



FREQUENTLY ASKED QUESTIONS

J.H. Baxter

BEYOND TOXICS 07/06/2022

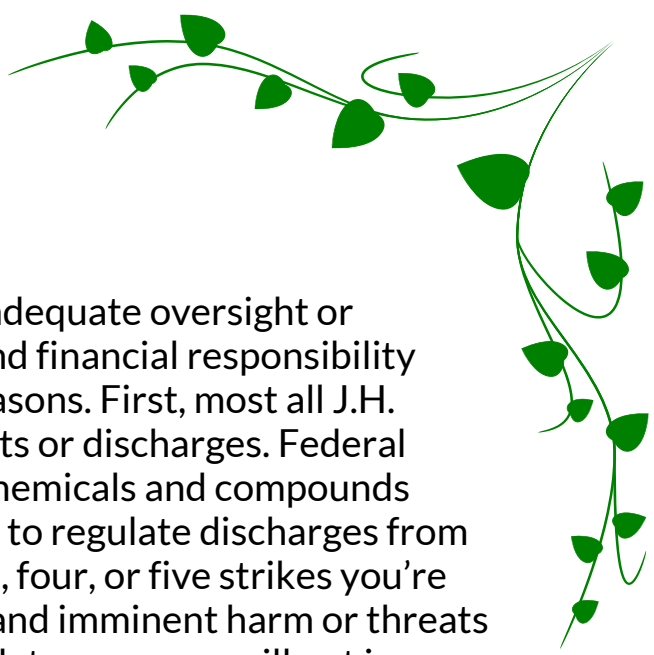
Introduction

A recent announcement from the local air quality regulatory authority, Lane Regional Air Protection Agency (LRAPA), confirmed that J.H. Baxter would close its doors. For over 50 years, J.H. Baxter operated its wood treatment facility in West Eugene. However, faced with “market volatility” and “diminished returns,” the company concluded that “it simply doesn’t make financial sense to continue [their] current operations at their Eugene facility.”

Celebrations from environmental justice advocates and community members are justified. However, decades of pollution violations, unpaid civil penalties, and unaddressed contamination caused by poorly regulated wastewater and harmful emissions are yet to be resolved. One of the most pressing concerns is the recent soil sampling by regulatory agencies resulting in findings of dioxin contamination in nearby residential properties and public parks. The dioxin is currently believed to be linked to JH Baxter and its operations.

J.H. Baxter, facing large civil penalties and an expensive clean-up, is currently “working with” the Oregon Department of Environmental Quality (DEQ) to craft a solution. The issue here is that those who cause harm and hurt should not also get to determine the price, method, and timeline of healing. Our system must not allow those who violate the law to determine their own punishment. Doors closed on business cannot mean doors closed on remediation and compensation for those harmed by decades of unethical business, weak regulatory protection, and social and environmental harm.

Beyond Toxics is committed to maintaining pressure and keeping a close eye on this process to ensure that regulators hold J.H. Baxter accountable for the damage they caused and elected decision-makers are responsible for prioritizing public health and precaution in policy and practice. Above all, we must make sure the community has a voice. The West Eugene community should not continue to bear the cost of the damage they neither caused nor supported.



J.H. Baxter has been allowed to pollute without adequate oversight or appropriate sanctions, and now accountability and financial responsibility remains unsatisfactory. This is for a variety of reasons. First, most all J.H. Baxter's pollutants qualify as agricultural products or discharges. Federal environmental laws make exceptions for many chemicals and compounds used in agricultural applications or otherwise fail to regulate discharges from agricultural operations. Second, there is no three, four, or five strikes you're out with environmental violations. Absent clear and imminent harm or threats of harm to the public, the Governor or state regulatory agency will not issue a cease-and-desist order to the polluting facility. And the polluter continues to pollute. Third, zoning and regulatory permits are outdated. These two factors largely allow for the historic pollution and harmful effects of J.H. Baxter's operations. Many communities neighboring the facility are in areas zoned as low-density residential. These areas were zoned decades ago, occupy fairly typical densities, and experience pollution levels that would not/should not be accepted under today's regulatory approaches.

To address these issues, Beyond Toxics has sought intervenor status in the contested case hearing J.H. Baxter requested to appeal the fines assessed by DEQ. It is crucial that community voices are heard and represented in that proceeding. After all, it is the community that has borne the brunt of these repeated violations and chronic environmental and social harms.

We are pleased to announce that in mid-July 2022, after months of stalling, JH Baxter dropped their contested case and has agreed to pay over \$300,000 in fines for their egregious violations of environmental laws.



In our efforts to disseminate information, update, and demand accountability from polluters and state and local actors that often allow pollution to harm communities at disparate rates, we have summarized the concerns that so many of you have expressed, and we share. We have outlined answers and resources to address frequently asked questions as well as provided a form for you to ask additional questions and express additional concerns. Your comments and questions are valuable.

Frequently Asked Questions

WHO IS J.H. BAXTER?

J.H. Baxter is a wood contaminant treatment company that operated in West Eugene for nearly 70 years.



The majority of J.H. Baxter's operation in West Eugene has centered on treating wood products with compounds meant to preserve wood from rot and protect against insect pests.

J.H. Baxter formerly operated a creosote wood treatment site in The Dalles on behalf of Union Pacific that was cited for illegal discharging of polluted wastewater into the Columbia River. Past operating practices, including discharge of wastewaters to unlined ponds, other on-site disposal, spills, and uncontrolled drippage caused dioxin contamination in the Columbia River and nearby riverfront area in The Dalles. J.H. Baxter operated the plant from 1959-1987.

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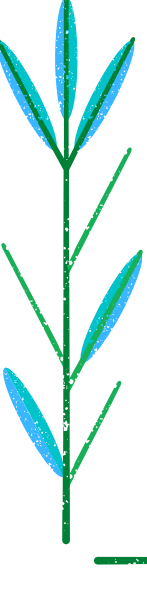
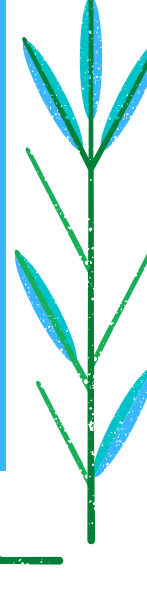
WHAT PRODUCTS DO THEY MAKE?

Various wood products such as railroad ties, electrical service poles, and cross arms with water and oil-based chemicals (penta, creosote, ACZA, etc.)

The wood products are treated under pressure in a closed cylindrical vessel or retort by forcing preservatives deep into the cells of the wood.

WHAT CHEMICALS DO THEY USE?

JH Baxter is not required to report the individual chemicals that are present in creosote to the Eugene Toxics Right to Know program because the company argued and won an exemption in a legal case. Below are the chemicals they have reported, excluding those that can also be classified as pesticides (e.g., naphthalene).

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- | | |
|------------------------------------|--|
| • acetone / 2-propanone | • acetylene |
| • aluminum sulfate | • ammonium carbonate |
| • creosols | • creosote |
| • ferric chloride | • manganese |
| • methane, trichloro- / chloroform | • toluene / methylbenzene |
| • naphthalene | • nitric acid |
| • methanol / methyl alcohol | • pentachlorophenols |
| • sodium hydroxide | • sulfuric acid / sulfuric acid (aerosol forms only) |
| • tartaric acid, diammonium salt | • xylene / xylene (mixed isomers) |
| • unknown ignitable | |
| • a number of heavy metals | |



WHY ARE WE CONCERNED?

J.H. Baxter has violated state and federal environmental law for decades, has had upwards of twenty environmental violation enforcements, and is designated as a “Significant Non-Complier” by the Oregon Department of Environmental Quality (DEQ).

- A facility labeled as a Significant Non-Complier is found to have met one or more of these criteria:
 - Causes actual exposure or substantial likelihood of exposure to a hazardous waste
 - Violates the law through flagrant or willful action
 - Are chronic or recalcitrant violators
 - Have violations that deviate significantly from the terms of permits/regulatory requirements.

J.H. Baxter was fined for letting harmful chemicals such as pentachlorophenol and dioxin leach into soils and groundwater underneath the plant. Contamination has spread outside the facility and affected residents’ properties and public places, creating risks to citizens and remediation costs.

ARE THERE ONGOING ISSUES OF CONCERN OR DANGER TO THE PUBLIC?

Yes, J.H. Baxter was compelled to take soil samples from city parks and several residents. Multiple tested areas came back positive for a chemical compound called dioxin. Dioxin is a hazardous substance that is linked to causing cancer, harming reproductive health, and damaging the immune system, among other issues. Dioxin exposure is particularly harmful to children under the age of six.



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WHAT IS DIOXIN?

Dioxin is a class of highly toxic inorganic compounds linked to causing numerous adverse health effects and environmental harms.

Dioxin poisoning is associated with exposure to Agent Orange that occurred during the Vietnam War.

Dioxin is a component of the treatment cocktail J.H. Baxter used to treat their wood products.



WHAT ENVIRONMENTAL LAWS APPLY TO THE REGULATION AND MONITORING OF DIOXIN?

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) / Resource Conservation and Recovery Act (RCRA)
- Toxic Substances Control Act (TSCA)
- Clean Water Act (CWA)
- Clean Air Act (CAA) and National Standards for Hazardous Air Pollutants for Wood Preserving Sources Combustors (Wood Preservation NESHAP)
- Emergency Planning and Community Right-to-Know Act (EPCRA)
- Safe Drinking Water Act (SDWA)

HOW DID HARMFUL CHEMICALS GET INTO NEIGHBORHOODS?

PENTACHLOROPHENOL (Penta)

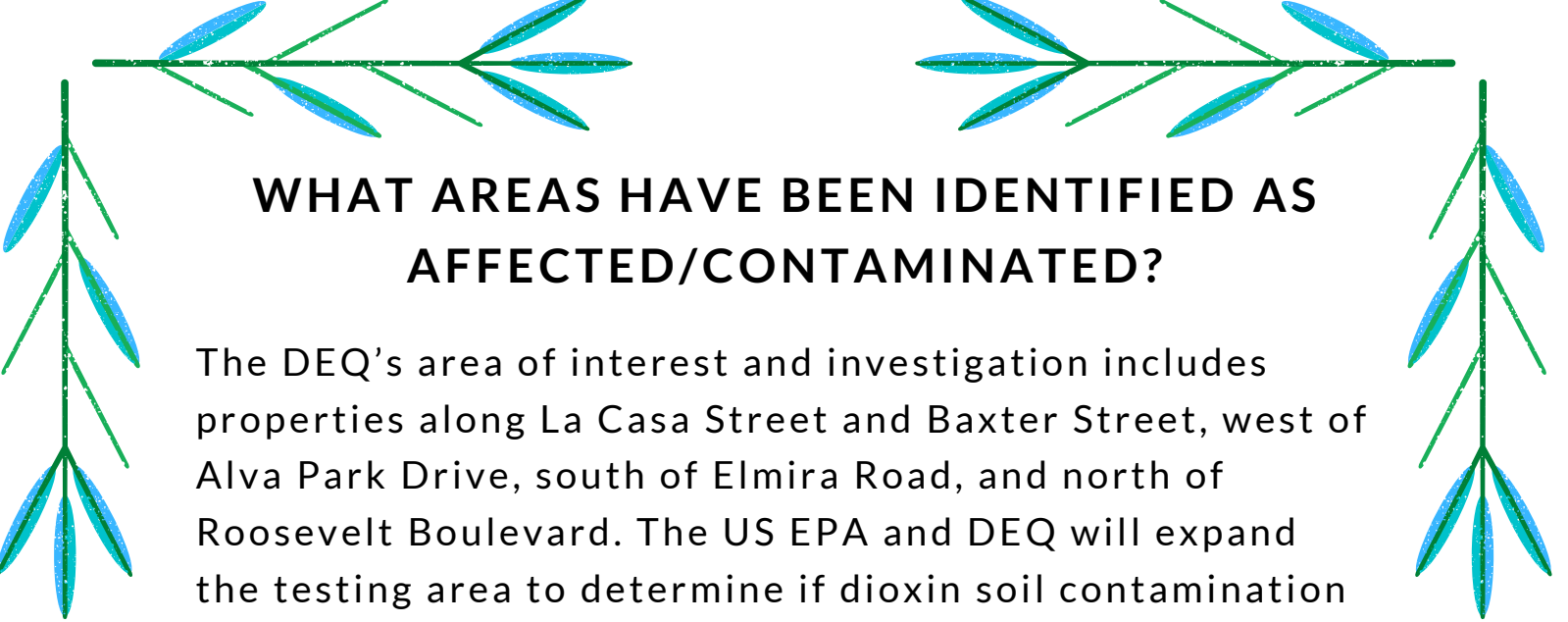
The chemicals used to treat the wood would run onto the warehouse floor, into drains, and then into pipes that ended in the earth underneath the facility. DEQ believes the contamination now seen in the neighboring community was caused by groundwater leaching. Put differently, pentachlorophenol from the facility have traveled through the soil spreading Penta pollution underneath the facility and into the community by groundwater.

DIOXIN

The DEQ believes that air emissions from JH Baxter may have contributed to the contamination. The agency does not know exactly where in the wood treatment process the contamination was formed. Baxter's use of pentachlorophenol, or penta, in their wood treatment process may have contributed. Penta is known to contain dioxins as impurities in the treatment solution.



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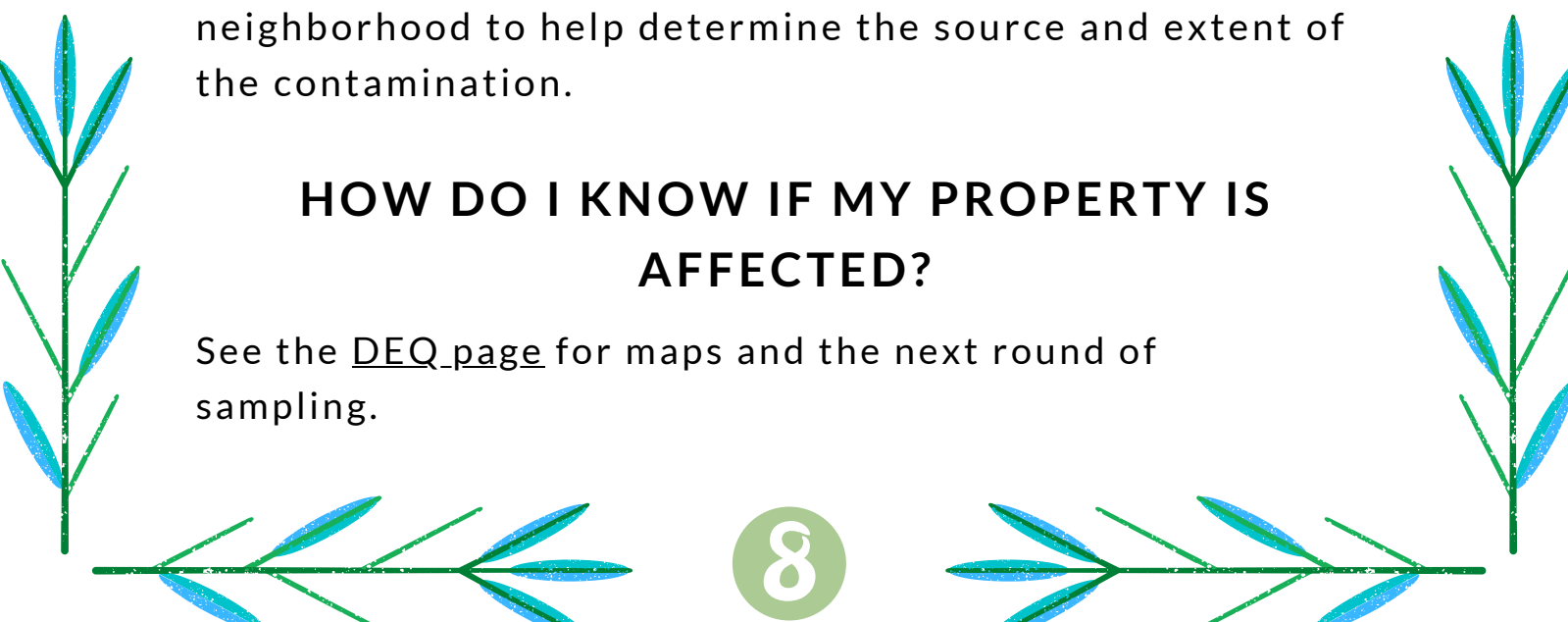


WHAT AREAS HAVE BEEN IDENTIFIED AS AFFECTED/CONTAMINATED?

The DEQ's area of interest and investigation includes properties along La Casa Street and Baxter Street, west of Alva Park Drive, south of Elmira Road, and north of Roosevelt Boulevard. The US EPA and DEQ will expand the testing area to determine if dioxin soil contamination from Baxter extends to additional properties in the neighborhood.

The U.S. Environmental Protection Agency plans to conduct dioxin soil sampling in dozens of additional homes between Roosevelt Boulevard and Elmira Road in addition to the approximately ten properties that were initially sampled.

In addition, dioxin contamination has been found in Trainsong Park, located in the Trainsong neighborhood. The park is situated approximately 3/4 of a mile to the northwest of JH Baxter. The DEQ is also conducting soil sampling in residential properties in the Trainsong neighborhood to help determine the source and extent of the contamination.



HOW DO I KNOW IF MY PROPERTY IS AFFECTED?

See the [DEQ page](#) for maps and the next round of sampling.



ARE THERE OTHER POLLUTANTS OR CONTAMINANTS OF CONCERN STEMMING FROM J.H. BAXTER'S OPERATION?

Yes, the facility is also known to release naphthalene into the ambient air.

Naphthalene is a substance found in mothballs. It is generally known as a strong insecticide and is among the chemical J.H. Baxter used to treat their wood products.

Acute (short-term) exposure of humans to naphthalene by inhalation, ingestion, and dermal contact is associated with hemolytic anemia, damage to the liver, and neurological damage. Cataracts have also been reported in workers acutely exposed to naphthalene by inhalation and ingestion. Chronic (long-term) exposure of workers and rodents to naphthalene has been reported to cause cataracts and damage to the retina. Hemolytic anemia has been reported in infants born to mothers who "sniffed" and ingested naphthalene (as mothballs) during pregnancy.



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WHERE HAS NAPHTHALENE BEEN MEASURED IN THE AIR?

Lane Regional Air Protection Agency has linked naphthalene emissions to J.H. Baxter. Naphthalene is present in creosote that is used in local wood preservation facility operations in West Eugene.



This photograph shows the dense Bethel neighborhood located in close proximity to the J.H. Baxter plant.

Beyond Toxics, in collaboration with the Oregon State University Pacific Northwest Center for Translational Environmental Health, also did air sampling for naphthalene and found the chemical at higher levels in the neighborhood to the northeast of J.H. Baxter.

The data correlates closely with the pattern of neighborhood complaints about noxious odors in the air from J.H. Baxter.

AIR
QUALITY
SAMPLING
RESULTS



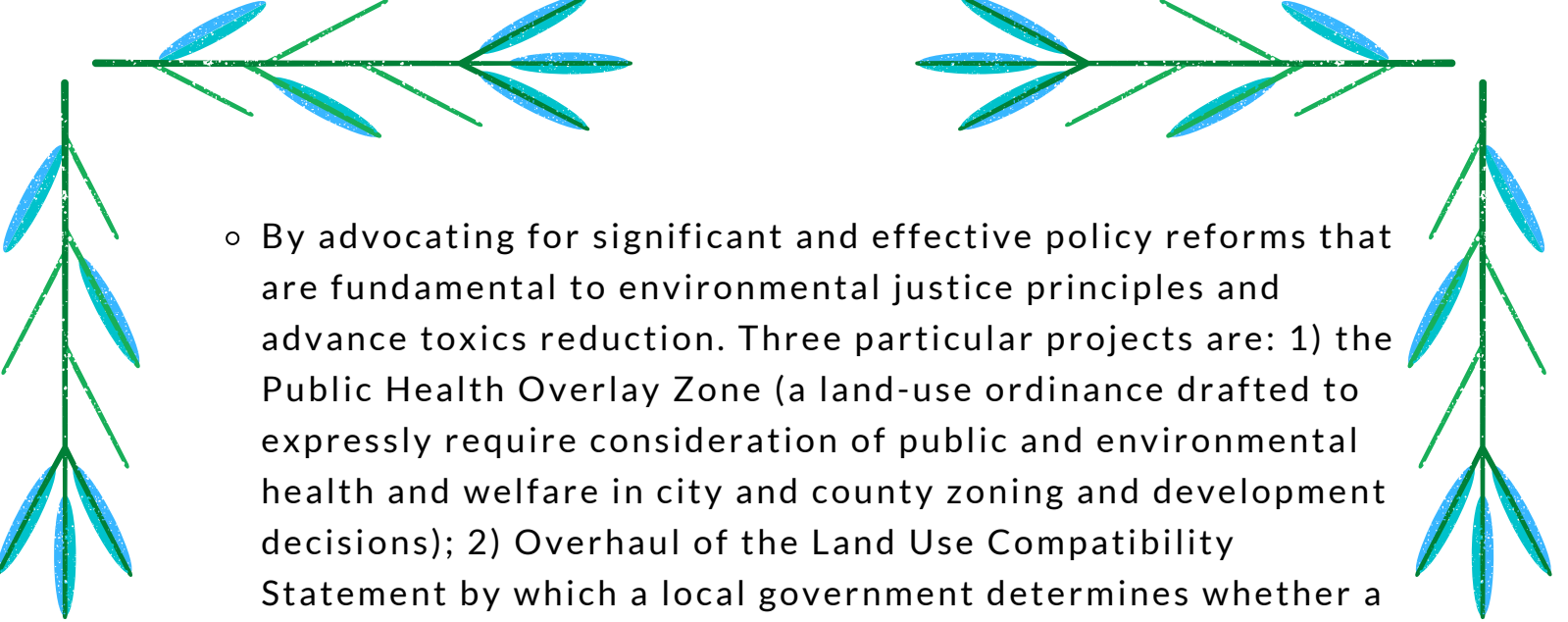
WHAT IS BEYOND TOXICS DOING ABOUT THIS?

Beyond Toxics was granted intervenor status in the contested case against J.H. Baxter. When companies break state and federal environmental law by failing to comply with their pollution permits, the Oregon Department of Environmental Quality (DEQ) has the authority to review and impose fines. J.H. Baxter, a chronic violator, was recently cited with over \$300,000 in fines by DEQ.

Beyond Toxics is being represented by Crag Law Center, a public interest environmental law firm based in Portland, in the case reviewing J.H. Baxter's violations, fines, and future cleanup/remediation. Beyond Toxics is committed to providing a community voice to demand accountability and consideration of social and environmental costs in these proceedings.

Beyond Toxics has advocated for more stringent oversight and regulation of JH Baxter for over fourteen years and continues to maintain pressure on key decision-makers in several ways:

- Active participation with the Core Team (a group that works to help public officials hear all sides of the story and make the right decisions with chronic polluters going forward)
- By serving as an appointed member of the ODEQ's Cleaner Air Oregon and Air Quality Regulations rule advisory committees for more than five years and defending environmental justice principles, community-right-to-know, public health, and pollution reduction criteria in Oregon's regulatory system.

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- By advocating for significant and effective policy reforms that are fundamental to environmental justice principles and advance toxics reduction. Three particular projects are: 1) the Public Health Overlay Zone (a land-use ordinance drafted to expressly require consideration of public and environmental health and welfare in city and county zoning and development decisions); 2) Overhaul of the Land Use Compatibility Statement by which a local government determines whether a facility applying for an air or water discharge permit complies with local land use codes; and 3) Risk Bonds for high-risk fossil fuel and hazardous chemical users that store, manufacture or transport chemicals and also meet certain regulatory thresholds.
 - More broadly, through continued development of the Chronic Polluters Campaign, which seeks to keep the public informed of decisions and policy changes that affect public health, welfare, and social and environmental justice



**SEE OUR
RECENT BLOGS
HERE**

**SEE STORYMAP
ON J.H. BAXTER
HERE****

**READ ABOUT
OUR EJ BUS
TOURS HERE.**

Feel free to reach out to Beyond Toxics' West Eugene Community Organizer Arjorie Arberry-Baribeault (aab@beyondtoxics.org) for more information about these efforts!

**Storymap created by LRAPA, DEQ, OHA, and other organizations



WHO CAN I TALK TO IF I AM CONCERNED ABOUT THIS ISSUE?

As mentioned above, feel free to connect with us at Beyond
Toxics. Also, feel free to reach out to the following public
officials:

DYLAN DARLING

DEQ PUBLIC AFFAIRS SPECIALIST

541-600-6119

DYLAN.DARLING@DEQ.OREGON.GOV

TRAVIS KNUDSEN

**LRAPA PUBLIC INFORMATION
OFFICER**

541-736-1056 EXT. 217

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DAVID FARRER

**TOXICOLOGIST WITH THE OREGON
HEALTH AUTHORITY**

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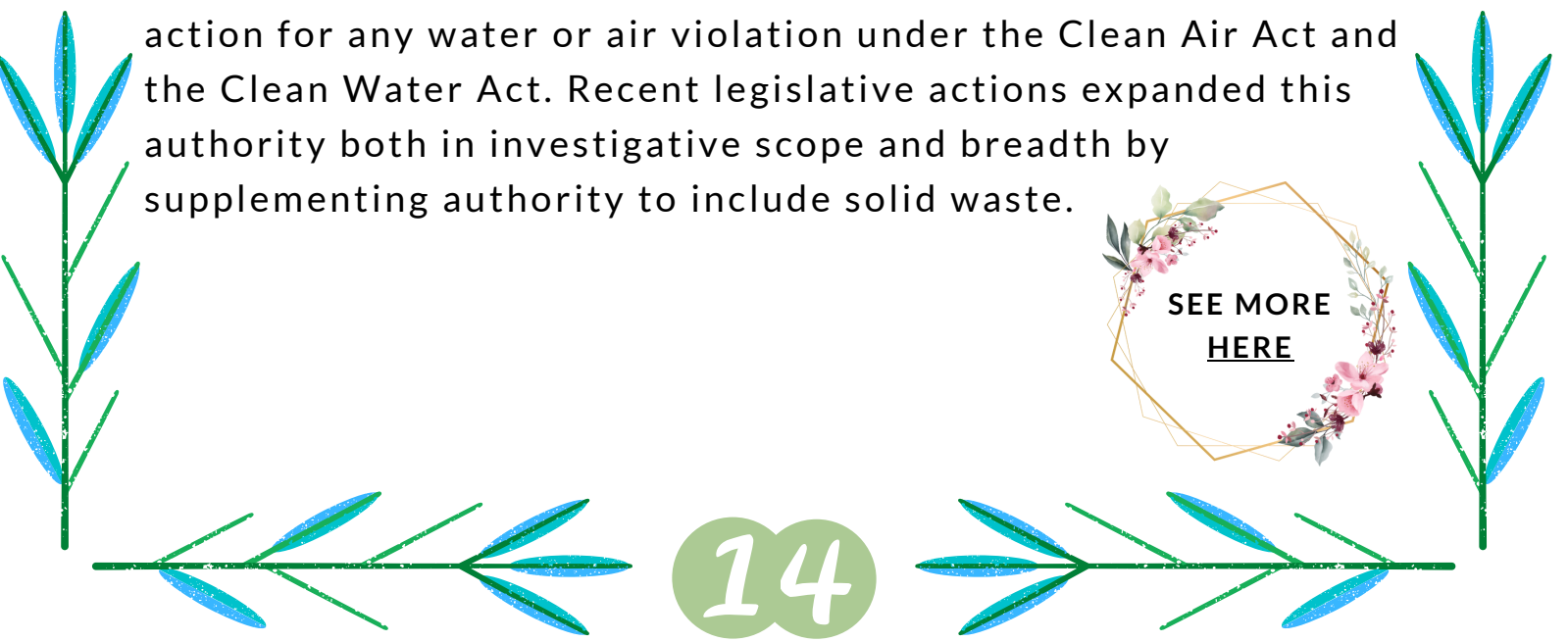


WHAT AGENCIES AND DECISION-MAKERS HAVE AUTHORITY OVER ISSUES LIKE THESE?

Lane Regional Air Protection Agency (LRAPA), Oregon Department of Environmental Quality (DEQ), Oregon Health Authority (OHA), Environmental Protection Agency (EPA), City of Eugene (land use decisions), and Lane County (land use decisions)

WHAT HAPPENS IF THE SAME POLLUTER OR A NEW OWNER WANTS TO OPEN UP OR RE-OPEN UP A HIGHLY TOXIC BUSINESS ON THE SAME SITE?

Several factors affect this. Land use applies to the land the facility sits on. Accordingly, any and all relevant land-use regulations that applied to the first polluter will likely apply to the second. Regulation of pollution (air, water, and toxic waste) is federally regulated but administered at the state level by the Oregon Department of Environmental Quality (DEQ). The DEQ has the authority to revoke, deny, or otherwise take permitting action for any water or air violation under the Clean Air Act and the Clean Water Act. Recent legislative actions expanded this authority both in investigative scope and breadth by supplementing authority to include solid waste.



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WHAT HAPPENS WHEN A POLLUTER VIOLATES ENVIRONMENTAL LAW?

Both state and federal agencies have regulatory authority to impose fines and sanctions on corporations that fail to comply with federal and state environmental statutes and code provisions. Federal environmental laws almost all include a citizen suit provision allowing citizens to sue for pollution violations and harm caused by failures to comply with federal law (e.g. Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act). Additionally, federal enforcement action can proceed civilly or criminally.

CIVIL ENFORCEMENT ACTIONS

- **Settlements** are generally agreed-upon resolutions to an enforcement case.
 - Settlements in administrative actions are often in the form of consent agreements/final orders (CA/FOs) or administrative orders on consent (AOCs).
 - Settlements in judicial actions are in the form of consent decrees signed by all parties to the action and filed in the appropriate court.
- **Civil Penalties** are monetary assessments paid by a person or regulated entity due to a violation or noncompliance. Penalties act as an incentive for coming into compliance and staying in compliance with the environmental statutes and regulations. Penalties are designed to recover the economic benefit of noncompliance and to compensate for the seriousness of the violation.
- **Injunctive Relief** requires a regulated entity to perform, or refrain from performing, some designated action. It also brings the entity into compliance with environmental laws.
- **Supplemental Environmental Projects (SEPs) and Mitigation** can be part of an enforcement settlement. SEPs are environmental improvement projects that a violator voluntarily agrees to perform. These projects are in addition to actions required to correct the violations specified in the settlement.

CRIMINAL ENFORCEMENT ACTIONS

- **Criminal Penalties** are federal, state, or local fines imposed by a Judge at the sentencing. In addition to criminal penalties, the defendant may be ordered to pay restitution to those affected by the violation. For example, a defendant may be ordered to pay a local fire department the cost of responding to and containing a hazardous waste spill.
- **Incarceration** refers to “prison time” for an individual defendant.

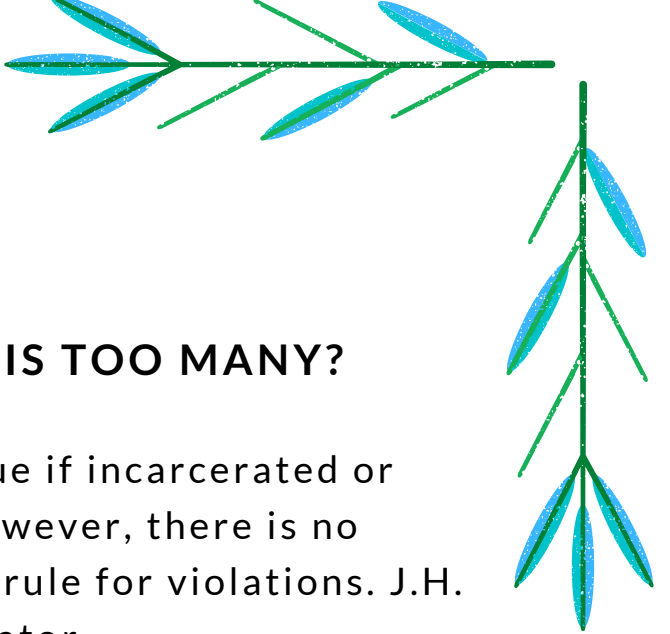
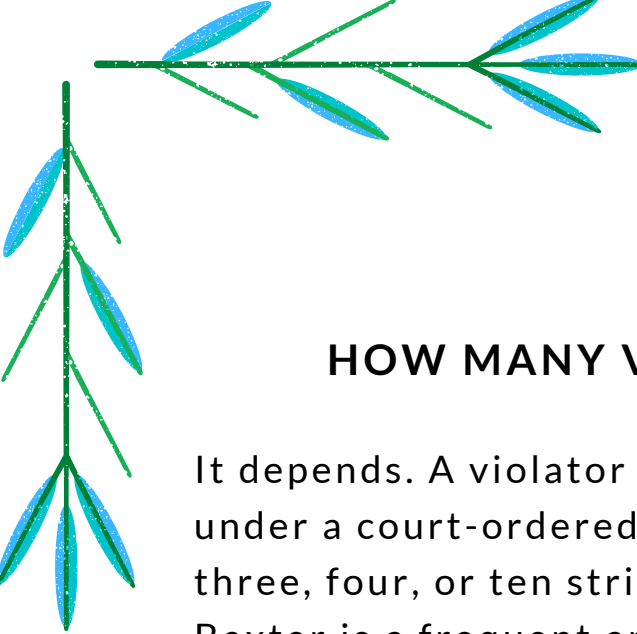


HOW ARE FINES ASSESSED?

Each federal environmental law has its own metric for assessing civil penalties. Generally, the metric involves a consideration of factors like ‘nature, extent, and gravity.’

States, by act of Congress, are granted authority ‘to recover cleanup costs as justice allows.’ Further, agencies are instructed to assess penalties such that polluters are not given an economic or competitive advantage for having violated the law.





HOW MANY VIOLATIONS IS TOO MANY?

It depends. A violator cannot continue if incarcerated or under a court-ordered injunction; however, there is no three, four, or ten strikes you're out rule for violations. J.H. Baxter is a frequent and chronic violator.

HOW ARE SUCH FACILITIES IDENTIFIED?

DEQ – Significant Non-Complier category for hazardous waste violators

DEQ-LRAPA - “High Priority Violations” for air quality permit violations



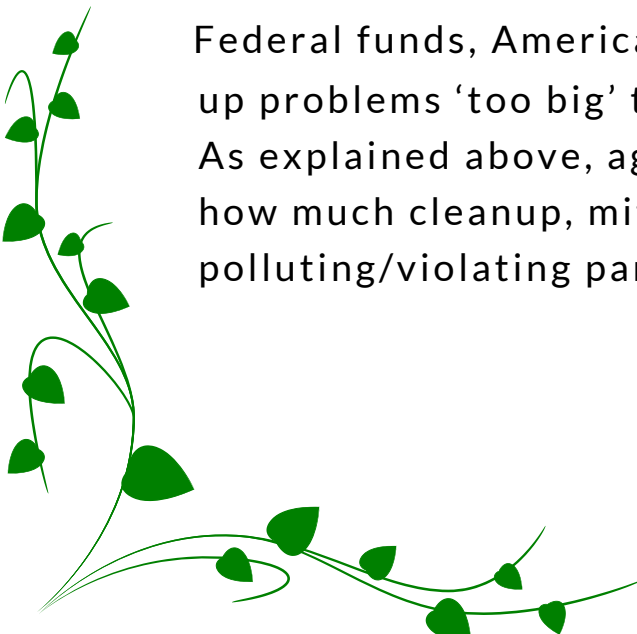
WHAT TRIGGERS A CEASE-AND-DESIST ORDER?

The governor can require that the DEQ shut down a facility posing an immediate public health risk.

ORS 468.115 provides for DEQ, at the direction of the Governor, to issue a cease and desist order if “water pollution or air pollution or air contamination” is presenting an “imminent and substantial endangerment to the health of persons”.

WHO PAYS TO CLEAN UP CONTAMINATIONS ?

This is a complicated question that largely depends on settlement, administrative order, or judicial order. Essentially, the polluter does and should; however, bankruptcy law and environmental laws such as the Comprehensive Environmental Response, Compensation, and Liability Act, often called “Superfund” complicate this.



Federal funds, American tax dollars, may be utilized to clean up problems ‘too big’ to be cleaned up by liability parties. As explained above, agency and judicial discretion guide how much cleanup, mitigation, and liability the polluting/violating part is responsible for.



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DO CITIES AND COUNTIES HAVE THE SAME AUTHORITY TO CURTAIL POLLUTERS?

Local governments do not have the authority to regulate pollution. That is the job of the natural resource agencies who have authority under federal laws such as the Clean Air Act. However, local governments can establish criteria in their local land use comprehensive plans to protect the public and the environment from pollution-generating facilities. Beyond Toxics is advocating for amendments to the Eugene Comprehensive Plan that will establish criteria for public health and environmental justice. For example, we recommend adopting a Public Health Overlay Zone which could add code amendments that prohibit the worst types of polluting industries and require buffer zones to separate industrial areas from homes, parks, and schools.

We believe that environmental destruction and community harm should never be the result of land use law and policy.



WHAT IS THE LOCAL GOVERNMENT DOING ABOUT CONCERNS RELATED TO JH BAXTER?

See the efforts of Beyond Toxics, in combination and in collaboration with our city officials, to address Chronic Polluters [here](#)

WHY HAS J.H. BAXTER BEEN ALLOWED TO RELEASE SUCH HARMFUL CHEMICALS AND POLLUTANTS INTO THE ENVIRONMENT FOR SO LONG?



1. There is no "three, four, or five strikes you're out" with environmental violations. Absent clear and imminent harm or threats of harm to the public the governor or state agency will not issue a cease-and-desist order. And the polluter continues to pollute.
2. Zoning and regulatory permits are outdated. These two factors largely allow for the historic pollution and harmful effects of J.H. Baxter's operations. Many communities neighboring the facility are in areas zoned as low-density residential. These areas were zoned decades ago, occupy fairly typical densities, and experience pollution levels that would not/should not be accepted under today's regulatory approaches.



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