

Maine, blocked use of its port as an export point for Line 9 tar sands oil.

Toronto needs to adopt a bylaw banning the transport of unconventional oil such as diluted bitumen and Bakken fracked oil across the city. Doing so would not only protect Toronto residents, but would add an authoritative voice to those across Canada calling for protection of municipal authority over public health and local environmental issues.

## **Intra Vires**

A decision by the Supreme Court to uphold the right of Canadian cities to pass bylaws to protect residents will change the balance of power in Canada toward more local control. This can pave the way for wider participation in key



A pipeline spill on March 29, 2013 in Mayflower, Arkansas was an estimated 1 million litres of DilBit.



47 residents of Lac-Mégantic died when a train carrying Bakken crude exploded on July 6, 2013. That train travelled through the heart of Toronto on its way to the east coast.

decisions like Line 9. Cities can become the heart of a new, more direct democracy which values the commons and climate justice, while fostering community decision-making.

### **Sources:**

August 28 decision: <http://bit.ly/1olkj3J>  
Rempe: [bit.ly/1tYLaqw](http://bit.ly/1tYLaqw)  
*Spraytech v. Hudson*: [bit.ly/1yMjWGN](http://bit.ly/1yMjWGN)  
Precautionary principle: [bitly.com/1qjkfRY](http://bitly.com/1qjkfRY)  
Burnaby: [bit.ly/1zNF1oC](http://bit.ly/1zNF1oC)

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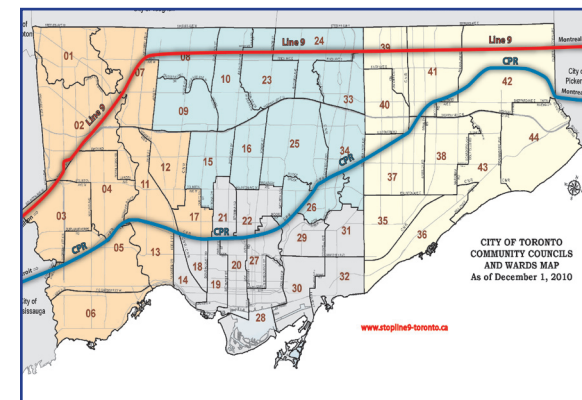
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# **Intra Vires**

## **(Within Our Jurisdiction)**



## **A city bylaw can protect us from hazardous oil**

On August 28, 2014, Toronto City Council voted overwhelmingly to ask pipeline company Enbridge Inc. not to pump dangerous tar sands oil (diluted bitumen — DilBit) across the city.

Enbridge ignored City Council's request.

Enbridge's troubled Line 9 project, running across the top of the city near Finch Ave., poses an urgent threat to the health of Toronto residents.

Meanwhile, on the rail line crossing mid-Toronto, rail tanker cars carrying another form of toxic crude oil pose a similar danger. This equally unconventional

crude called Bakken fracked oil, killed 47 people when it exploded in Lac-Mégantic in 2013.

Our city government already has a responsibility to clean up hazardous substances after a spill. Toronto needs authority to prevent these spills by controlling the transport of toxic unconventional oil by pipeline or rail.

The public health dangers are alarming: potentially lethal explosions, fouling of the city's water supply, and poisoning of its atmosphere.

Railways and pipelines are regulated by the federal government. But Canada's Supreme Court has acknowledged municipalities may need to act beyond their normal jurisdiction to protect public health and the environment.

## Supreme Court ruling

In its October 16, 2013, submission to the National Energy Board (NEB) on Line 9, the City of Toronto cited a Supreme Court precedent (*Spraytech v. Hudson*, 2001), "The Supreme Court here refers to the principle of 'subsidiarity' which suggests that local governments, being the closest to the people, should be empowered to exceed not lower national norms" [and cites] "the role of municipalities as 'trustees of the environment'" said City Solicitor Graham Rempe.



Cleaning up the 2010 pipeline spill in Marshal, Michigan (Kalamazoo) has cost almost \$1 billion and is still not finished.

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*Spraytech v. Hudson* upheld bylaws passed by many cities, including Toronto, that protected residents' health by stopping the use of weed-killers on lawns. It overruled a protest by the chemical companies that regulating such chemicals was outside municipal jurisdiction.

The Supreme Court has also cited the "precautionary principle", whereby "environmental measures must anticipate, prevent, and attack the causes of environmental degradation", even if there is a "lack of full scientific certainty" regarding "serious or irreversible damage".

## Burnaby leads the way

A recent NEB order violating the spirit of this Supreme Court decision is now being appealed to the Federal Court of Appeal by the City of Burnaby, BC. The NEB had overruled a Burnaby bylaw protecting a city park from damage by pipeline company surveyors.

Burnaby says the NEB lacks authority to take such an action. "No federally appointed panel should have that power; it doesn't exist in the NEB Act, and it has never been claimed before by any federal tribunal. This is a very serious question that a higher court needs to decide", says Burnaby counsel Greg McDade.

Burnaby supporters have encapsulated this position in the term "Intra Vires" (Within Our Jurisdiction).

Burnaby has invited other municipalities to join in its submission on this issue to the federal court.

## Toronto needs to act

Other jurisdictions have taken initiatives similar to Burnaby's bylaw. For example in the United States, South Portland,

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***"We should ... stop the movement of toxic and dangerous substances through the city" — Toronto Mayor John Tory, December 2014***

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