

## To the Island Go the Spoils

The Port of Portland Wants More Leeway to Dump on West Hayden Island

By Dirk VanderHart @dirquez

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THERE'S NO MORE hotly contested expanse of wild in Portland than West Hayden Island.

For decades, the grassy, tree-strewn 800-acre plot in the Columbia River has been a nexus for bitter feuding. Its owner, the Port of Portland, has repeatedly sought authority to build a new shipping terminal there. Neighbors and environmental groups have pushed back with all they have, urging conservation.

The fight's well known. Less so is the fact that the Port of Portland has been spreading solid waste on idyllic West Hayden Island for more than a decade.

It's not the glowing, nefarious waste of movies. The port periodically dumps large amounts of mildly contaminated river bottom onto the island—in full view of, and compliance with, state regulators.

But a bill cruising through the Oregon Legislature this session is making West Hayden Island into something of a battleground again, as the Port of Portland pushes for special exemptions to state regulations dictating when and whether it's allowed to store these "dredge spoils" on the island.

The port says the nature of its work carving channels into Portland's rivers means it (and other ports) shouldn't have to comply with the same regulations as operations that generate similar waste. Environmentalists disagree. If passed—a possibility that looks likely, given its speedy trip through the Oregon Senate—they say the bill would give the Port of Portland wide authority to stockpile vast fields of nasty sand.

"The Port of Portland acts like a private corporation, not a public entity," says Bob Sallinger, conservation director for the Audubon Society of Portland. "You're giving these ports *carte blanche* to create solid waste dumps."

Here's what we're really talking about: Since 2010, the Oregon Department of Environmental Quality (DEQ) has had special rules for mildly polluted industrial waste that can be put to some "beneficial use"—often as fill for construction projects. Obtaining a beneficial-use finding for solid waste is a good deal for producers and the public alike, since it cuts disposal costs and ensures landfills aren't filling up needlessly.

But there are rules for what can fall into this category. Waste producers have to prove to the DEQ that the material's only *sort of* polluted, and that its storage won't present problems for humans or animals. They also have to prove there's a "productive" use that waste can be put to—a provision intended to help ensure new waste dumps don't spring up everywhere.

All sorts of operations seek beneficial-use determinations. In 2011, Portland-based Columbia Steel Casting got permission to keep and sell hundreds of tons of slag waste for use at construction sites. The same year, particleboard manufacturer SierraPine got the DEQ's blessing to store plastic-tinged "wet scrubber mud" for later use as animal bedding. And time and again, the Port of Portland has gotten permission to take tens of thousands of cubic yards of lightly contaminated sediment from beneath the Columbia and Willamette Rivers—sediment it removes so ships can safely dock—and put it on a 102-acre plot of West Hayden Island.

The port's survived challenges from environmentalists and neighbors to do so, and a 2010 lawsuit over the dumping wound up being dismissed.

Now, though, the port says the DEQ's rules are too strict. While the Port of Portland's proposed legislation, Senate Bill 412, would keep in place regulations over the storage and allowed contamination of beneficial waste, it would also ensure that Oregon ports don't have to prove the stuff has any productive purpose on land.

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"There may or may not be a productive use in any individual case," says Ian Whitlock, a lawyer for the Port of Portland. That shouldn't matter, he says, since the dredging supports a viable port. "If you listen to our philosophy, that question needn't be asked in the first place."

If the change seems unnecessary, consider the current state of the port's designs on developing West Hayden Island.

In July 2013, the port finally convinced the Portland Planning and Sustainability Commission to recommend city council annex the land, and zone it to allow for a new terminal. But that recommendation came with a poisonous requirement—that the port spend millions to make up for the loss of natural areas.

Port officials abandoned the prospect early last year, and city planning documents now suggest there probably won't be changes to the island for at least 20 years.

That creates a potential problem for the Port of Portland. The DEQ has repeatedly cited the likelihood of new development on West Hayden Island as the "productive use" that allowed tons of lightly polluted dirt there.

"We agreed, at that time, that given everything we knew, there was likely a future use of development," says Tom Roick, a DEQ staffer who played a lead role in crafting the beneficial-use regulations.

With that development now uncertain, Sallinger thinks environmentalists and neighbors have their strongest foothold in years for challenging the dumping. The port's bill would do away with that foothold.

"We think we have much stronger standing to say 'This use is entirely speculative,'" Sallinger says.

For its part, the DEQ has taken a neutral stance on the bill. "We reached a compromise that we think is ultimately protective of the environment," says Palmer Mason, legislative coordinator for the agency.

But the DEQ's also worked to tighten its verbiage. In the legislation's initial form, there were worries ports would be able to skirt regulations on dredge waste altogether. The Port of Portland's tried that before—in a 2009 bill it pulled back so the DEQ could develop the very beneficial-use rules the port is now questioning.

This year's bill "was very similar to a bill five or six years ago," Roick says. "What it would have basically done is exempt dredge sediments from being considered solid waste."

The legislation, in its updated form, is narrower. And it's beating a speedy path to the governor's desk. SB 412 passed the Oregon Senate on April 28, in a unanimous vote. But that was before Sallinger and other conservation types got wind of the legislation. Sallinger says he's marshaling opposition to the provision, so that its trip out of the House isn't so easy.

"There is a reason why dredge materials are characterized as solid waste," he says. "If the ports are going to place these materials in a location, we think it's important that they're going to use them somewhere down the line."

That's fine with Senator Arnie Roblan, the Coos Bay Democrat who filed the bill at the port's request. He tells the *Mercury* that the legislation wouldn't much affect his district, and that he didn't need much of a sales pitch to file the bill.

"I felt comfortable letting the legislative process occur," Roblan says. "I do trust the process."

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