



## **Clean Water Act 40: Fishable Waters Action Day**

Thursday, June 21, 2012

---

### **Overview**

On Thursday, June 21st **Waterkeepers from around the U.S. are urged work together** to bring awareness to their communities, and to local and national decision makers, regarding the importance of fishable waters to the health and well being of their communities. The goal of this effort is to promote access to clean, fishable waters globally and to celebrate the 40<sup>th</sup> Anniversary of the Clean Water Act that has provided safeguards to U.S. drinking water.

### **We are working on two fronts on this Fishable Action Day:**

#### **1. Mercury Rule Rollbacks:**

Senator Inhofe's (R-OK) attempt to move a Congressional Review Act (CRA) to roll back the Mercury Rule that was implemented by EPA late last year. The Mercury and Air Toxics Standard, a rule finalized by the Environmental Protection Agency in December 2011, would require steep reductions of mercury, lead, arsenic, and other toxic pollutants from coal-fired power plants, the largest human-caused source of mercury emissions in the United States. These contaminants are linked to birth defects, brain damage, learning disabilities, cancer and other serious ailments and have significant impacts on our fisheries. **This could be up for a vote in the Senate THIS WEEK!**

#### **2. NEDC v. Brown**

Last year, in a case called Northwest Environmental Defense Center v. Brown, the Ninth Circuit Court of Appeals ruled that the Clean Water Act requires permits for discharges of polluted storm water from pipes, ditches and channels along logging roads. Across the West, logging roads are the leading source of sediment pollution from logging activities.

The NEDC v. Brown decision reaffirms that the Clean Water Act and EPA regulations require permits for this widespread and harmful source of pollution. Unfortunately, Big Timber and other polluters are pushing Congress to exempt them from the Clean Water Act so they can continue dumping pollution into our Nation's streams.

**We will be targeting members of Congress and the EPA to protect clean water and our fisheries from the impacts of logging roads.**

**WATERKEEPERS: PLEASE TRY TO PARTICIPATE OR HAVE ONE OF YOUR STAFF PLUG INTO ONE OR MORE OF THESE ACTIONS. WE NEED A**

## STRONG UNIFIED VOICE TO CONVEY OUR CLEAN, FISHABLE WATER MESSAGE!

### Tactics

1. **Call your Senators and Congressional Representatives** with phone calls starting at **10:00 a.m. EST on Thursday, June 21st** with a message similar to the one below:

(U.S. Senate Directory [here](#) and U.S. House of Representatives [here](#).)

*"I XXXXX, the XXXXXXXX Riverkeeper/Baykeeper **Stand for Clean Water** and ask you to pledge to do the same by working to protect OUR water and fisheries from pollution and toxics, and please work to defend the Clean Water Act during this 40<sup>th</sup> Anniversary, and beyond, from attacks from corporate polluters and those in Congress who are trying to weaken this historic legislation.*

### **Mercury Rule Language:**

*"Mercury is a dangerous neurotoxin that harms the developing hearts, lungs and brains of fetuses, infants and toddlers—it does not belong in our air or OUR water.*

*The EPA has a new rule that would **limit mercury and other dangerous pollution from coal-fired power plants**. That rule is now under attack. Sen. James Inhofe of Oklahoma is organizing an outrageous campaign to halt the EPA's new rule please protect the health of our communities and fisheries from this attack."*

### **NEDC v. Brown Language:**

*"Since 1990 nearly every other American industry has had to obtain permits for their stormwater discharges. There is no reason the logging industry should be allowed to continue polluting our Nation's rivers and streams while all other industrial activities have to get permits. **Please oppose efforts to exempt the timber industry or logging roads from adhering to the Clean Water Act.**"*

2. **Participate, and circulate via Facebook, Twitter**, and to membership lists, in **Waterkeeper Alliance's Change.org petition** here is the [LINK](#) that will directly send a message to Congress to protect fishable waters for all and to protect the Clean Water Act from ongoing attacks.

### Sample Tweets:

#### **Mercury Rule**

- Don't let Senator Inhofe put polluter profits over the health of people, #fish and waterways.
- Don't let Senator James Inhofe destroy a landmark EPA ruling to protect #fish from mercury: #SwimDrinkFish
- It took 20 years to create a rule to cut mercury by 90%. Don't let Senator Inhofe kill it and poison our #fish: <insert link to @Waterkeeper action alert on Inhofe's bill>. #SwimDrinkFish
- It's fishable waters day with @Waterkeeper Alliance. Here is our is our favorite place to #fish? Where is yours? #SwimDrinkFish
- We think the <insert the name of your waterway here> is a great place to #fish. Let's keep it that way: Join <insert link to the local Waterkeeper's membership page> today! #SwimDrinkFish
- Happy #Fishable waters day, If you're near the water today, take some shots and share your favorite place to #fish @ <insert Waterkeeper name here>
- @Waterkeeper Alliance takes legal action to protect waterways and #fish from mercury: <http://bit.ly/GFPzps> #swimdrinkfish #fishable action day
- EPA & CDC say 1 of 6 US women carry dangerous mercury levels endangering 640,000 children annually. #SwimDrinkFish
- Proud of my organization @Waterkeeper Alliance or <insert local Waterkeeper link here>. Support if you want to #SwimDrinkFish across the world: <http://bit.ly/GOkEfC>
- What is your clean water story? Here's a great one from @ Waterkeeper Alliance's Marc Yaggi: <http://bit.ly/GH5F1H> #swimdrinkfish
- My favorite place to #swimdrinkfish is in the XXXXXXXX What's yours?
- @Waterkpr\_West: Tell Congress to stand up for clean water! #swimdrinkfish <http://ecowatch.org/2012/tell-congress-access-to-clean-drinking-water-is-a-basic-human-right/>

## **NEDC V. BROWN**

**ACTION: Contact EPA PRIOR TO JUNE 22<sup>nd</sup> and let them know that logging roads ARE NOT exempt from compliance with the Clean Water Act!**

**IMPORTANT: This should only take a few minutes; here is the link to make your comments:**

<http://www.regulations.gov/#!submitComment;D=EPA-HQ-OW-2012-0195-0001>

#### SAMPLE TEXT TO USE FOR COMMENT LETTERS

Dear Administrator Jackson,

I value clean water and wild fish. I believe it is time for the logging industry to do its fair share to protect water quality. I oppose efforts to exempt the timber industry and logging roads from the Clean Water Act.

Industrial logging roads are a leading cause of sediment pollution, threatening water quality and native fish populations across the West. Thankfully, there are low-tech, cost-effective, and well-proven road design, construction and maintenance practices that can reduce that pollution. Many of these practices are already being implemented in some parts of the country.

The Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit program provides a streamlined way to incorporate those practices and reduce logging road pollution while also insuring regulatory certainty. EPA determined over 20 years ago that industrial logging activities require NPDES permits for point-source stormwater discharges. EPA should stand by that determination and regulate the timber industry as it regulates nearly every other industry in America.

Please ensure that industrial logging road pollution remains regulated under the Clean Water Act's NPDES permit program.

Sincerely,

XXXXX Waterkeeper

#### **Background:**

**The *NEDC v. Brown* decision:** In May 2011, in a case called *Northwest Environmental Defense Center v. Brown*, the U.S. Court of Appeals for the Ninth Circuit ruled that EPA regulations require Clean Water Act NPDES permits for

polluted stormwater discharged from pipes, ditches and channels along logging roads.

The decision is solidly grounded in established law. The CWA requires NPDES permits for “point source” discharges of pollution. The Act defines “any pipe, ditch or channel” as a point source and that’s exactly what many logging roads use to discharge pollution. In 1990 EPA’s Phase I rule required NPDES permits for stormwater discharges associated with industrial logging activities. And since 1977 the courts have consistently held that EPA’s rules (specifically the Silvicultural Rule) do not and cannot exempt timber companies from the NPDES permit requirement. The *NEDC v. Brown* decision is yet another case holding that timber industry polluters are not exempt from the CWA’s NPDES permit requirements.

- **Judicial Branch:** In September 2011 the State of Oregon and members of the timber industry asked the Supreme Court to review the *NEDC v. Brown* decision because they do not want to comply with the Act’s very effective NPDES permit program. On behalf of the United States, in May 2012 the Solicitor General filed a brief strongly recommending denial of the petitions for certiorari. The Supreme Court should decide whether to take the case by the end of June.
- **Executive Branch:** Also in response to the *NEDC v. Brown* decision, EPA recently announced that it is considering amending the CWA rules to exempt logging roads from the NPDES permit requirement and instead regulate them under a non-permitting scheme under section 402(p)(6). The initial comment period closes June 22, after which EPA will likely proceed to formal rulemaking.
- **Legislative Branch:** In December 2011 Congress passed an appropriations rider that addresses NPDES permitting of stormwater discharges from roads associated with silvicultural activities. The rider was in section 429 of the Consolidated Appropriations Act, 2012, Public Law No. 112-74, and many believe it imposes a moratorium on NPDES permitting for stormwater discharges from logging roads. The rider sunsets on September 30, 2012, but the timber industry is still lobbying hard for another rider.

#### **Message to elected officials and their staff:**

- **We fundamentally oppose efforts to exempt the timber industry or logging roads from the Clean Water Act’s NPDES permit program.**
- Logging road pollution—polluted stormwater discharged from culverts and ditches—is one of the more widespread and harmful sources of point-source pollution in the West.

- The CWA is a bedrock law that protects municipal drinking water supplies and aquatic species such as salmon and trout by requiring point sources of pollution to obtain and comply with NPDES permits.
- Since 1990 nearly every other American industry has had to obtain NPDES permits for their stormwater discharges. There is no reason the logging industry should be allowed to continue polluting our Nation's rivers and streams while all other industrial activities have to get permits.
- **Congress does not need to get involved because concerns about the decision can be addressed by the other branches of government.**
- The Supreme Court will likely rule on the petitions for cert this June.
- **If there are concerns, communicate those to EPA and allow the public, transparent, and established administrative processes to play out.** EPA has announced that it will commence rulemaking to address discharges from forest roads. Concerns about the scope of the ruling (what logging activities will require permits?), implementation of the ruling (will every culvert need a separate permit?), and citizen suit liability (will small forestland owners now be subject to lawsuits in federal court?) can all be resolved through upcoming EPA rulemaking if appropriate.
- **The conservation community recognizes *legitimate* concerns and wants EPA to clarify issues through guidance or rulemaking, while also ensuring that point-source stormwater discharges from industrial logging operations get NPDES permits.**
- The conservation community recognizes that many, if not most, timber harvesting and other logging activities are legitimate "nonpoint sources" of pollution because they do not use stormwater collection systems to route stormwater to streams. EPA should clarify that so it's clear that only true "point source" discharges require NPDES permits.
- The conservation community also recognizes that not all logging activities are "industrial" in nature—e.g., very small landowners, farmers that cut some timber, etc.--and so perhaps shouldn't be subject to the NPDES permit requirement. EPA should also clarify that.
- But some logging roads do use pipes and ditches to pollute, and those sources are "point sources" within the meaning of the Act. Moreover, logging in state forests and on other large tracts of land that are managed for timber harvest are "industrial logging activities." Where those activities result in point source discharges to streams they require—and should require—an NPDES permit.