

The Oregonian

Portland OK to spend millions of utility ratepayer money on Superfund cleanup

By Jessica Floum

January 5, 2017

Portland was free to spend tens of millions of dollars in sewer revenue on addressing pollution in the Willamette River's Portland Harbor, a Multnomah County judge ruled Thursday, following years of mixed-bag rulings in a lawsuit dating to 2011.

Judge Stephen Bushong said Portland appropriately spent money paid by water and sewer ratepayers on the federally managed Superfund project in the Willamette and on nonprofit work. But the city should not have used that money, collected through customers' bills, on parks programs, he also ruled.

The city has spent \$58.2 million on the Superfund project since 2001. Of that, \$50.6 million was paid by sewer customers through a surcharge on their bills. The ruling means Portland won't have to pay back those utility customers -- sparing officials from a major budget headache in Mayor Ted Wheeler's first year.

"I am pleased that the court agrees that council has acted appropriately," Wheeler said in a statement.

Superfund spending was the largest of some 36 allegations of utility misspending brought by ratepayers represented by attorney John DiLorenzo. The court ruled against the city seven times. Some allegations never went to judgment.

Overall, the city's liability could be as low as roughly \$13 million.

The city also avoided judgment on two questionable expenses by returning \$1 million worth of sewer money spent on a Pearl District redevelopment site and reimbursing the Water Bureau \$1.6 million from the general fund for money the bureau spent to fix a building for the Portland Rose Festival Foundation.

The lawsuit began when several ratepayers accused the city of improperly spending money dedicated to water, sewer and stormwater management.

The court ruled in March 2014 that the city can only spend funds paid by water and sewer ratepayers on "matters that are reasonably related to the water and sewer services provided by the city."

Last year, Bushong ruled that city officials weren't authorized to spend about \$2.1 million on Hurricane Katrina relief efforts in 2005, but they had the authority to spend around \$12 million on decorative water fountains.

In 2012, City Council passed a resolution stating that they would evaluate how, if appropriate, they could spread payments to the Superfund across city agencies, bureaus and funds.

Thursday's ruling comes a day before the U.S. Environmental Protection Agency is expected to release a final plan for cleaning the harbor, which is expected to cost at least \$746 million for responsible parties.

While the ruling allowed the utility bureau's past spending on the Superfund, it also acknowledged that ratepayers could still challenge how the city pays for future cleanup costs.

"I don't see this as a vindication of anything the city has done on Superfund," DiLorenzo said. "It all depends on what their reallocation would be."

The court also ruled Thursday that Portland's Bureau of Environmental Services was allowed to spend \$90,000 of money from sewer ratepayers to nonprofit events and projects. The nonprofit work contributed to a public education program on stormwater management required by the state and federal governments, the court found.

Bushong also allowed the Water Bureau's annual grants to the Sandy River Basin Watershed Council because they helped the city's work to restore salmon habitat. That project was required as part of the federal Endangered Species Act.

The court ruled the Bureau of Environmental services violated the city charter when it spent ratepayer funds on programs managed by the Parks Bureau between 2008 and 2013.

The sewer bureau paid for a Forest Park ranger, a street tree inspector, a forest outreach and education coordinator, and on the enforcement of rules for dogs in certain parks and natural areas. The parks bureau managed these programs, but struggled to fund them on its own because of budget cuts.

"The charter does not permit city council to use ratepayer funds to cover budget shortfalls in another bureau's budget," the court decision said. "The city's post hoc rationale attempting to justify spending sewer ratepayer funds on parks programs is unpersuasive to this court."

City Attorney Tracy Reeve said her office is "very pleased" with the decision, which she said she expected.

"This has been a long and tortuous road," Reeve said.

Reeve said the city has not decided whether it will appeal Bushong's decision.

If the city appeals, DiLorenzo said, he will too.

The Portland Tribune

Judge sides with City Council on Superfund spending

By Jim Redden

January 5, 2017

The City Council was justified in paying for most of the Portland Harbor Superfund costs so far with sewer ratepayer funds — and may use them to pay for the majority of the potentially higher cleanup costs required by the United States Environmental Protection Agency, according to a Multnomah County Circuit Court ruling released Thursday.

However, in the final ruling in the long running utility ratepayer lawsuit against the City of Portland, Judge Stephen Bushong also ruled the council must eventually "reallocate" all of the city's Superfund spending by assessing any other bureaus deemed liable contributing to the pollution.

Mayor Ted Wheeler said the ruling showed the council was acting responsibly with the resources of the Bureau of Environmental Services, which operates the city's sewer system and is overseen by Commissioner Nick Fish.

"Commissioner Fish and I share a vision for our utility bureaus that focuses on the responsible use of public resources. I am pleased that the Court agrees that Council has acted appropriately in its use of ratepayer funds," said Wheeler, who agreed the council will reallocate the costs once the process is farther along.

Ratepayer attorney John DiLorenzo said Bushong's affirmation of the reallocation process is important because it means the council's final spending decisions could end up back in his court.

"This means that the court will hold the City Council to a reallocation process among bureaus, that the City Council will perform it in the first instance subject to a challenge by the ratepayers," said DiLorenzo, who filed the lawsuit in 2011.

The EPA has released a preliminary \$746 million cleanup plan that it is expected to finalize on Friday. Some harbor related businesses believe the final cost will be much higher, perhaps \$1.5 billion to \$2 billion or more.

In an earlier ruling, Bushong found that the City Charter requires that water and sewer ratepayer spending must be "reasonably related" to the missions of BES and the Portland Water Bureau and the Bureau of Environmental Services, which operates the city's sewer system and stormwater management programs. The lawsuit filed by several ratepayers charged that the council had illegally spent hundreds of millions of dollars over the years on projects and programs with little or no connection to the bureaus.

In a series of previous rulings on challenged spending, Bushong found in favor both both side. He sided with the ratepayers by finding that up to \$14 million was spent illegally. Projects and programs included up to \$9 million for work at Powell Butte not directly related to a new reservoir built there, \$2 million for renovating Dodge Park outside the city limits, \$1.1 million for creating "hydroparks" at water storage tanks, \$650,000 for the public toilets known as Portland Loos, \$550,000 on the now-defunct Voter Owned Elections program, and \$400,000 for Hurricane Katrina relief.

"Next steps include appointment of a referee to make the detailed accountings and determination as to whether interest will apply to these amounts," DiLorenzo says.

In addition, after the lawsuit was filed, the council voluntarily paid the water bureau back \$1.2 million for money spent on a new Rose Festival headquarters and paid BES back \$950,000 for money spent on the long-stalled Centennial Mills redevelopment project.

But Bushong has ruled that a far larger amount of challenged spending was legal under the charter, including \$6 million in BES funds used to buy an undeveloped portion of the River View Cemetery for a park and stormwater management.

The Superfund spending will easily be the largest single category of challenged spending by the time the cleanup is complete. The council has already spent over \$58 million preparing for the EPA's final plan, with over \$50 million coming from BES.

Lawyers representing the ratepayers had argued all of the costs should have been paid with unrestricted general fund dollars, with a final "true up" occurring when the project was complete. City attorneys argued that if Portland is liable for any of the cleanup costs, it will be because the sewer system dumped pollution in the harbor.

Although Bushong said there was "some logic" the ratepayer's position, he sided with the city in his Jan. 5 ruling, in part because it is premature to determine the extent to which the BES spending is "sufficiently related" to the city's sewer services.

"Accordingly, at this juncture, the court rules in favor of the City on the challenged Portland Harbor Superfund expenditures to date, subject to a future reallocation of all Portland Harbor Superfund costs among responsible city bureaus, agencies and funds and further consideration by the City Council on the extent to which the Portland Harbor Superfund costs should be borne by taxpayers and not sewer ratepayers," the ruling says.

Bushong also sided with the city on most of the remaining challenged expenditures in the suit. They include system development charges waived to encourage affordable housing, grants to nonprofit environmental organizations, and funds spent for public art.

However, Bushong ruled that BES funds provided to Portland Parks & Recreation for a number of years for such things as a tree inspector and a park ranger were not authorized by the charter. That amount has yet to be determined.

City attorneys have already said Portland will challenge Bushong's "reasonably related" before the Oregon Court of Appeals.

You can read the ruling [here](#).

Willamette Week

Judge Rules Portland's Utilities Were Justified in Using Ratepayer Funds for Portland Harbor Superfund Cleanup

By Rachel Monahan

January 5, 2017

Portland City Hall had the right to use money from sewer bills toward cleaning up the polluted Portland Harbor, a Multnomah County Circuit judge ruled Thursday.

It's a significant win for the city—and for Commissioner Nick Fish, who oversees the city's utilities—in a five-year-long court battle that centered on who would be responsible for cleaning up the Willamette River.

Judge Stephen Bushong ruled that city was justified in charging ratepayers roughly \$50 million of the nearly \$60 million so far spent on preparations to clean Portland Harbor, a federal Superfund site.

Utility ratepayers sued the city in 2011, demanding that money back, along with city funds used to give waivers to land developers, and pay for parks and public art.

The decision comes a day before the U.S. Environmental Protection Agency is expected to issue its final plan for cleanup of the harbor, which is expected to cost between \$750 million and \$1.5 billion for all polluters.

The city's responsibilities for that cleanup will be determined by that decision, but today's ruling shows that utility ratepayers will remain on the hook.

"The [city] charter authorized the city to spend sewer ratepayer funds in addressing the city's potential ... liability for the Portland Harbor Superfund, subject to an appropriate reallocation after EPA issues its Record of Decision," writes Bushong.

The judge also found the City Council could waive system development charges —the fees paid by developers that cover infrastructure costs for new projects. That's another key win. But spending utility funds for parks projects was not justified, Bushong found.

Fish and John DiLorenzo, the lawyer for the ratepayers who sued the city, did not immediately respond to requests for comment.

UPDATE, 1:03 pm: Mayor Ted Wheeler issued a statement celebrating the ruling.

"Commissioner Fish and I share a vision for our utility bureaus that focuses on the responsible use of public resources," Wheeler said. "I am pleased that the Court agrees that Council has acted appropriately in its use of ratepayer funds."

UPDATE, 2:18 pm: The city estimates today's ruling and previous ones in the suit will require the city's general fund to pay back the utility bureaus a maximum of \$16.2 million, according to Deputy City Attorney Karen Moynahan.

DiLorenzo says that the judge's decisions contain good news for water and sewer ratepayers, even though he won on a fraction of the hundreds of millions he had sought.

"Despite the city's attempt to justify its actions, the bottom line is that the court has made clear that approximately \$15 million of the city's non-Superfund expenditures from water and sewer funds were not authorized by the charter and will have to be returned to those funds," says DiLorenzo.

"The court has also made clear that the final Superfund expenses must be allocated among all city bureaus, not just the ratepayers. Time will prove that portion of the decision as great victory for the ratepayers."

Neither the city nor DiLorenzo has decided whether to appeal Bushong's ruling.

Will a Lack of Humility Be Ted Wheeler's Greatest Stumbling Block?

*By Beth Slovic
January 5, 2017*

As Portland Mayor Ted Wheeler continues his victory lap around City Hall this week—he seems to like doing things in threes, with a private swearing-in last Friday, a public swearing-in Wednesday, and an inaugural press conference this Friday—the inevitable questions nag at the

nattering nabobs of negativism among us: What will Wheeler's biggest stumbling block be? And will he be able to overcome it to secure a second term?

If you've read any amount of news coverage of Wheeler's nascent administration, you might be under the impression that Portland's unique form of government, which gives almost as much power to its four elected commissioner as it does its mayor, is the most likely source of Wheeler's potential undoing.

Former mayors Charlie Hales, Sam Adams and Tom Potter all struggled in the weak-mayor system, finding themselves isolated at times when they couldn't rally colleagues to their causes. It's a valid point, and one this newspaper has made, too.

At its heart, though, that's a sexist revision of Portland's recent history—one that completely erases the tenure of former Mayor Vera Katz, who led Portland for three terms, not just two, from 1993 to 2005. As mayor, Katz corralled the same commission form of government that so bedeviled her male successors. (She nonetheless supported changes to the system, which voters in 2002 rejected —the eighth time they did that since embracing the weak-mayor style of government in 1913.)

When Wheeler sat down for an interview with WW two weeks ago, he said the best piece of advice he'd received after winning office was to "approach the job with humility."

He went on: "I have no monopoly on the truth."

Moments later in the interview, however, WW asked Wheeler for evidence of this humility by asking him to acknowledge fairly widespread criticism of his leadership style, as Multnomah County chairman and Oregon treasurer, that he often fails to bring others along with him.

That's something Portlanders heard about on the campaign trail: a variation on the smartest-guy-in-the-room syndrome, wherein Wheeler stumbles when he needs to act on others' advice or input.

As he did during the campaign, Wheeler resisted.

"I've certainly heard loudly and clearly from some in the Legislature that I did not listen," he responded after additional prodding. "Let's take the one example from the Legislature that people point out as being just a colossal failure—a failure to build a coalition. Three times I brought forward the Investment Modernization Act, and three times it got stuffed right back in my face. People say, 'Well, here's an example of how Ted Wheeler doesn't know how to build a coalition or listen or learn from his mistakes.'"

Wheeler then went on a three-minute, multi-pronged defense of his actions, captured in the video below. Asked again whether he could show any sense of humility about his failure three times (there's that number again) to reform the treasury, Wheeler again demurred.

"I can't," he said. "I know people don't universally love me. This isn't a popularity contest. It's not about being loved. It's about getting things done."

True enough, and let's not forget that Wheeler has pointedly avoided saying whether he wants to stay at City Hall for more than four years.

Except, funny thing about governing and elections. They kinda are popularity contests.

The Portland Business Journal

City will keep Portland Building open as a homeless shelter into the weekend

By Jon Bell

January 5, 2017

Nearly 40 homeless people didn't have to sleep on the streets of Portland last night, instead finding shelter in the Portland Building, which the city opened as a temporary shelter during the region's current cold snap.

Mayor Ted Wheeler tweeted earlier this morning that 38 people had taken shelter in the building last night. He also noted that the building will remain open as a shelter tonight, tomorrow night and possibly Saturday, as well.

The city is working with local nonprofit Transition Projects, which has provided some staffing for the temporary shelter. Wheeler also asked city employees to help out if they could.

A list of shelters on the 211info.org site listed the Portland Building Warming Center as being open for walk-ins from 7 p.m. to 7 a.m. Jan. 5-7.