

Coordination & Engagement on Issues Related to the JH Baxter Facility

COMMUNITY ENGAGEMENT CORE TEAM

April 7, 2021

Facilitator's Summary

ACTION	WHO	BY WHEN
Look into how to make LRAPA air quality monitoring data more immediately available for the public to access; provide an update at the next Core Team meeting.	Travis Knudsen	May Core Team meeting
Schedule next Core Team meeting for mid-May.	DSC	ASAP

Participants: Arjorie Arberry (Beyond Toxics (BT)); Lisa Arkin (BT); Ali and Jeremy AAsum (Community Member); Robin Bloomgarden (Community Member), Jenny Boyd (Active Bethel Community (ABC)); Mary Camarata (DEQ); Killian Condon (DEQ), Dylan Darling (DEQ); Ed Farren (ABC); David Farrer (OHA); Ann Farris (DEQ); Max Hueftle (LRAPA); Ryan Josef-Maier (Community Member); Travis Knudsen (LRAPA); Mike Kucinski (DEQ); Kelby Land (Lane County Public Health), Emily Pyle (ABC); Diana Rohlman (OSU); Susan Turnblom (DEQ); Sarah Wheeler (DEQ); Jon Wilson (City of Eugene); and Lin Woodrich (ABC).

Facilitation Team: Donna Silverberg and Emily Stranz, DS Consulting

Welcome and Introductions - Facilitator, Donna Silverberg, welcomed the group and stated that the purpose of this session is to continue to build understanding and relationships between impacted community members who are willing to work with agencies to improve the air, soil and water conditions at and near the JH Baxter facility in West Eugene. In particular, tonight's focus is to learn about DEQ's programs and recent enforcement actions at JH Baxter. Donna noted that the Core Team has been working through the process of sharing information and identifying what information would be helpful for a broader community meeting in the late spring.

Group members introduced themselves and their affiliation. Participants included West Eugene community members, and representatives from the Active Bethel Community (ABC), Beyond Toxics (BT), City of Eugene, Department of Environmental Quality (DEQ), Lane County Public Health, Lane Regional Air Protection Agency (LRAPA), Oregon Health Authority (OHA), and Oregon State University (OSU).

DEQ Programs and Recent Enforcement Actions - Dylan Darling, DEQ's Western Region Public Affairs Specialist, provided an overview of DEQ, noting that since 1969 DEQ has been working to restore, maintain and protect Oregon's air, land and water (see PowerPoint slides below). DEQ is made up of 700 employees (50 in Eugene) and includes scientists, engineers, administrators, environmental specialists, and environmental law specialists. They are charged with implementing state and federal laws and are overseen by a 5-member citizen panel called the Oregon Environmental Quality Commission (EQC).

Mary Camarata, DEQ Regional Solutions and Brownfields Coordinator, provided information on the various resources utilized for cleaning up contaminated sites in Oregon (see PowerPoint slides below). She reported that cleanup efforts are often collaborative, involving DEQ, Business Oregon, OHA, US Environmental Protection Agency (USEPA), and local governments. Operating sites are required to be cleaned up by the operator, whereas non-operating sites can be assessed for funding to address the contamination. Funding programs to access and clean up contaminated sites include:

- EPA competitive grants for assessment and clean-up efforts
- EPA's Target Brownfields Assessment Programs
- Business Oregon's Brownfields Program for grant funds and/or loans for municipalities and loans for private owners' assessments.
- DEQ site specific assessment grants for municipalities (limited funding)
- DEQ's orphan programs for abandoned properties or foreclosed properties

Coordination & Engagement on Issues Related to the JH Baxter Facility

- DEQ's Supplement Environmental Projects (see below).

Mary also provided information on DEQ's Supplemental Environmental Projects (SEP), which is a program administered through DEQ's Enforcement Program that allows responsible parties to direct part of their fines to fund to community projects. The SEP project is chosen by the party paying the enforcement fine; DEQ maintains a list of potential SEP projects on their website.

Mary shared photos and background of a project to cleanup an old car crushing yard in Lincoln County near Newport. She noted that DEQ's work at the site started in 2000 with a complaint that was made to OR Department of Transportation. The example project has taking over a decade to start addressing and may take over \$1M to complete cleanup. It has been a collaborative effort between DEQ, Lincoln County, local business, and SEP funding.

- A Core Team member asked whether DEQ has investigated the car crushing yard that is located next to JH Baxter to see if there are contamination concerns at that facility. Jon Wilson, City of Eugene, reported that the facility (Pacific Recycling) has an industrial stormwater permit managed by the City and that dioxins are not associated with the nature of the work that they do. He added that the liquids onsite are contained and recycled and do not drain to the stormwater. Similarly, DEQ Hazardous Waste inspected the facility in 2020 (there is an inspection report if people are interested, they can contact Killian Condon, DEQ) and several violations were called out in a warning letter. The gravity of the violations did not trigger a formal enforcement action and the site has since come back into compliance.

DEQ Enforcement - Sarah Wheeler, DEQ Environmental Law Specialist, provided background on DEQ's enforcement program, noting that enforcement is intended to create better protection for the environment and human health. The program issues around 200 penalties annually, which average around \$10,000-\$20,000, but can be over \$1 Million. More commonly, the program issues warning letters for violations and works with the facility to bring them back to compliance. DEQ prioritizes enforcement actions, such as penalties, for serious violations or repeat offenders. Enforcement actions and penalties can be appealed. These cases are decided by Administrative law judges and are not criminal cases. Criminal cases are investigated by US EPA and the State Police, and prosecuted by the US or Oregon Department of Justice, or local county district attorneys.

Regarding JH Baxter, Sarah reported that DEQ issued a civil penalty of \$233,440 for water quality and hazardous waste violations. As part of the penalty, DEQ ordered JH Baxter to prepare a plan for improved prevention and response if settling ponds were to overflow; JHB has informally agreed to develop the plan. JH Baxter also appealed the enforcement action, so now the case will proceed to settlement meetings for case processing and resolution. This will likely take months. If DEQ and JH Baxter reach agreement, the next steps would be an enforcement order with which JH Baxter will be required to comply or face more penalties. If they do not reach settlement, the case would go before a judge who would issue a proposed final order; the final order then goes to the EQC (described above) for approval. Although rare, there is a route to appeal the final order which would move the case to the Oregon Court of Appeals.

Sarah noted that the enforcement process does not include a public comment period, although there are limited options for participating in the hearing (this does not happen often and there is a technical legal standard for who may participate).

Core Team members asked questions and provided their perspectives:

- Settling the enforcement actions quickly may not be the best route forward since the point is to resolve it in a way that protects the community. JH Baxter has a long history of violations, reaching agreement, and then not taking sufficient steps needed to clean up the site. Community members have a need to make sure that the right actions are taken this time to protect the community.
- Trust is an issue that JH Baxter needs to address for the community moving forward: Are there ways to use the settlement to repair trust with the community?

Coordination & Engagement on Issues Related to the JH Baxter Facility

- Community members noted that increased transparency, openness, and information sharing around implemented changes and cleanup efforts would be helpful. The community needs to be apprised of what is going on so that they can build trust in the process and outcomes.
- There is a desire for follow through and for JH Baxter to be held accountable for the violations. Community members were concerned that if the plan for compliance allows for a decrease in fines, there may be more violations in the future.
- Is it possible to install chemical sensors around the plant that would sound off an alarm when toxins are detected to let community members know that exposure is occurring?
- Will there be ongoing inspections conducted throughout the settlement process? Is there an opportunity to increase the frequency of inspections?
 - The City of Eugene industrial pretreatment program will continue to inspect JH Baxter annually.
 - The LRAPA inspector has been on site at JH Baxter four times so far in 2021 and 10 times in 2020. Covid has reduced unannounced inspections, yet, there were at least two unannounced inspections in 2020.
 - DEQ Hazardous Waste conducted 3 inspections from October 2019 to August 2020. Through the enforcement program, JH Baxter was designated as a Significant Non-Complier (SNC), which means that DEQ resources are prioritized and DEQ can inspect the facility at any time. DEQ plans to continue inspections as needed.
 - EPA programs are aware of DEQ's enforcement actions and could also visit for inspections.

It was noted that, in addition to increased inspections and the DEQ enforcement actions, there is a lot going on at JH Baxter through the various LRAPA, OHA, and DEQ programs, including: data gathering and analysis; this community engagement process; and technical meetings between all the agencies and with JH Baxter and their contractors. The regulatory agencies are taking the situation seriously and are very engaged at all levels.

Agency representatives encouraged community members to continue using the LRAPA and DEQ complaint lines if they smell or see air, water, or solid waste that concerns them. Stormwater runoff complaints should be directed to DEQ and the City of Eugene (both agencies regulate JH Baxter's stormwater). The best way to notify the City of Eugene is by calling the City's Public Works Maintenance Department at (541) 682-4800.

Community members explained that there is a long history of complaints seemingly being ignored which has resulted in distrust between the community and regulators. Additionally, it was noted that after the October 2019 odor event, community members noticed a change in the time of emission releases; similarly, since the DEQ enforcement action there has been another shift in releases to times when not as many people will notice. People were concerned that if the agencies are relying on community complaints and complaints decrease, it may impede action.

There was a request that, once the violations are remedied, regulatory agencies do not let the situation at JH Baxter get to this point again and ensure that JH Baxter stays in compliance. It was suggested that the agencies hold a public session to allow people to ask questions, allow agency and JH Baxter representatives to listen to community concerns, and to share information and stories about how this affects the people's lives in the area.

Sarah thanked the group for their input and perspectives and noted that she will plan on attending the Core Team meetings as often as needed to be available to hear the concerns and provide transparency.

Air Monitoring Data - Travis Knudsen, LRAPA public affairs, provided air toxic monitoring data collected from 2018-2020. He showed graphs (see below) detailing naphthalene concentrations recorded at the Hwy 99 monitor. JH Baxter is one of the sources that contributes to the naphthalene that would be picked up at this site (creosote creates naphthalene, which is a light gas that spreads far and smells like mothballs). Travis reported that, based off the data, LRAPA believes that practices at JH Baxter have been modified in the last year or so and have contributed to decreases in naphthalene. Community members expressed interest in having LRAPA's data made available to the public. Travis said the data is typically made available after it progresses through the final quality

Coordination & Engagement on Issues Related to the JH Baxter Facility

assurances stages and is certified. Travis committed to exploring ways to make the data more immediately available for public access; he will provide an update about this at the next Core Team meeting.

Health Impacts - David Farrer, OHA toxicologist, provided information on the health impacts of exposure to high concentrations of PAHs, Pentachlorophenol (PCPs) and Dioxins. He reported that it is uncertain what the health effects could have been from the October 2019 peak event shown in the LRAPA graphs, in part because the specific levels of contamination are unknown in the neighborhoods nearest Baxter.

David noted that the health risk depends on the amount of chemical to which a person is exposed. In high concentrations, PAHs, PCPs and dioxins all can increase the risk of certain cancers. PAHs may impact red blood cells and neurodevelopment. PCPs can impact liver and immune system function, as well as thyroid and reproductive health. Similarly, high levels of dioxins can cause liver damage, reproductive and endocrine disruption, immune system function, and, in studies, has been shown to have inter-generational impacts. We don't yet know whether people are or have been exposed to levels high enough to cause any of the health effects described above. More data on the specific chemicals can be accessed at <https://wwwn.cdc.gov/TSP/index.aspx>. Information on the CAO risk-based concentrations used for risk assessment is available at <http://cleanerair.oregon.gov>

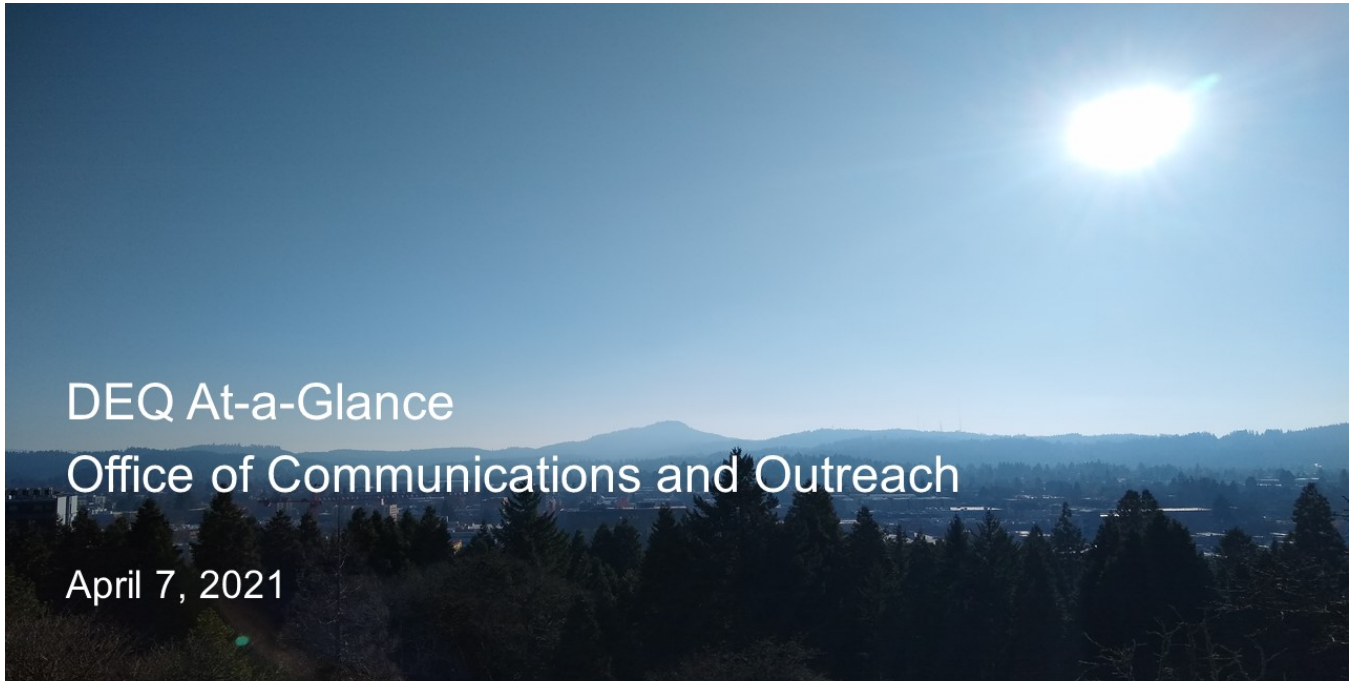
Moving forward, the Cleaner Air Oregon (CAO) process will ensure there is a good understanding of the actual health risks in West Eugene. Soil sampling conducted through DEQ's Clean-Up program will provide more information on the PAHs, metals, and dioxins levels near JH Baxter.

Planning for the Broader Community Session - Lin Woodrich, ABC board chair, shared the draft agenda for the upcoming Active Bethel Community meeting which will take place on April 21st from 7:00-8:30pm. She encouraged all Core Team members to attend.


Donna noted that the next Core Team meeting will be scheduled for May and will provide an opportunity for the group to talk about the ABC meeting, digest what has been shared to date, get updates, and figure out what is next steps for a broader community meeting.

With that, Donna thanked everyone for their participation and the meeting was adjourned.

This summary is respectfully submitted by the DS Consulting Facilitation Team. Suggested edits are welcome and can be sent to Emily Stranz (emily@dsconsult.co).



Dylan Darling | Oregon Department of Environmental Quality



DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.



DEQ details

- About 700 employees
- Implement state and federal environmental laws
- Overseen by the Oregon Environmental Quality Commission



DEQ's history



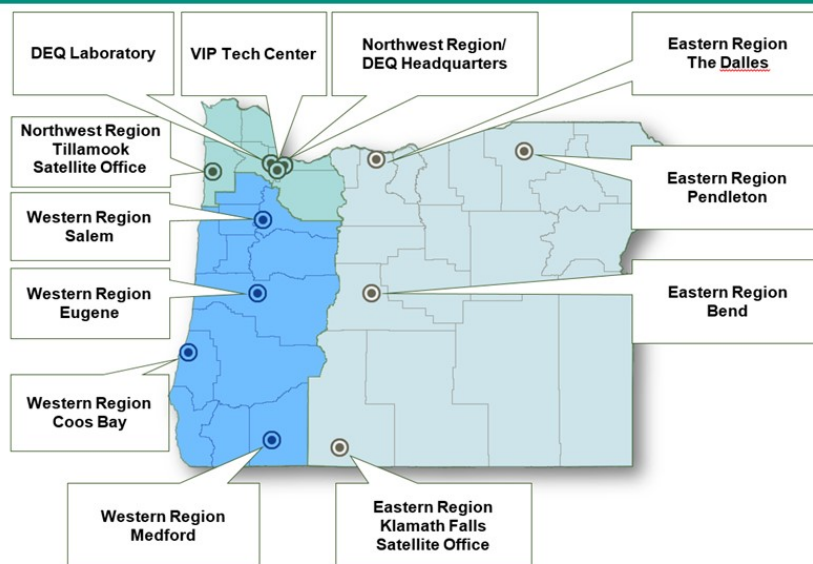
- Oregon Legislature established DEQ in 1969.
- More than 50 years of public service, protecting air, land and water.



DEQ Structure



DEQ in Oregon's Communities



People and programs you know

Ann Farris – cleanup (land)

Susan Turnblom – cleanup (land)

Mike Kucinski – cleanup (land)

Killian Condon – hazardous waste (land)

Steve McMillan – water quality (water)

JR Giska – Cleaner Air Oregon (air)

Dylan Darling – communications (air, land and water)

Mary Camarata – community liaison (air, land and water)

Sarah Wheeler – compliance and enforcement (air, land and water)



Funding Options for Addressing Contamination

- Assessment/Investigation – EPA, DEQ, and Business Oregon
- **Cleanup – EPA, DEQ orphan account, and Business Oregon**
- Community – EPA visioning, OHA health assessments, DEQ Supplement Environmental Projects (SEPs)



Example - Funding for King Salvage near Newport



DEQ Enforcement

Sarah Wheeler, Environmental Law Specialist

Office of Compliance and Enforcement

Sarah Wheeler | Oregon Department of Environmental Quality



Enforcement Goals

Enforcement ...

- Creates better **public health** and **environmental** outcomes by compelling compliance and **detering** future violations.
- **Levels the playing field** for business.
- Builds **credibility** and **public trust** in the government.



J.H. Baxter Enforcement Action

Violations – Total \$223,440 civil penalty

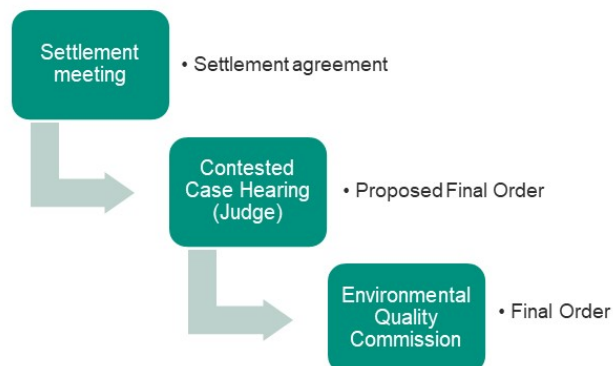
- Three stormwater permit violations
- Six hazardous waste violations

Order to Comply

- Stormwater: plan for improved prevention and response to overflows
- Sampling: hazardous wastewater
- Assess potential ground or water contamination from secondary containment releases



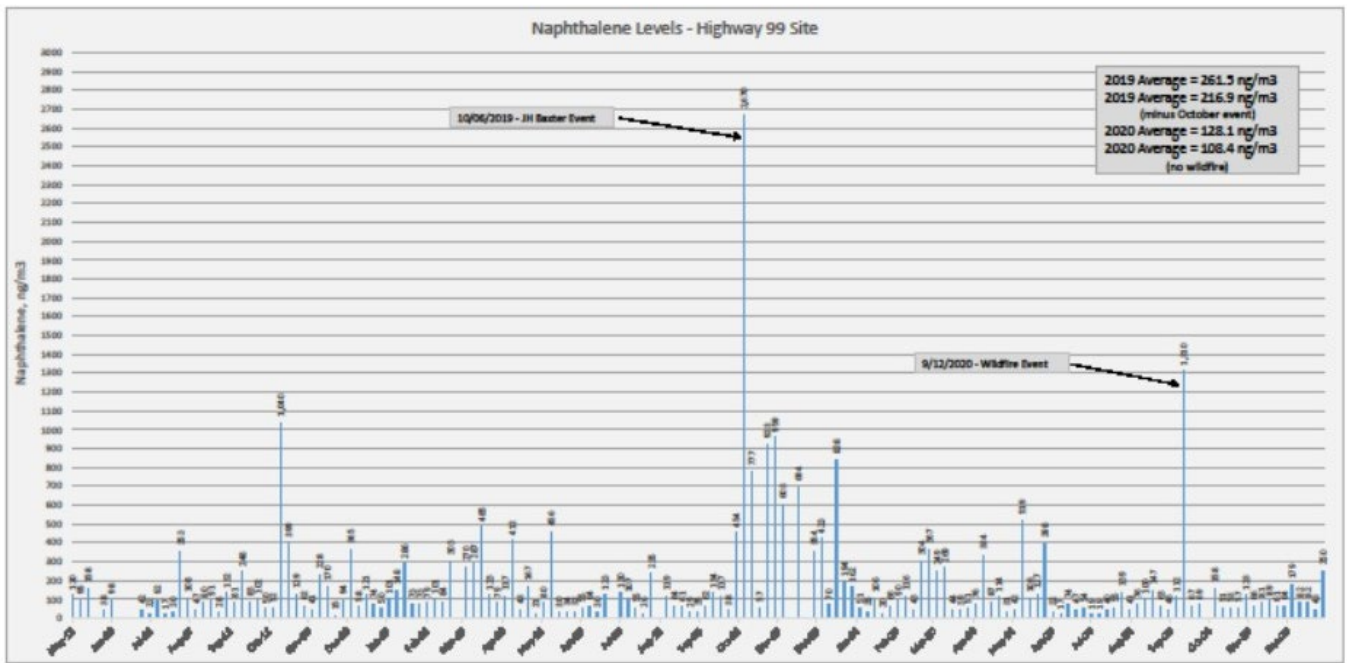
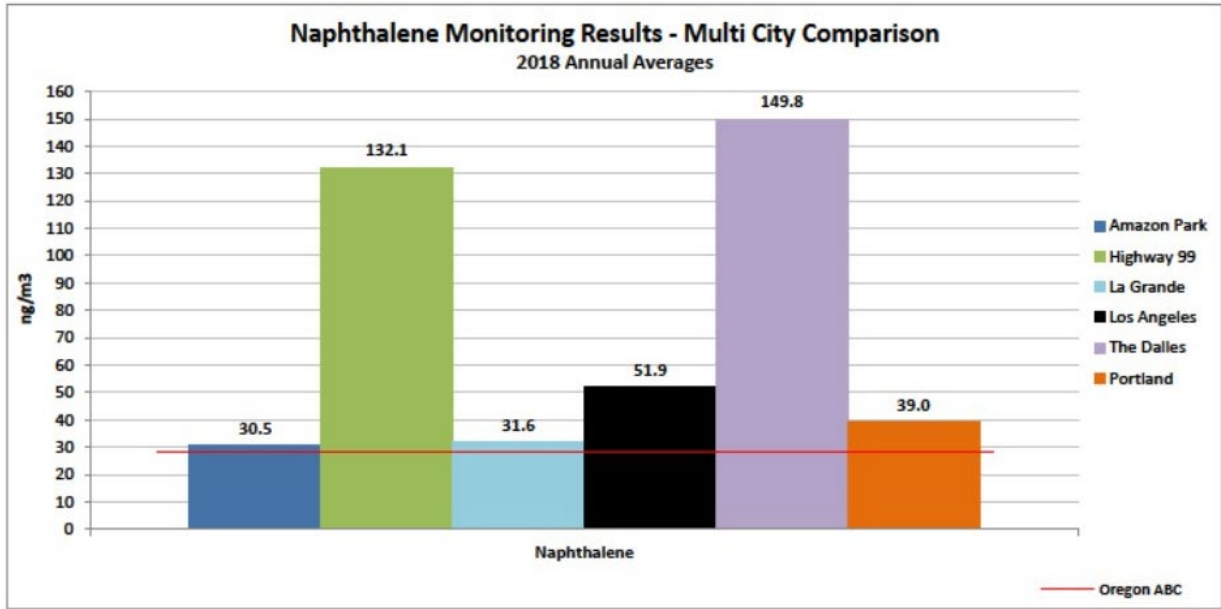
- Contested Case Process and Resolution – What could that look like?



- Questions?



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