

# The Northwest Environmental Defense Center



# Industrial Stormwater Permit Enforcement



*Northwest Environmental Defense Center*

The Cuyahoga River catches fire in 1969. Sometimes it makes sense to deal with problems before things get out of hand.



# Clean Water Act §101

- Discharge of toxics in toxic amounts is prohibited
- Interim goal that all waters be fishable, and swimmable by 1983
- National goal that the discharge of pollutants be eliminated by 1985

# Important Permit Conditions

- Must require compliance with water quality standards
- Must include opportunity for public comment and hearing
- Permits may not be issued to new discharger if receiving waterbody is impaired, and no TMDL has been developed yet

# Compliance With Water Quality Standards

- Clean Water Act. 33 U.S.C. § 1311(b)(1)(C)
- 40 C.F.R. §122.4(d) and 40 C.F.R. §122.44(d)
- "[I]ndustrial discharges must comply strictly with state water quality standards."  
*Defenders of Wildlife vs. Browner*, 191 F.3d 1159, 1165 (9<sup>th</sup> Cir. 1999)

# Heavy Metals Commonly Found in Industrial Stormwater

- Aluminum, antimony, arsenic, beryllium, cadmium, chromium, copper, cyanide, iron, lead, magnesium, mercury, nickel, selenium, phenols, silver, and zinc

# How prevalent are they?

- Arsenic and Chromium: more than 50% of the time
- Nickel and Cadmium: more than 40% of the time
- Cyanide: more than 20% of the time
- Antimony, Beryllium, and Selenium: more than 10% of the time

# Opportunity For Public Comment and Hearing

- Both permit application/Notice of Intent *and* stormwater pollution control plan

*Environmental Defense Center vs. EPA* 344 F.3d 832,863  
(9<sup>th</sup> Cir. 2003)

# Contents of Plan

- Violations of plan constitute violations of the permit
- Plan conditions (such as BMPs) are enforceable effluent limitations

*Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985 (9<sup>th</sup> Cir. 2000)

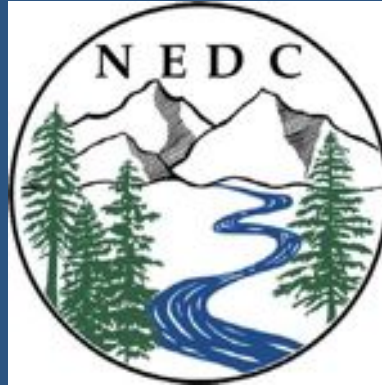
Polluters may have a permit to discharge pollution but are often dumping more than they are allowed



Sometimes polluters dump pollutants discretely and hope that no one is crazy enough to be out in the pouring rain with a camera documenting what they are doing



# We're watching



# The Sunday Oregonian

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## Kayak crusaders persuade polluters to come clean

Mark Etkedahl, executive director of the Northwest Environmental Defense Center, searches the Columbia Slough for signs of illegal pollution. Limits are especially tight in the slough because of its polluted legacy.

STEPHEN VAZ  
THE OREGONIAN



**Environment** | Armed with plastic bottles and the law, a nonprofit group wins more in penalties than the state DEQ

By MICHAEL WILSTEIN  
THE OREGONIAN

Mark Etkedahl paddles his kayak through pounding rain, heading across the Columbia Slough to a riverbank pipe that pours chocolate-brown liquid directly into the water. Holding steady, he reaches out and fills a plastic bottle with the muck — it smells like gasoline — and

tests it right for a trip to the lab for testing.

You'd better hope the downpipe isn't yours.

Because Etkedahl is after anyone draining oil, toxic metals, toilet-chewing bacteria and who knows what else into our rivers and streams — even this gray and abused slough in Northwest Portland.

He's the lone full-time employee of what may be Oregon's toughest environmental enforcer, The Northwest Environmental Defense Center, funded by Etkedahl's long hours and student volunteers from Lewis & Clark Law School,

tracks pollution like a detective and whisks the law like a hammer to make polluters clean up their acts. And they're having striking success.

The little band in their Subaru, van, gear and kayaks won more cash penalties from water polluters last year than the entire Oregon Department of Environmental Quality, the state's official environmental cop with an enforcement staff of about 120.

"I don't think I'd feel we need to be so aggressive if the state were as aggressive as it ought to be," Etkedahl says.

Or, as plain-spoken, perhaps.  
Please see ENFORCERS, Page A7

# Ways we find potential cases

- Agency File Review
- Tips
- Independent Surveillance

A sheen on the surface of the water is  
never a good sign



# Sampling Protocol Tip: Don't dip fingers in the muck





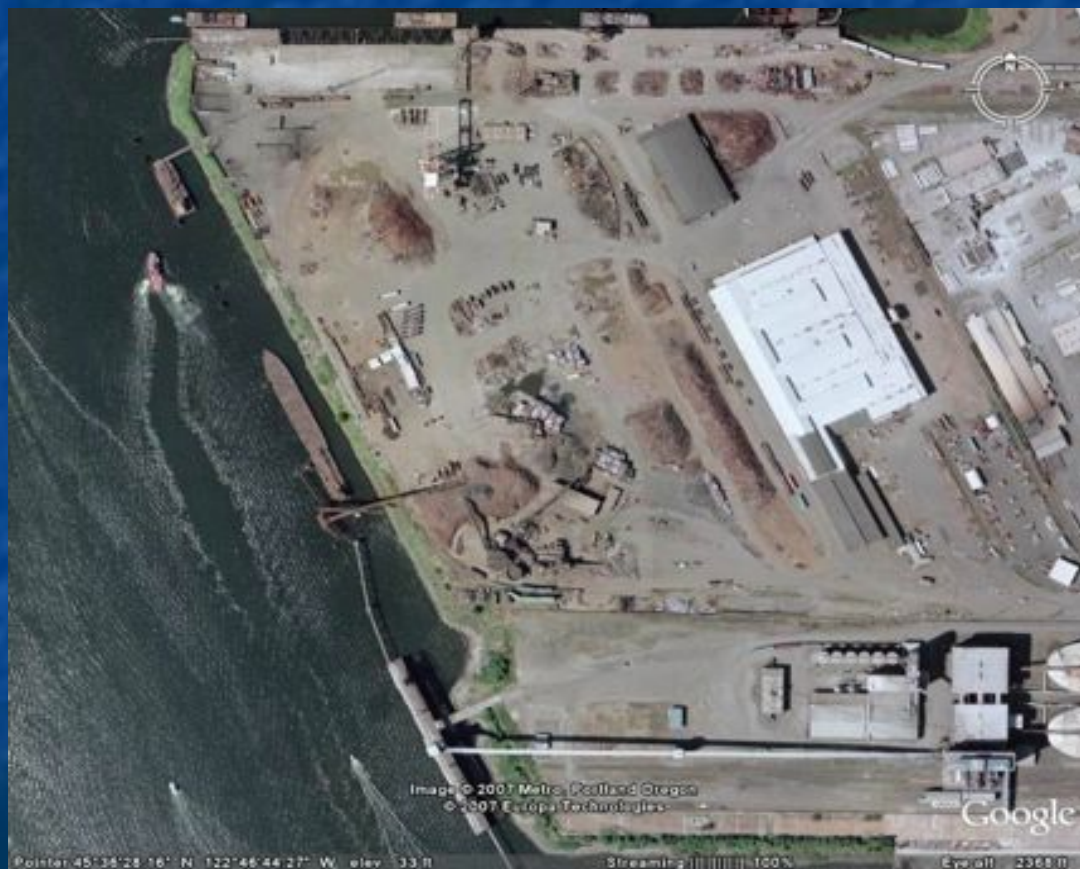




# Helpful Tools



# Google Earth



NEDC student volunteers diligently taking field notes after collecting samples



Samples ready to take to the lab. Guess which two bottles were collected from outfalls belonging to illegal polluters and which is from upstream?



# Stormwater laden with heavy metals discharging to Portland Harbor



Sometimes taking to the air gets results as well. NEDC flew over dozens of factory farms and posted images of problematic operations on our website. This tactic led to a much higher rate of permit compliance at these sites.



# Making Polluters Pay

- NEDC enforcement actions have generated more funding for local restoration projects than the Oregon Department of Environmental Quality collected in penalties during each of the past several years
- Through these enforcement actions, dozens of other conservation organizations, local governments and agencies have received thousands of dollars in support of their important work



# Waste Management, Inc. stormwater outfall on the Columbia Slough:

before and after a NEDC enforcement action



# Protecting Chum Salmon Spawning Habitat at Wood's Landing in Vancouver, WA



