

TO: Senate Energy and Environment Committee
FROM: Beyond Toxics
DATE: May 20, 2021
RE: Support for HB 3372-A

Dear Chair Beyer and Members of the Committee,

I am writing on behalf of Beyond Toxics, a statewide environmental justice organization advancing policies that ensure meaningful participation and cultivating grassroots leadership from Oregon's frontline and impacted communities. Beyond Toxics is also a member of the Cleaner Air Oregon Rules Advisory Committee (CAO), which engages at every step of the Department of Environmental Quality's CAO implementation process to ensure the strongest possible outcomes for the quality of Oregon's air, the health of our communities, and our economy.

Thank you for the opportunity to provide these comments in support of HB 3372-A, a bill to allow the DEQ to professionally and satisfactorily do their job in cases of repeated, intentional and serious violations of Oregon's environmental health and safety laws. The authority to thoroughly investigate serious and recurring violations of an air permit is essential for public health, safety and community wellbeing.

To provide one example, Beyond Toxics has long worked alongside communities in West Eugene who have borne the brunt of toxic emissions from a wood treatment plant owned and operated by JH Baxter, Inc. Community members, who are predominantly BIPOC, low income and working class, have endured serious health impacts as a result including increased rates of cancer, asthma, diabetes, heart disease, thyroid disease, respiratory issues, rashes, headaches, and nosebleeds. The smell of creosote and naphthalene is so severe at times that residents aren't even able to open their windows or go outside their own house. School children playing during recess have been called back into the classroom because of a "wall of chemical fumes" enveloping the school.

In 2012, nearly a decade ago, DEQ issued findings that classified [JH Baxter as a Frequent Non-Complier](#). You can find the EPA report [here](#). The characteristics of a Frequent Non-Complier are:

- Cause actual exposure or a substantial likelihood of exposure to hazardous waste to humans or the environment;
- Violate the law through flagrant and willful action;
- Are chronic or recalcitrant violators;
- Have violations that deviate substantially from the terms of a permit ... or regulatory requirement

Yet, JH Baxter continued to operate in the Bethel neighborhood, Eugene's largest and most diverse neighborhood. In 2019, DEQ announced they had tested for, and found, dioxin in the soil of the neighborhood homes and parks near JH Baxter as well as PCP's in surface and ground water plume spreading underneath homes.

The DEQ recently fined JH Baxter \$223,000 for illegally emitted 1.7 million gallons of creosote waste directly into the air without control mechanisms by "boiling it off" in the creosote retort ovens between 2015-2019, instead of disposing the hazardous waste properly as required by their permit. During this time, the local air regulatory agency had received many hundreds of public complaints from nearby residents about gaseous and nauseating odors. The complaints were specific and the impacts notable. People were unable to use CPAP machines as directed by their doctors to treat respiratory illnesses. Neighbors had to miss work from feeling sick and children had to miss school from exacerbated asthma symptoms.

This is just one example of what happens when major polluters go unchecked, and the health consequences related to emissions from hazardous and illegal practices are not paid due attention.

We cannot expect major polluters to rein themselves in--that is the responsibility of the DEQ, whose mission "is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water." In our current system, major pollution emitters can easily pay off fines for noncompliance, yet community members struggle to afford resulting medical expenses.

Thus, HB 3372-A also addresses environmental justice issues, which should be front and center in the development of this program, as the burden of pollutants like naphthalene and benzene will be experienced disproportionately by children, BIPOC and other marginalized communities.

During a recent CAO Rules Advisory Committee meeting, DEQ staff were asked about their options should evidence show that a company has repeatedly and intentional violated their air permit. As we had suspected based on past cases, the staff said they do not have the authority to deny the permit. They might be able to give the polluter an "immediate curtailment" plan after an investigation. However upon further questioning, I learned that this course of action is: 1) a partial investigation due to their limited authority to gather necessary past permit compliance records; 2) no immediate action able to be taken that leaves the public experiencing continuous exposure to dangerous air pollutants nor; 3) true curtailment because the agency cannot require a facility to cease operations until the situation is remedied. DEQ must have the authority to do their job and protect public health.

Please review the Register Guard article on JH Baxter and the community experience published 5/16/2021 in the record.

Thank you for considering our comments.

Sincerely,

Lisa Arkin, Executive Director, Beyond Toxics

Arjorie Arberry-Baribeault, West Eugene Environmental Justice Organizer

[Beyond Toxics](#)

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