

*MAKING A DIFFERENCE*

**STOPPING FOSSIL FUEL INFRASTRUCTURE IN ITS TRACKS**

The logo for 350 PDX, featuring the number '350' in a large, bold, blue font, followed by the letters 'PDX' in a similar font. A light blue arrow points to the left, positioned to the left of the '3'.

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*No new fossil fuel infrastructure' is the right rallying cry for this moment in history; a stand that would galvanize the rest of the planet and demonstrate where the future lies.*

*-- Bill McKibben*

## **THE PORTLAND EXPERIENCE**

2015 was a big year for climate activists in Portland, Oregon. We defeated a proposal for a very large propane export terminal and blockaded Shell's Fennica ice breaker in a dramatic fashion. With the urging of activists and community groups, our city council voted to divest from fossil fuels, oppose oil trains, and, most audaciously, **ban new infrastructure used for the storage and transport of fossil fuels**. It was an incredible year in which direct action strategies, community organizing, and creative policy ideas altered the nature of Portland's relationship to the fossil fuel industry. 350PDX was right in the middle of all of this activity. We learned many lessons that we want to communicate to our friends and colleagues throughout the 350 network and other grassroots groups to keep us moving toward the just transition we need in order to preserve a habitable planet.

### **Lessons Learned**

The major takeaway lessons from our experiences have been:

1. For the fossil fuel economy to function, fossil fuel infrastructure to extract, transport, store, and combust fossil fuels must be built and maintained. In addition to driving climate change, every fossil fuel infrastructure project poses localized risks and environmental hazards.
2. Local governments have significant power to regulate fossil fuel infrastructure in order to protect the health, safety, and welfare of their residents. This power is constitutionally recognized as a fundamental aspect of local governance. For example, the Supreme Court of the United States has recognized the power to regulate land use as a police power entrusted to local government. In many states, this local power is enhanced through home-rule authority embedded in state constitutions.
3. Creating coalitions with diverse political and strategic perspectives is a very effective means of fighting fossil fuel infrastructure projects. Successful campaigns should include direct action, community organizing, and creative policy development.

Opposition to fossil infrastructure is widespread in the Northwest. Any community can reject, or strictly regulate, new infrastructure on grounds that it endangers health and safety. Our story in Portland is an example of how an idea like “no new fossil fuel infrastructure” can go from a long-term goal to a near-term reality through skillful coalition building and campaigning.

In this paper, we will describe the proliferation of new fossil fuel infrastructure projects in the Pacific Northwest, Portland’s response to this threat, and the potential for regulation of fossil fuel infrastructure to spread to local governments throughout the country.

## **THE PROBLEM: RAPID PROLIFERATION OF NEW FOSSIL FUEL INFRASTRUCTURE PROPOSALS**

### **The Pacific Northwest**

The fossil fuel industry is currently subjecting the Pacific Northwest to an unprecedented expansion of fossil fuel infrastructure projects. At the time of this writing, there are plans for 28 new such projects -- coal, oil, and gas (propane & natural gas) export, transfer, and refinement facilities -- at various stages in the permitting process. Though several were introduced under the pretext of importing cheap fuel for domestic use, most of the proposals are now defined as projects for the export of fossil fuels to growing Asian markets either for energy or for commodity production (such as propane for microbeads). In 2014, Sightline Institute published a report [Northwest Fossil Fuel Exports](#) with a staggering conclusion: the carbon emissions from combusting the fuels from the proposed facilities in the Northwest would exceed those of the Keystone XL Pipeline by at least five times. In addition to the serious local impacts of fossil fuel projects (discussed below), it is clear that the combined effects of proposed fossil fuel infrastructure in the Northwest is of global significance. Around the same time the Sightline report came out, Portland Rising Tide released a [map](#) showing the broad geographical reach of the proposals, including the expected sites of extraction, transport routes, and export terminals. This project helped the public comprehend the potential cumulative impacts of these projects.

Because the Pacific Northwest is not traditionally a fossil fuel region, the infrastructure proposals have led to broader reflection on the nature of the global fossil fuel economy. The public interest in fossil fuel infrastructure projects is both widespread and passionate. The *Stand Up To Oil* campaign delivered **276,296 public comments** opposing the Tesoro-Savage oil terminal proposed for Vancouver, WA, obliterating previous records for public involvement in the permitting process. We have concluded that as residents and global citizens, we have both the right and the responsibility to halt its expansion. Rather than submit to claims of inevitability, we are seizing the opportunity to take action to shape the future of the planet.

## **Fossil Fuel Infrastructure**

As opposition to these projects intensifies, there is growing attention to the degree to which our society is entangled in the fossil fuel economy. In fact, much of the infrastructure that has created and sustained modern society could be categorized as fossil fuel infrastructure, depending on how broadly we utilize the term. As such, it is important to specify exactly what we mean as we transition away from dirty fuels to clean energy and a sustainable economy.

In addition to the machinery and equipment used to extract and refine fossil fuels, the pipelines, trucks, trains, and ships that transport it from place to place are fossil fuel infrastructure. So are the facilities and storage tanks that serve to store fossil fuels along their journey, as well as the import/export terminals and refineries that handle, store, transfer, and refine fossil fuels are fossil fuel infrastructure. Much of the power grid, including fossil fuel combusting power plants and the transmission lines used to send power to homes, businesses, and industry can also be characterized as fossil fuel infrastructure. In a less direct sense, physical infrastructure such as roads, highways, and bridges -- to the extent that they are constructed with, contain, or aid in the movement of vehicles powered by and/or transporting fossil fuels -- are fossil fuel infrastructure. Infrastructure constructed with fossil fuels (and not relying on fossil fuels for continued maintenance) that could be put to future non-fossil fuel uses is of a different character of course from infrastructure constructed specifically to maintain the fossil fuel economy. Due to the complexity of the fossil fuel economy, a degree of nuance is important as we distinguish between projects that will truly help us transition toward a clean economy and those that will bind us to fossil fuels for decades into the future.

## **Environmental and Public Health Risks**

In addition to driving climate change, every fossil fuel infrastructure project carries localized environmental and public health risks, such as leaks, spills, and explosions. Although there are distinctions in the specific hazards inherent in each fuel source -- and further distinctions based on the chemical composition of the fuel, method of extraction, and mode of transport -- there is growing awareness of the unacceptable risks posed by all fossil fuels. After several recent and high-profile oil train explosions -- such as in Lac-Mégantic, Quebec and Heimdal, ND -- many have started calling trains containing fossil fuels "bomb trains," and campaigns have been launched to improve rail safety.

## **Human Rights Abuses**

Furthermore, the sites of fossil fuel extraction are often host to horrific human rights abuses anywhere from local pollution of air and water to sex trafficking epidemics. Indigenous communities, due to historical abuse, disempowerment, poverty, and a

lack of full sovereignty, are particularly likely to fall within so-called “sacrifice zones” where human well-being and environmental integrity are sacrificed for profit. Any way you look at the issue, the costs of the fossil fuel economy are enormous and unacceptable. Given this context, it is clear that “keep it in the ground” is a call to protect the vulnerable and disenfranchised as much as it is an environmental imperative.

## **Focusing on Fossil Fuel Impacts**

Most climate policy debates about pricing schemes and incentive programs focus on reducing emissions over time. On the other hand, focusing in on the physicality and immediate impacts of fossil fuel infrastructure has demonstrated that direct strategies can both halt the growth of the fossil fuel economy, as well as ensure that environmental justice concerns are met. Simultaneously organizing around the global and local impacts of the fossil fuel economy expands the pool of potential allies, which improves the chances that campaigns will be successful. We saw activists successfully seize upon this principle with resistance to the Keystone XL pipeline, and we continue to see it in opposition campaigns to new fossil fuel infrastructure in the Pacific Northwest. Portland’s recent experience in opposing fossil fuel infrastructure resulted in a lot of learning that is transferable to allies fighting the same fights—and also a story full of drama, complete with heroes, villains, and a big victory for activists.

## **THE PORTLAND STORY: PORTLAND SAYS NO TO FOSSIL FUEL INFRASTRUCTURE**

*If they build it, we will block it. If they ship it, we will stop it.*  
-- Popular Climate Activist Slogan

2015 was a unique and important year in Portland’s struggle for climate justice. This narrative should provide an idea of just how exciting it was, but for the sake of readability, many important details and activities have been omitted. Generally, 2015 could be characterized as the year when solid climate organizing met opportunity as the Portland activists demanded exactly what they needed, refusing to settle for anything less.

Though Portland is widely regarded as an environmentally conscious community and has historically been innovative in taking action on climate change, local government had been reluctant to act on fossil fuel infrastructure despite the explosion of projects that directly impacted the safety of Portland’s residents. Many in the environmental movement found Portland’s lack of official action on fossil fuel infrastructure to be problematic. This frustration stemmed from (1) the size and potential impacts of the combination of local and NW fossil fuel infrastructure developments in comparison to Portland’s local carbon footprint, and (2) given

Portland's responsibility as a climate leader, the surprising lack of action by the city of Portland on the biggest climate issue in the region. The inaction came in part from a belief by policymakers that federal law totally prevented them from acting on the transportation of fossil fuels. So the city government attempted no action beyond a non-binding anti-coal resolution passed in 2012.

Despite a lack of traction at the level of official policy, there was a growing recognition by environmental activists in the Northwest that something had to be done in the face of the potential danger of catastrophic carbon release. In 2013 and 2014, activists began calling on local and state governments to ban new infrastructure for the storage and transport fossil fuels. However, there was very little expectation that such demands would be taken seriously, for activists felt unable to influence the political process. Then, all of a sudden, circumstances changed.

## **Pembina Comes to Town**

In the fall of 2014, the Port of Portland and Pembina Corporation proposed a propane export terminal that would set off a chain of events ultimately resulting in Portland's first-of-its-kind fossil fuel resolution. According to Pembina's [informational documents](#),

The facility would receive shipments, averaging 37,500 barrels or approximately 1.6 million gallons per day, of propane via rail from Pembina's Redwater Facility northeast of Edmonton, Alberta. The propane would be unloaded, chilled and stored for 15 days in above-ground refrigerated holding tanks, before being loaded to a propane ship for export to global markets. Pembina estimates there to be two-to-three vessel shipments per month.

Pembina estimated that it would invest about \$500 million into the terminal, sited at the Port of Portland's Marine Terminal 6 on the Columbia River. In September 2014, Portland Mayor Charlie Hales expressed public support for the project, saying,

We welcome this investment and these jobs in Portland. The city is committed to growing our economy on the land we already have, and holding industry to very high environmental and public safety standards. This proposal meets these goals.

No public process was offered before this decision--the Port simply entered into an agreement with Pembina. Despite serious public concerns about climate impacts and local risks, it seemed that nothing could be done about it—that is, until someone discovered an obscure zoning regulation that prohibited propane from being piped across a sensitive environmental area to the ships that would carry it across the Pacific. So, when the City of Portland convened a process to amend this regulation in order to allow propane, those opposing the terminal turned it into a referendum on the entire project.

## The Community Speaks

Local environmental organizations that had been focusing on fossil fuel export projects for years teamed up with neighborhood groups, scientists, medical professionals, teachers, students, local indigenous tribes, local labor unions, faith-based groups, and members of the general public to oppose the project on both safety and climate grounds. This developing coalition turned out hundreds of concerned citizens to testify at the Portland Planning and Sustainability Commission's (PSC) public hearing to determine whether they would recommend a zoning change to the Portland City Council, the body with the final word. Despite the turnout, and after a dramatic last minute vote change by a single commissioner, PSC recommended that the council amend the zoning code to allow propane. This was considered a tremendous blow to the growing opposition to the project because Mayor Charlie Hales had previously expressed support, and it was widely expected that he would be able to corral another two votes to make the zoning change.

However, rather than accept what seemed inevitable, the community rallied. A

strategic decision was made by climate activists to make support of the propane project an albatross that would have electoral consequences. Activists showed up at the mayor's public events, chiding him about the project, and they also hung posters around town with an artist's rendering of the mayor, the text reading "[Fossil Fuel Charlie For Mayor 2016](#)"; leaflets were handed out at locations throughout the city; Twitter, Facebook, and other social media platforms were used to interact with the mayor's public accounts and respond in real time to his environmental messaging. [On Earth Day](#), six people even briefly occupied a city council session (with enlarged cardboard cut outs of the commissioners' heads) in order to confront them with their own words on the importance of climate action and environmental stewardship. Local and international media began to cover the events and the propane issue with increasing curiosity as the public's interest steadily grew.



Fossil Fuel Charlie – Poster designed by Portland artist Michael Losier April 2015.



## **The Mayor Folds**

Then, just as activists were starting to scale up the intensity of their actions, something interesting happened--the [Mayor changed his mind](#). On May 7, Hales sent out a press announcement that he no longer supported the project and would take it off the council's agenda. He cited intense public opposition to the project in the form of over 3000 public comments voicing concern and [said](#), "[a]t some point, those of us in power have to listen to those who put us there." The mayor was immediately and repeatedly attacked by press outlets that supported the project -- including The Oregonian and The Portland Business Journal -- but no other councilperson dared to put the zoning amendment issue back on the council agenda. Suddenly, climate justice activists found themselves in the unprecedented position of having organized enough political power to make elected officials respond directly to their demands. The significance of this was not lost on climate organizers.

## **A Significant Policy is Crafted**

While the opposition campaign to Pembina was in full effect, organizers had enough foresight to also engage in the city's updating of the Climate Action Plan. At the same time that organizers gathered comments in opposition to Pembina, they also made a series of requests of the City of Portland, asking them to improve their climate planning. The most important of these was the request that the Climate Action Plan contain a provision requesting a comprehensive "fossil fuel export policy" from the City of Portland and Multnomah County. Several activists and organizers also met with city and county planners to discuss the importance of this step given that failing to account for so-called "pass through" emissions -- activities that we profit from, but don't account for in our climate reporting -- might well dwarf our direct climate footprint. In the end, the "fossil fuel export policy" was included as an action item in the draft Climate Action Plan, which was later ratified by both the City of Portland and Multnomah County. This willingness to engage in crafting policy would become massively important later in the year.

With a fossil fuel policy on the table expected sometime within a year, climate activists tentatively celebrated the victories, but many expected the propane export terminal to somehow spring back to life. The Oregonian editorial board made it a constant issue, relentlessly chiding the mayor for changing his mind on such a large investment. However, rather than waiting patiently to see where the political winds would blow, climate justice activists sprang back into action.

## **Shell Oil Takes a Hit**

In late July, activists learned that Shell's icebreaker, the Fennica, was scheduled to undergo maintenance at Vigor Industrial on the Willamette River in Portland, OR. Activists knew that the ship carried essential equipment necessary for Shell's Arctic drilling tests. Many Portland residents had participated in Seattle's 'kayaktivism' in

opposition to Shell's Polar Pioneer rig in May, and it was quickly decided that Portland should stage its own demonstration while the ship was in town.

350PDX, Portland Rising Tide, and other Climate Action Coalition member groups began to organize the action by securing dozens of kayaks and spreading the word that a blockade would take place near the St. John's Bridge that crosses the Willamette River in North Portland. On July 28<sup>th</sup> organizers, including a few of our allies from the Seattle area, began deploying kayaktivists into the river in anticipation



of the Fennica's imminent departure. Then something unexpected happened. Before dawn on July 29, thirteen Greenpeace activists rappelled from the bridge and turned the protest into a full-on blockade complete with a stunning visual spectacle. Despite some police presence, the climbers hung suspended on tiny platforms, in punishing heart, for forty hours. On July 30 at 6:30 AM, the Fennica departed from its dock

at Vigor Industrial and began to move toward the St. John's Bridge. Police ordered the climbers to end their blockade. The climbers refused and then something else unexpected happened, Fennica turned around and went back to dock.

People erupted in cheers as they realized that they were actually stopping mission-critical fossil fuel equipment from reaching the site of extraction. They had found a geopolitical chokepoint and were taking direct action against one of the largest fossil fuel companies in the world. Suddenly, because of this creative action, a community effort rapidly mobilized to sustain the blockade for as long as possible. More people came to participate in the kayaktivist action, bringing food and supplies, and suddenly the eyes of the entire country were on Portland. Despite the mainstream media's attempts to paint the protestors as an annoyance (blocking traffic, causing delays, etc.), people continued to show up to the St. John's Bridge en masse in support of the action. It looked as though the blockade might be sustained as long as the climbers could tolerate their extreme conditions dangling from the bridge.





However, in the afternoon on July 30, the U.S. Coast Guard, Oregon State Police, Multnomah County Sheriff's Office, Clark County Sheriff's Office, and Portland Police set in motion a series of events that would eventually lead to creating a "safe zone" under the bridge, moving kayakers out of the water, and extracting several Greenpeace climbers to create enough space for the Fennica to pass. As the Fennica crossed under the bridge, kayaktivists disobeyed police orders and heroically paddled out to place themselves in front of the Goliath ship to try to stop it from leaving. Hundreds of Portlanders cheered them on from shore as

national and international media hovered about with helicopters and camera crews. Afterwards, elected officials presented the city and state response as a reasonable reaction to a protest. They promoted the sentiment that at some point, protest has to yield to reality. But for the protestors who descended upon the Willamette, a return to reality was a return to Arctic drilling and the fossil fuel economy. They made it known through [videos](#), articles, and social media that they didn't appreciate city and state officials authorizing resources to support the fossil fuel industry in the destruction of the planet. Considering their efforts to try to find a balanced state response to the blockade, elected officials were likely surprised by the intensity of the community reaction. But the courageous action in those last days of July showed exactly what was at stake and the type of action needed to change the world. Though the Fennica left Portland and made it to the Arctic, the actions of late July impacted the residents of Portland and emboldened them for fights to come. Arguably, this action, along with other major grassroots actions against Shell's Arctic drilling, had a global impact as well, as Shell abandoned its Arctic drilling plans and the Obama administration shifted its position on Arctic drilling soon after the events of late July.

## **Portland Adopts Additional Policies**

In the wake of the St. John's Bridge action, the City of Portland took several policy steps. In September, after a two-year grassroots campaign, both the City of Portland and Multnomah County [voted unanimously to divest](#) from fossil fuels. And in November Portland exemplified the power of local climate action by passing a fossil fuel resolution declaring all fossil fuels to be inherently dangerous and opposing the construction of all new fossil fuel infrastructure in the city. The activists and community groups who opposed the Pembina propane export terminal and blockaded the Fennica were instrumental in designing and passing the new policy.

## **PORTLAND'S FOSSIL FUEL INFRASTRUCTURE POLICY**

*NOW, THEREFORE, BE IT RESOLVED, that the City Council will actively oppose expansion of infrastructure whose primary purpose is transporting or storing fossil fuels in or through Portland or adjacent waterways[.]*

*-Portland City Council Resolution No. 37168*



Activists outside of Portland City Hall pose with "Cities Lead" banner. Photo by Rick Rappaport.

Ironically, by fall of 2015, Mayor Hales had become a full-fledged climate champion, having been invited to attend meetings with both the Pope and President Obama about the moral imperative of urgent climate action. Hales had decided that Portland was going to reclaim its position as a clear leader in local climate policy. To that end, he invited a series of stakeholders, including climate activists, neighborhood representatives, local businesses, and tribal representatives to help the city craft a fossil fuel infrastructure policy that would reflect the needs of the community and appease Portlanders who had been loudly demanding substantive action.

350PDX was among the groups invited to participate as stakeholders. The stakeholders almost uniformly declared that the city should not adopt a token policy, but something strong and legally enforceable. They asked the city to consider two important factors as officials structured the policy:

- Fossil fuels are inherently dangerous throughout their entire life cycle from extraction, to transport, storage, and finally combustion. The amount of accidents, spills, and explosions worldwide involving every major fossil fuel demonstrates that the safety claims of these fuels cannot be taken seriously. Furthermore, emissions from fossil fuels are a primary driver of climate change.
- The transport and storage of fossil fuels in Portland is particularly dangerous because of the high likelihood of an impending catastrophic seismic event. Such an event would disable most critical infrastructure in the City and cause untold damage. Any fossil fuel infrastructure, no matter how stable, would add unacceptable degrees of risk to be borne by the residents of the City of Portland.

350PDX, Center for Sustainable Economy, and other Climate Action Coalition and community groups asked the city council to consider the risks inherent in all fossil fuels from extraction, through transport, storage, and consumption. We argued that when localized risks are considered in concert with climate risks, local governments have considerable power to regulate these developments. According to longtime Supreme Court precedent, local governments retain Constitutional police powers to regulate the health, safety, and welfare of their residents. City staff was very receptive to these suggestions and incorporated them in full into their draft resolution.

After thousands of letters and phone calls from Portland residents in support of an infrastructure ban over the course of just two weeks and after two city council hearings packed into overflow rooms with Portlanders supporting the resolution, the Portland City Council unanimously voted to pass [Resolution No. 37168](#), which calls for the City to “actively oppose the expansion of infrastructure whose primary purpose is transporting fossil fuels in or through Portland or adjacent waterways[.]” The extensive “Whereas” section of the resolution -- where the rationale is explained -- meticulously lists the many dangers inherent in all fossil fuels throughout their entire life cycle, and the heightened dangers of fossil fuel infrastructure in a seismically unstable region like the Pacific Northwest and much of the West Coast.

Particularly notable declarations of fact in the resolution included the recognition of the scale, scope, and future effect of fossil fuel infrastructure proposals in the Northwest:

the rapid development of fossil fuel resources in the western U.S. and Canada has resulted in numerous facility and infrastructure projects proposed to transport coal, diluted bitumen, natural gas, propane or other fossil fuels through the West Coast.

**seismic risks:**

fossil fuel infrastructure poses considerable risks in the event of a major earthquake;

**inherent risks to health and safety:**

fossil fuels pose risks to safety, health, and livability, including mobility of people, other freight, and other commercial vehicles;

**risks to the climate:**

extraction and combustion of fossil fuels are significant sources of greenhouse gas emissions and major contributors to climate change and pollution;

**transport risks:**

transporting crude oil, coal and other fossil fuels into Oregon involves traversing challenging mountain passes, areas laced with significant earthquake faults and numerous older unsafe bridges lacking appropriate infrastructure maintenance or upgrades, significantly increasing the risks of serious accidents;

**tribal rights:**

tribal communities in Oregon and Washington have expressed concerns about the safety risks of fossil fuel infrastructure and the related threats to human health, cultural heritage, and environmental quality;

**economic impacts:**

economic opportunities presented by expanding fossil fuel infrastructure are modest, with few jobs and little value added when compared to the related environmental costs:

[ ] local, regional and global economies are transitioning to low-carbon energy sources, and West Coast businesses are leaders in providing energy efficiency and renewable energy technologies and services; and

[ ] the future of the fossil fuel industry is questionable given global action to reduce greenhouse gas emissions[.]

In addition to telling the right narrative on the dangers of fossil fuels and laying the foundation for the implementation of an enforceable code banning new fossil fuel infrastructure (expected by December 2016), the resolution encourages the city to transition away from fossil fuels to clean energy and a sustainable economy:

BE IT FURTHER RESOLVED, that the Bureau of Planning & Sustainability shall undertake an analysis of the economic impacts of any proposed Code changes to advance the policies set forth in this resolution, with a particular focus on potential impacts to local blue-collar jobs; and

BE IT FURTHER RESOLVED, that the City and applicable bureaus shall seek and identify opportunities to invest in Portland's 'human infrastructure' by supporting programs to retrain our workforce as the city transitions to a clean energy economy[.]

The immediate result of this resolution was to create a new, binding policy as well as a directive for city staff to develop the code changes that will codify the policy. In response to the new city policy, on February 29, 2016 Pembina Corporation [officially withdrew](#) its \$500 million propane export terminal proposal. Even before the policy was implemented in code, it had been made clear that [Portland is not open for the business for the fossil fuel industry](#).

## **Addressing Related Issues**

In the wake of the new policies related to fossil fuel infrastructure, we and other environmental groups are already teaming up with labor, housing, social justice, and renewable energy industry representatives and community advocates to craft proposals for a just transition that promotes the rights of workers and communities of color, and that calls for housing affordability and stability, disaster preparedness, and climate resiliency. Portland's declaration recognizing the dangers of fossil fuels will have effects far beyond the direct focus of the resolution, for it asks Portlanders to consider what a clean energy economy will actually look like. This is exactly the position we want to be in: creating the reality of a clean future. In retrospect, it is extraordinary that less than a year ago, it was likely that we would have a new, dangerous propane export terminal in our community. Because a committed group of people responded to circumstance, rallied their community into action, and wouldn't settle for anything less than victory, to fossil fuels. Though Portland has its own unique circumstances, a trajectory toward a clean energy economy is available to all local governments.

## **LOCAL GOVERNMENT CAN REGULATE FOSSIL FUEL INFRASTRUCTURE**

There is a strong, and not completely unfounded, belief among local policymakers and activists alike that local governments have little authority to impact the fossil fuel economy because the direct regulation of the export of any specific commodity will run afoul of the Interstate Commerce provisions of the Constitution. They are correct that a direct regulation on export or commerce would be presumed to be illegal. However, according to the Supreme Court, cities have general police powers to regulate for the health, safety, and welfare of their residents. So while localities are unable to regulate exports, local governments can regulate the storage and transport of fossil fuels at the local level because of the unique and serious risks they pose to the health and safety of communities. Also, communities with potential seismic risks might claim additional evidence that regulating fossil fuels is necessary to reduce risks to public health and safety. Under this paradigm, any effects on the larger fossil fuel economy and trade policy would be incidental to legitimate regulation.

## **Local Power**

As mentioned throughout this paper, municipalities have general police powers to enact land use and/or zoning regulations to protect the health, safety, and welfare of residents. The relative power of a local government is affected by its state constitution and existing state laws. Most states in the United States allow for "home rule" from local governments, which means (to varying degrees) that absent an explicit state preemption, local governments are presumed to have the authority to govern themselves as they see fit. For example, municipalities in Oregon are on strong footing as long as they comply with the Oregon Constitution and Senate Bill 100. Though local governments typically cannot regulate the transport of commodities by ship or rail, nor can they "discriminate" against specific commodities without good reason, land use regulations that primarily aim to protect the health, safety, and welfare of residents in the immediate vicinity of dangerous infrastructure and hazardous materials fall into a legal zone where local powers are at their peak. Because fossil fuels -- whether at the point of extraction, transport, storage, or combustion -- are uniquely dangerous commodities (and often already recognized as such in federal, state, and local laws), there is a strong legal rationale that local governments can regulate their extraction, transport, and storage. Outside of Portland, many local governments in the United States have attempted to utilize this approach with varying degrees of success.

## **Local Actions**

In 2011 in Dryden, NY, for example, the Town Board amended its zoning ordinance to ban any and all gas exploration, extraction, and storage. The Town Board [declared](#) that the industrial use of land in the "rural environment of Dryden" for natural gas purposes "would endanger the health, safety and general welfare of the community through the deposit of toxins into the air, soil, water, environment, and in the bodies of residents." The gas industry promptly challenged this local rule and after a series of rulings and appeals, the NY Court of Appeals (the state's highest court) upheld the zoning change as a reasonable exercise of the town's police powers. The use of local zoning rules for either a temporary moratorium or full ban on specific fossil fuel extraction, transport, or storage has been utilized in Vancouver, WA (oil terminal moratorium), Allamakee County, IA (frac sand moratorium with bond conditions), South Portland, ME (Tar Sands export ban), Denton, TX (hydraulic fracturing ban subsequently invalidated by state preemption), Bonita Springs, FL (hydraulic fracturing ban), and elsewhere.

## **Financial Assurances**

In addition to land use regulations, local governments may demand financial assurances, in the form of risk bonds, to cover damages to natural resources.



Though this strategy is untested at the local level, it is established practice at the state and federal levels. Requiring companies to produce financial guarantees or bonds shifts the financial risk of a fossil fuel infrastructure disaster from the public to the company and its investors. Because of the huge amount of risk externalized onto the public by fossil fuel infrastructure (settlements for natural resource disasters often reach hundreds of millions of dollars), it could be very difficult for companies to provide these financial assurances to local governments up front. Again, this approach has not been tried at the local level, but in theory, could be another way to exercise local government's police powers to protect the health, safety, and welfare of residents. The [Center for Sustainable Economy](#) has been studying, developing, and continually advocating for the introduction of [risk bonding](#) in local, state, and national fossil fuel policy.

## **Leading the Way**

The extent of the local power to regulate the fossil fuel industry for the health, safety, and welfare of residents remains unclear, and as local governments continue to confront the industry, we are likely to learn more about the limits of this authority. However, some uncertainty is no reason to delay action. It is up to local governments to lead the way on shifting our economy away from fossil fuels and toward clean energy. And, local government action can inspire action by other governments. In our Portland work, we were strongly influenced by the actions of other local governments in advancing their interests through local regulation. The Portland approach of saying no to all new fossil fuel infrastructure is strong and will likely be effective, but local governments should adapt their strategies to their own contexts and the specific hazards they face. Though they have been reluctant in the past, it is now clear that local governments not only have the power to protect their residents, they also have the potential to change the world.

## **CONCLUSION**

We live in a tremendously exhilarating time, in which the understanding of what is realistic, possible, and necessary is shifting incredibly fast. It is becoming more common for grassroots efforts to shape the future by demanding exactly what people need in order to live healthy, happy lives and to ensure a habitable planet. Communities are standing up and saying no to the risks of hazardous fossil fuel infrastructure as we begin to transition toward a greener and more equitable future. There is immense power in grassroots organizing, coalition building, and creative policymaking. When these approaches are utilized together, the results can be amazingly effective, achieving goals far beyond the expectations of activists. And the footprint of strong, local victories can extend well beyond individual communities. We are seeing this in the Pacific Northwest, where we are creating an extremely

active, confident, and competent network of resistance to new fossil fuel infrastructure.

We hope that our experiences in Portland in 2015 inspire others to take strong action opposing new fossil fuel infrastructure wherever it is proposed, and to create new policies that will make their communities healthy and safe. We look forward to learning from other communities, inspiring us in return. We have the momentum and it is time to dream big. Much is at stake.

## **ACKNOWLEDGEMENTS**

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This paper is written in honor of the groups that mobilized and organized around the no new fossil fuel infrastructure resolution; in particular, the Climate Action Coalition which, in addition to 350PDX, includes Portland Rising Tide, First Unitarian Church's Community for Earth, the Sustainable Energy and Economy Network, and the Portland Raging Grannies, among others.

In order to pass Portland's Resolution, we also brought together and led a larger coalition that included key allies in the fight against the Pembina propane terminal, such as Audubon Society of Portland, Columbia Riverkeeper, Oregon Physicians for Social Responsibility, Friends of the Columbia Gorge, as well as local indigenous tribal leaders, labor, local businesses, Portland school students and teachers, Oregon Interfaith Power and Light and other faith-based groups, Portland neighborhood associations, social justice groups, and others.

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