

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

WILLAPA-GRAYS HARBOR OYSTER
GROWERS ASSOCIATION,
Appellant,

v.

PCHB No. 18-073

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,
Respondent,

**Declaration of George Kimbrell in Support
of Motion to Intervene**

and

AD HOC COALITION FOR WILLAPA
BAY,
Respondent Intervenors

CENTER FOR FOOD SAFETY, CENTER
FOR BIOLOGICAL DIVERSITY,
COALITION TO PROTECT PUGET SOUND
HABITAT,
Proposed Respondent Intervenors.

I, George Kimbrell, declare that if called as witness in this action I would competently testify of my own personal knowledge, as follows:

1. I am the Legal Director of the Center for Food Safety (CFS). I submit this declaration in support of Applicant Center for Food Safety's motion to intervene as Respondents in the proceeding before the Pollution Control Hearings Board regarding Washington State

1 Department of Ecology's (Ecology) denial of a permit to use imidacloprid to kill the native
2 burrowing shrimp that live on or near commercial oyster and clam beds in Willapa Bay and
3 Grays Harbor.

4 2. CFS is a tax-exempt, nonprofit membership organization with offices in the
5 Portland, Oregon; San Francisco, California; and Washington, District of Columbia. CFS
6 represents nearly one million members in every state across the country, including tens of
7 thousands of members in Washington State. CFS members join and support CFS because they
8 believe in safe, sustainable food production. These members are being adversely affected by the
9 commercial shellfish industry's use of pesticide, and support Ecology's denial of the
10 imidacloprid permit to protect Washington's unique ecology and habitats, used by numerous
11 species of wildlife and human alike.

13 3. CFS was founded in 1997. Since its inception CFS's mission has been to
14 empower people, support farmers, and protect the environment by addressing the harmful
15 impacts of industrial agriculture. Accordingly, CFS's activities have focused on the
16 environmental, human health, and economic impacts of the development and commercialization
17 of agriculture and food processing technologies. Principal among these activities are analyses
18 and actions to mitigate the impact of industrial agriculture on human health and the environment.
19 This includes major programs on both animal factories, including aquaculture, and pesticides.
20 Chief among CFS's concerns with animal factories, or concentrated animal feeding operations
21 (CAFOs), from which aquaculture is borne, are: water contamination, pollution, and harm to
22 endangered and threatened species. CFS seeks to protect the natural habitats and wildlife that
23 CFS staff and members enjoy from industrial animal agriculture, including aquaculture. CFS also
24 seeks to ensure a healthy and safe food supply for its members and the public, one that promotes,
25 rather than threatens, public health.

1 4. CFS combines multiple tools and strategies in pursuing its mission, including
2 public and policymaker education, outreach, and campaigning. For example, CFS disseminates a
3 wide array of informational materials to government agencies, lawmakers, nonprofits, and the
4 general public regarding the effects of industrial food production, agricultural products, and
5 pesticides, on human health and the environment. These educational and informational materials
6 include, but are not limited to, news articles, policy reports, white papers, legal briefs, press
7 releases, newsletters, product guides, action alerts, and fact sheets.
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9 5. CFS has created and disseminated these materials to the public and members and
10 provided policymakers and agencies with comments on the harmful aspects of industrialized
11 shellfish aquaculture. Specifically, CFS authored a report on ocean-based fish farming in March
12 2015 and a fact sheet on shellfish aquaculture in Washington in March, 2016. CFS also co-
13 hosted and presented at a conference on shellfish aquaculture held in Seattle Washington, on
14 March 30, 2016. CFS has also presented on the topic of industrial commercial shellfish
15 aquaculture at conferences and at universities.
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17 6. CFS has been concerned about the environmental and human health impacts of
18 industrial aquaculture for more than a decade. Yet, in the past few years, increased understanding
19 about its effects and its rapid development into new waters has propelled the issue to the
20 forefront of our actions. CFS has used organizational resources, including hundreds of staff
21 hours, to investigate, compile, and disseminate information about the impacts of industrial
22 shellfish aquaculture, to educate policy-makers and agencies, and fulfill CFS's function to
23 provide oversight of governmental activities surrounding industrial aquaculture.
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25 7. CFS uses these same strategies to address the impacts of pesticides, both on land
26 and in aquatic environments, and seeks to end harmful impacts of pesticides on humans and non-
27 target species, including threatened and endangered species. CFS advocates at the federal and

1 state agency levels for better protections for species like pollinators and aquatic invertebrates
2 from neonicotinoids, including imidacloprid. When necessary, CFS has engaged in litigation to
3 prevent the registration of harmful neonicotinoid pesticides without adequate analysis of impacts
4 to the environment and threatened and endangered birds and insects.

5 8. CFS has a vested interest in opposing pesticide use by industrial shellfish
6 aquaculture given the significant negative environmental and human health impacts that result.
7 These impacts directly contradict CFS's mission of promoting sustainable food production and
8 protecting the environment, including direct and indirect threats to marine life and marine
9 ecosystems and threatened and endangered species; the removal of native species; and the
10 pollution of nearshore ecosystems.

12 9. CFS submits comments regarding shellfish aquaculture and pesticide use to
13 Ecology, the U.S. Environmental Protection Agency (EPA), and U.S. Army Corps of Engineers,
14 among other regulatory agencies, via the public notice-and-comment process. CFS also regularly
15 sends out action alerts to its members, encouraging them to participate in the notice-and-
16 comment process, or to submit letters to government officials related to the oversight of
17 industrial aquaculture, pesticide use, and other issues affecting CFS's mission to build a
18 sustainable food system. CFS staff based in its Pacific Northwest office have been working on
19 the issue of shellfish aquaculture in Washington State in particular for many years. For example,
20 CFS filed organizational comments to the Army Corps on the Nationwide Permit (NWP) 48 for
21 Commercial Shellfish Aquaculture, to Headquarters on August 1, 2016, then to the Seattle
22 District on August 18, 2016, and again to the Seattle District on its proposed adoption and
23 regional conditions for NWP 48 on January 6, 2017. These comments addressed the Army
24 Corps' overall regulation of shellfish aquaculture under Clean Water Act Section 404, and dealt
25 in part with the impacts of pesticide use by the shellfish industry in Willapa Bay/Grays Harbor
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1 and the Army Corps' failure to consider or prevent these impacts to water quality when issuing
2 its general permit.

3 10. CFS also filed comments with Ecology on the proposal to spray the insecticide
4 imidacloprid on shellfish beds in Willapa Bay and Grays Harbor, WA. In 2014, when the
5 shellfish growers first applied for the imidacloprid spray permit, CFS commented warning
6 Ecology of the risks of imidacloprid and urging Ecology to take a closer look at the
7 environmental impacts. After the original 2015 permit was withdrawn, CFS again commented to
8 Ecology on the renewed permit application, urging Ecology to deny the permit based on the
9 dangers of imidacloprid to aquatic ecosystems and invertebrates, especially given the new
10 information and science that evolved since the first permit application.¹ In May 2018, after
11 Ecology announced the tentative permit denial, CFS submitted comments to Ecology supporting
12 Ecology's decision to deny the application, as Ecology's own review of the latest science
13 showed that there is no scenario of imidacloprid use in Willapa Bay that is safe and legal. CFS
14 also sent an action alert to its thousands members in Washington to send their own comments to
15 the Department of Ecology and urge them to finalize their denial of the permit in May 2018.
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17 11. The adverse impacts of the proposed imidacloprid use (and the previous
18 commercial scale trials in Willapa Bay) also injure individual CFS staff and members. CFS
19 members enjoy recreating along the Washington bays and coastlines, including Willapa
20 Bay/Grays Harbor. They live on and/or regularly visit the beaches and bays to take pleasure in
21 the aesthetic beauty of Washington's coastline and waters; they walk the beaches, kayak, swim,
22 and sail; they fish or catch native species; bird-watch and observe whales and other wildlife; and
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26 ¹ CFS *et al.*, Comments on Supplemental Environmental Impact Statement for Control of
27 Burrowing Shrimp using Imidacloprid on Commercial Oyster and Clam Beds in Willapa Bay
and Grays Harbor, Washington (Nov. 1, 2017), and Appendices and Attachments.

1 they enjoy the environment in its natural state. They deeply value threatened, endangered, and
2 non-endangered species including iconic species like salmon, orca and humpback whales; green
3 sturgeon; snowy plovers, eagles, falcons, and other shorebirds; and native shellfish, like clams
4 and Dungeness crabs. They rely on the bays and waters of Washington for their businesses. All
5 of these interests are directly threatened by the proposed imidacloprid use on shellfish beds in
6 Willapa Bay and Grays Harbor.

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8 12. For example, CFS members Ross Barkhurst, Tom Buchele, and Fritz Cohen all
9 own homes and real estate on or near Willapa Bay; they live or frequently recreate there; and
10 they have suffered harm to their economic, recreational, environmental, and aesthetic interests
11 from commercial shellfish operations' use of pesticides. Mr. Barkhurst lives on Willapa Bay and
12 owns shellfish beds; he regularly gathers shellfish, fishes, and hunts in Willapa Bay. The use of
13 pesticides, and imidacloprid specifically, harms Mr. Barkhurst's interests in enjoying his own
14 tide beds and the wildlife they used to support. Mr. Buchele owns a vacation home on Long
15 Beach peninsula very near the Bay; he regularly eats oysters from Bay and enjoys and observes
16 wildlife in and around the Bay. Mr. Buchele is highly concerned about pesticide use in shellfish
17 industry and what impacts it might have on his health and the health of the Bay and its wildlife,
18 and will avoid eating oysters from any operations on Willapa Bay unless he is sure they do not
19 use pesticides. If imidacloprid spraying is allowed to continue (beyond the 500-acre commercial
20 scale "experiment trial"), it will require him to spend additional time and resources to ensure that
21 his oysters were not sprayed with pesticides. Ms. Cohen owns a historic bed and breakfast hotel
22 directly on Willapa Bay, with its own shellfish beds; she has suffered economic, environmental,
23 and aesthetic impacts from industrial shellfish industry's use of pesticides. Ms. Cohen has lost
24 tens of thousands of dollars on oyster sales and hotel visitors, after her shellfish beds were
25 contaminated with pesticides sprayed in Willapa Bay, and will continue suffering this economic
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1 loss so long as pesticides are still used on Willapa Bay shellfish beds. Ms. Cohen was one of the
2 Willapa Bay residents that secured the agreement by the Willapa Grays Harbor Oyster Growers
3 Association (WGHOGA) to cease the use of carbaryl on shellfish beds to kill burrowing shrimp,
4 and has a vested interest in preventing the replacement of carbaryl with another toxic and
5 persistent pesticide.

6 13. Accordingly, defending Ecology's denial of the imidacloprid permit is of
7 fundamental importance to CFS and to the interests of our members. CFS seeks to defend
8 Ecology's denial to prevent further injuries to CFS and its individual members from the use of
9 imidacloprid on shellfish beds.
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12 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and
13 correct.

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15 Respectfully submitted this 5th day of February, 2019 in Vancouver, Washington.

16 /s/ George Kimbrell
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on February 5, 2019, I served a true and correct copy of the Declaration in Support of Motion to Intervene on the following via electronic mail and First Class Mail:

Environmental and Land Use Hearings Office
Attn: Pollution Control Hearings Board
1111 Israel Rd. SW, Suite 301
Tumwater, WA 98501

Respondent

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Intervenor Respondent

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DATED this 5th day of February, 2019, at Seattle, Washington.



Andrew Hawley