NELC's lawsuit is believed to be the first citizen enforcement suit in Rhode Island to enforce both the Clean Air and Clean Water acts. ♦



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