This Coastal Town Banned Tar Sands and Sparked a War with the Oil Industry

South Portland's fight is a cautionary tale about the power of money — and whether towns can set their own rules about oil and gas infrastructure.

By Sabrina Shankman

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SOUTH PORTLAND, Maine—Can communities say no to energy companies?

Hundreds of miles from the nearest oil field or fracking well, the answer to this question is playing out here, as a longrunning David-and-Goliath battle over plans to pipe tar sands oil from Canada to Maine for export nears a pivotal moment.

On one side is South Portland, a picturesque waterfront city of 25,000, which approved an ordinance in 2014 to outlaw heavy crude exports from its harbor in an overwhelming City Council vote.

On the other is the Portland Pipe Line Corporation, the company behind the project, and its allies, including the American Petroleum Institute, whose members include most major oil and gas companies. API spent hundreds of thousands of dollars to defeat a ballot measure in 2013 that would have blocked the project. The City Council approved the ordinance a year later. The Portland Pipe Line Corporation is now suing the city, with support from API and the U.S. Chamber of Commerce, arguing the ban was unconstitutional.

A federal judge is expected to rule in the coming weeks. A decision in favor of the company could effectively open a gateway for the flow of carbon-heavy tar sands oil to one of the East Coast's largest oil ports.

For other cities seeking to restrict oil and gas activities, South Portland's four-year fight to fend off the oil industry offers perhaps a cautionary tale.
Piping Tar Sands?
The small city of South Portland, Maine, is three years into a lawsuit against Portland Pipe Line Corporation, which wants to reverse the flow of an existing line and pipe tar sands oil from Canada to the city’s port for export.

Portland-Montreal Pipeline
Pump stations/terminals

Corsica
Lake Champlain

Burlington

Dover

Manchester

Concord

Lee

Brunswick

Lewiston

Augusta

MAINE

NEW HAMPSHIRE

VERMONT

NEW YORK

Massachusetts

ALBERTA

SASK.

MANITOBA

ONTARIO

Québec

Canada

United States

Atlantic Ocean

TransCanada Energy East Pipeline (canceled)

Hardisty

Montreal

Saint John

N.B.

N.S.

Detail

South Portland, with an operating budget of $32.6 million, had spent $1.1 million as of August in legal fees to defend its ban, and the costs continue to rise. "They're getting killed," said Sean Mahoney, executive vice president of the Conservation Law Foundation, who has advised the city on the case.

At issue is local control, the right of communities to make their own rules when it comes to oil and gas operations and infrastructure.

"This has always been seen by the companies as a beachhead," Mahoney said. "They can't allow communities to pass this kind of ordinance because it could be a model for communities everywhere."

The industry argues that local ordinances violate state and federal laws and the U.S. Constitution because it's not the job of local governments to regulate oil and gas. The law is open to judges' interpretations, and litigation almost always follows when towns pass these local measures. Across the country, community fracking bans in particular have been the target of lawsuits.

The ordinance in South Portland is meant to address air pollution concerns associated with the bulk loading of crude oil, and was sparked by fears associated with oil sands, the tar-like bitumen of northern Alberta. South Portland is no stranger to environmental causes, having successfully fought past oil industry attempts to build new tank farms on the waterfront, and it recently flipped the switch on the state's largest municipal solar farm.

The pipeline project would reverse the flow direction on a 70-year-old system that carries conventional crude oil from a tanker facility in South Portland to refineries in Montreal. A reversal would transform it into a route for shipping Alberta's landlocked tar sands oil east to the coast. The lines traverse the watershed of Maine's Sebago Lake, the drinking water supply to 15 percent of the state. Opponents say a spill could foul their water.
But to complete the reversal, the company also needs to build a pair of 70-foot high smokestacks that would burn off volatile organic compounds from the oil before loading it into tankers. This became the focus of the ordinance because cities in Maine have "home rule authority" to create regulations that go beyond state rules to protect public health and welfare, and the project's opponents saw air pollution as a clear and present risk. The smokestacks would be built on a pier next to South Portland's beloved Bug Light Park, which juts out into Portland Harbor and is home to outdoor movie screenings and festivals in the summer.

Clean air became the focus of the ordinance because the Portland Pipe Line Corporation planned to build smokestacks near Bug Light Park that would burn off volatile organic compounds from the tar sands oil. Credit: Corey Templeton/CC-BY-NC-ND-2.0

The Portland Pipe Line Corporation argued in federal court in Maine that the measure amounts to illegal interference by a local government into international and interstate commerce and maritime trade, violating the state and federal constitutions.
Neither the Portland Pipe Line Line Corporation (PPLC) nor the American Petroleum Institute returned calls for comment.

Roberta Zuckerman, a retired psychotherapist who helped raise $150,000 for the city's legal defense, said she was propelled into action in 2013, when she learned about the extent of the project. "The hazards for marine life, fishing, lobstering—it's too much."

Mahoney sees the case as about more than stopping the tar sands.

"What this case is about is the authority of a local community to protect the health and welfare of its people," he said.

The Reversal: Getting Tar Sands Oil to the Coast

For more than 75 years, PPLC has owned and operated the pipelines that traverse 236 miles through southern Maine and the northern corners of New Hampshire and Vermont before connecting to Enbridge's Line 9 in Montreal. The company is owned by Imperial Oil, a subsidiary of ExxonMobil, Shell Canada, McColl-Frontenac and Suncor Energy.

If reversed, the pipeline wouldn't offer significant capacity for tar sands exports, but it would help crack the problem of moving Canada's landlocked tar sands oil to markets overseas. The tar sands companies don't have access to the Gulf of Mexico or the Pacific Ocean because of fierce opposition to the Keystone XL and to the various pipelines to the Canadian coasts. The U.S. East Coast is seen as one of the best remaining options to export Alberta's oil sands via pipeline, along with piecemeal projects through the nation's midsection to the Gulf Coast.
The idea of reversing the flow on the Portland-Montreal line isn't new. When major commercial oil production began in Alberta and North Dakota just over a decade ago, PPLC began quietly looking into the reversal, which was contingent on Enbridge doing the same thing with Line 9. The companies were ready to commit in 2008. Then the financial crisis hit, and both companies put the project on a backburner.

By the time the economy had turned around, the company faced a conundrum: Conflicting rulings were issued in Vermont on whether switching the fuel in PPLC's line to tar sands would require additional permitting. The company's board directed the company to slow down until there was more clarity about its ability to move ahead with the project.

Around the same time, a 2010 pipeline rupture on Enbridge's Line 6B spilled more than a million gallons of tar sands oil into Michigan's Talmadge Creek and the Kalamazoo River. The
accident would reveal how hard it is to clean up a spill of heavy bitumen in water.

Meanwhile, in South Portland, a group of citizens became aware of their local company's plans.

South Portland Fights Back

In June 2013, the grassroots group Protect South Portland collected enough voter signatures to land a question on the November ballot aimed at blocking the import of tar sands oil into the region. The group launched a get-out-the-vote campaign, taking up shop in a donated office space.

In the early months, as the group was training volunteers, knocking on doors and working the phones, they were surprised by the lack of opposition. But it didn’t last.

"We spent most of September waiting for the hammer to drop—we knew it was going to," said Taryn Hallweaver, who helped organize the grassroots effort as the campaigns director of Environment Maine. "Then it was like 'boom'. It was just all out. They pulled out all the stops."

Over the course of 2013, the Maine Energy Marketers Association, a trade group that represents the industry, led the efforts against the ballot question.

The campaign received more than half a million dollars in cash and in-kind donations, largely from the oil and gas industry, including $100,000 from the American Petroleum Institute in the final days before the election. Campaign disclosure forms show how several individual oil companies contributed, as well. The Maine Energy Marketers Association did not return calls for comment. The pipeline reversal opponents had about $176,000 total in cash and in-kind donations.

Supporters of the industry knocked on doors, telling residents that passing the ordinance would shut down the entire South Portland waterfront, an area that is key to the local economy and to many people's livelihoods.

PPLC also told people that it did not have immediate plans to go through with the pipeline reversal. The company forfeited one
of the permits it held to build the project's smokestacks in a highly publicized move—proof, PPLC said, that the company did not plan to develop the project. (The permit had been set to expire a few months later.)

In a letter signed by the company's upper ranks, including its now-President and CEO Tom Hardison, PPLC wrote that references by activists to tar sands and smokestacks "are designed to scare you into thinking that our company has an imminent project to bring tar sands to South Portland or smokestacks to Bug Light Park. Let us be clear—there is no such project proposed, pending or imminent," they wrote.

In August of this year, in a courtroom across the bay in Portland, a lawyer for the city of South Portland asked Hardison if that was true. If the ballot measure failed, the lawyer asked, how soon after would PPLC have started to pursue partners to complete the reversal? "The next day," Hardison answered.
Let us be clear — there is no such project proposed, pending or imminent. In fact, recently, as a good faith measure, we took the rare step of voluntarily surrendering our final permit relating to that prior proposal, as further reassurances to the community we care so deeply about that there is no tar sands project.

—Open letter to South Portland from executives of the Portland Pipe Line Corporation, November 2013

On Election Day, 8,694 South Portland residents cast ballots. The ordinance failed by 192 votes.

"It felt really crushing," said Hallweaver, who is now the legislative director for the Maine People's Alliance. "We had just poured our hearts and souls and every waking minute into this campaign. We were going up against the biggest industry in the world, and for a second it seemed like we had a shot—and then we lost."

The next day, the City Council introduced a measure calling for a six-month moratorium on exporting tar sands through the city's facilities.

As the council weighed the ban, API sent a letter to the mayor and council members, recommending that it reject the moratorium.

"The moratorium is an attempted end-run around federal and state policy, and it cannot be adopted because it is contrary to state law, it is preempted by federal and state law, and it violates the U.S. Constitution," wrote API vice president and general counsel Harry Ng in a Dec. 3, 2013, letter. "If enacted, the moratorium ... would face strong legal challenges."
Two weeks later, the temporary ban was approved, and a committee began working on the language for a more permanent solution: an ordinance that would keep PPLC from reversing the pipeline. They narrowed the broad language from the earlier ordinance to give the ordinance the best chance of standing up to legal challenges, zeroing in on air pollution concerns from the project. With tank farms sprinkled across the city, the air in South Portland already has the pungent smell of industry on some mornings.

Helen Suh, an expert on air pollution exposure science and epidemiology at Northeastern University who was hired by the city, found that levels of sulfur dioxide, nitrogen dioxide, VOCs and hazardous air pollutants in the air near the smokestacks and tank farms would increase if the reversal were completed and the tanks filled with tar sands oil. The impacts could be especially bad at South Portland High School, Kaler Elementary School and in certain residential neighborhoods.
At Bug Light Park, for instance, her modeling showed that nitrogen dioxide levels would increase from 10.6 parts per billion to 39.2 ppb. One study that looked at an increase of that size in Atlanta found it corresponded with an 8.6 percent rise in emergency department admissions for asthma and wheezing.

Sulfur dioxide levels could increase even more. Suh found the level could jump from 9 ppb to 54.7 ppb at Bug Light. She cited a study in Montreal, where similar increases resulted in a 46 percent increase in hospital admissions and an 18 percent increase in emergency department visits for asthma.

Members of Protect South Portland started showing up to meetings wearing light blue T-shirts—symbolizing the clear sky they were seeking from the proposed “Clear Skies Ordinance.” The presentation of the draft ordinance was met with a standing ovation, Hallweaver said.

By the next meeting, the tenor had changed. An hour before the meeting was to begin, dozens of men in red T-shirts emblazoned with the American flag and the words “American Energy” lined the hallway outside the City Council chambers. When the doors opened, the room filled with a mix of red and blue T-shirts, overwhelming the room’s capacity. The Fire Department came and everyone was sent home.

The meeting was rescheduled for two days later at a gymnasium, and the City Council went on to vote 6-to-1 to
approve the ordinance.

The council member who voted against it —Michael Pock—was voted out in the next election. Since then, the ordinance has had unanimous support by the council.

The Pipeline Company's Challenge

Six months later, on Feb. 6, 2015, PPLC and the American Waterways Operators sued the city of South Portland and its code enforcement director, Patricia Doucette.

"By seeking to interfere in international and interstate commerce, and maritime trade, and in fact doing so, the ordinance contravenes fundamental principles upon which our Republic was founded and seeks to regulate in areas in which local regulation is preempted," PPLC's lawyers wrote in the complaint.

Protect South Portland formed a fundraising committee that has raised about $150,000 for the city's legal defense as the city files briefs, answers PPLC's requests for documents and does the necessary legal research for its case. The funds have come from hundreds of residents in the city and from concerned people from across the state and beyond.

South Portland City Manager Scott Morelli said the city has also been able to rely on rainy day funds to keep the lawsuit's costs from affecting local services.

Meanwhile, the company said it has fallen on hard times, making the reversal necessary to its business success.

Since the major oil discoveries were made in the tar sands and in North Dakota, the demand for crude to be carried from Portland to Montreal has dwindled. "Right now, the northbound supply of crude oil is almost nonexistent," Hardison testified in court. Between 2010 and 2016, he said the company saw a 90 percent reduction in the amount of oil carried on its pipes each day, and 14 of the company's 23 tanks in the city are currently out of service because there's no oil to fill them with.

But the city says there's not sufficient tar sands oil flowing to warrant the reversal, either. It tried in August to get the judge to