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State of Montana, fuel industry sue Portland over city's gas transport rules



By [Alex Zielinski](#) (OPB) and [Conrad Wilson](#) (OPB)

Feb. 15, 2023 6 a.m.

The state of Montana and a number of fuel industry trade associations are suing Portland over city policies that restrict fuel transport within city limits.

The [federal lawsuit](#) accuses the Portland City Council of passing regulations that do little to address the city's stated goals of reducing its reliance on fossil fuels — and discriminate against interstate commerce in the process.

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“Because the code amendments serve political purposes, they do not resolve the issues they purportedly target, but actually undermine those goals,” reads the complaint, filed Tuesday in the U.S. District Court in Portland.

The lawsuit was submitted by attorneys with Miller Nash, representing the state of Montana, the Western Energy Alliance, the Pacific Propane Gas Association, Idaho Petroleum Marketers and other petroleum industry groups.



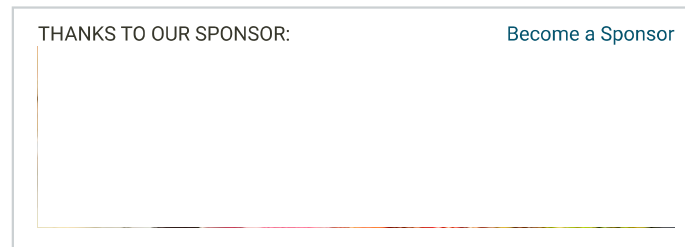
A six-mile stretch of Northwest Portland is known as the Critical Energy Infrastructure Hub, where hundreds of tanks store fuel on soil that would become unstable during a major earthquake.

Courtesy of Multnomah County

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The lawsuit targets a number of updates to city code that limit fuel companies' ability to operate in Portland, a major hub. In 2016, the city voted to ban the development and expansion of all fuel facilities that hold more than two million gallons of fuel and handle fuels delivered by boat, rail or pipeline.



That policy faced an immediate court challenge by another fuel industry group, Western States Petroleum Association, which eventually landed before the Oregon Land Use Board of Appeals. The appeals board ruled that the city had the authority to enact the policy, but had to support the ordinance with more evidence and data in the future. The city renewed the policy [in 2019](#) and [2022](#), bolstering the rules with additional data and small language tweaks.

The lawsuit specifically decries the policy's exemptions for fuel used by local airports, shipping ports and vehicle fleets. The plaintiffs argue that this allows the city to discriminate against export facilities while keeping local fuel-reliant industries afloat, thus violating the U.S. Commerce Clause.

Portland City Attorney Robert Taylor declined to comment on the complaint. Attorneys with Miller Nash did not immediately return a request for comment.

The city's 2016 policy was also inspired by the seismic vulnerability of the land alongside the Willamette River where Portland's fuel terminals are located. About 90% of the gasoline, diesel and jet fuel used in Oregon and Southwest Washington sits in tanks on this strip of land along the river. [A study](#) commissioned by the city in 2020 found that at least 95 million gallons of fuel could be released from these fuel tanks in a major earthquake, causing up to \$2.6 billion in damages. By limiting the expansion of these terminals, city leaders say they are avoiding an ever more catastrophic disaster.

“There’s extensive records at this point about terrifying data about what will happen to the shores of the Willamette during an earthquake,” Caleb said. “I hope the federal court agrees we have a legal purpose in allowing that risk not to expand.”

In 2018, after a second legal challenge to the fuel terminal ban, the Oregon Court of Appeals [upheld the city’s policy](#), explicitly citing the importance of limiting the number of large fuel terminals in an area threatened by seismic activity.

The complaint comes as environmental advocacy groups urge city council to go further on its fossil fuel ban by limiting the expansion of a fossil fuel terminal owned by Zenith Energy. Although the city initially banned Zenith from expanding its facility in 2021, it reversed course in 2022, after the company [pledged to phase out its use of crude oil](#) over the next five years and replace it with renewable fuels.

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Oregon looks to head off an earthquake-triggered fuel-spill disaster

The Oregon Department of Environmental Quality announced Wednesday it is moving forward with a plan to prevent a mega earthquake from setting off catastrophic fuel spills in the Willamette and Columbia rivers.

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Fuel spill in Portland after a major earthquake could be bigger than Deepwater Horizon, study finds

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Portland City Council Moves Toward Readopting Fossil Fuel Restrictions

On Wednesday, the Portland City Council moved a step closer to reapproving its 2016 ordinance banning the expansion of fossil fuel infrastructure.

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Quake Could Threaten 90 Percent Of Oregon Fuel Supply

Along the Willamette River, a six-mile stretch in Portland holds more than 90 percent of the state's fuel supply. If a quake strikes here, it could devastate supply lines for fuel, electricity and natural gas.

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