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JH Baxter are continuing settlement talks over a fine the DEQ issued to the company in March. Meanwhile, the California-based company – which has a track record of health and environmental issues stretching back decades – faces a fresh wave of accusations from west Eugene residents who complain of strange smells and toxic fumes tainting the air around the facility.

On March 3, the DEQ sent a notice to JH Baxter detailing a list of the company's permit violations, the majority of which occurred in 2019. These violations include failure to properly test and treat its stormwater runoff, resulting in contaminated discharge flowing into Amazon Creek, and misuse of its wood-treatment chambers, causing chemical fumes to be released into the surrounding community. The notice orders the company to improve its facilities to prevent future mishandling of hazardous waste.

JH Baxter appealed the notice on March 24. The appeal requested a contested case hearing and “an informal discussion with DEQ prior to such contested case hearing.”

According to DEQ Public Affairs Specialist Dylan Darling, JH Baxter and the DEQ have engaged in settlement talks since the company filed the appeal. If the two can't agree on a settlement, the case would be sent to the Office of Administrative Hearings, where a judge would decide in a contested case hearing whether or not Baxter is obligated to comply with the original DEQ notice and pay the fine.

In this case, if a judge sides with JH Baxter, then the company will not have to comply with the DEQ's orders and will get out of having to pay the full fine, Darling says.

But while negotiations continue, west Eugene residents are complaining of worsening foul odors coming from the Baxter facility, making it difficult to breathe.

Jeremy Aasum lives with his wife off of Royal Avenue, near Petersen Park in west Eugene. He says air pollution in the area, which usually smells like burning rubber, fluctuates wildly, often peaking late in the evening or in the early hours of the morning. While he says air quality in west Eugene reached a low point in 2019, the year the violations in the DEQ notice occurred, the past few weeks have seen an increase in the sickening odors.

“Recently, it's definitely been picking up, almost as bad as it was in 2019,” Aasum says. “There's been a few days when we can't go outside, because it's that bad.”

Aasum is a community representative for the West Eugene Community Engagement Core Team, a group of community members and representatives from organizations like the Lane Regional Air Protection Agency (LRAPA), the DEQ, Eugene-based environmental advocacy group Beyond Toxics and the

Oregon Health Authority (OHA) that meet regularly to discuss issues related to JH Baxter. Based on discussion he's had with regulators and JH Baxter's history of dodging regulations, Aasum says he's doubtful that any fines imposed on the company will stop it from violating its permits and harming the community in the future.

"It's this big swirling mess of everybody pointing fingers at everybody else," Aasum says. "Baxter should not be allowed to violate its permit over and over again, and just write it off as the cost of doing business."

But DEQ hazardous waste inspector Killian Condon says that past enforcement actions by the DEQ have worked.

"They have changed practices on site because of these enforcement actions," Condon says. "It may not necessarily mean that the odors aren't still there, because certain industries have smells associated with them."

The effectiveness of the most recent enforcement actions, however, depends on the outcome of Baxter's appeal, according to Darling.

In the appeal, Baxter states that the fines issued are inappropriate and says the company did properly test and treat its stormwater runoff and made efforts to improve its waste handling. According to the appeal, runoff from the facility did flow into Amazon Creek, but this was due to heavy rains, not the company's negligence.

The appeal also says the company acted within the grounds of its stormwater-treatment permit and that the DEQ has no authority to issue fines regarding its wood-treatment chambers, which the company claims falls under the jurisdiction of LRAPA, not the DEQ.

The company may also have the opportunity to invest in a Supplemental Environmental Project (SEP) in lieu of paying the full fine, Darling said.

Supplemental Environmental Projects are projects that “benefit the environment or public health in Oregon,” according to the DEQ website.

The website lists examples of potential DEQ-approved SEPs, including investments in environmental education for low-income children, projects to upgrade old school buses to clean-diesel, restoration of damaged stream-banks or installing solar panels in public buildings, among others. For a SEP to be approved by the DEQ, the money spent on the project must equal the fine reduction sought.

To ensure that the west Eugene community is represented throughout the legal process, Beyond Toxics plans to petition the DEQ to allow the group to enter the proceedings as a third party on behalf of the community.

“Our goal is to make sure that in that room – with that hearings judge, the DEQ and JH Baxter – that the community has a voice,” says Lisa Arkin, Beyond Toxics’ executive director.

Arkin says there’s no guarantee a SEP will actually have a positive effect on the west Eugene community most affected by the company’s pollution. If JH Baxter is not required to improve its facilities and is allowed to invest in a SEP instead of paying the full fine, then there would be little to stop them from committing the same violations in the future, Arkin says.

“It’s to point out that what JH Baxter proposes might be something way out by Fern Ridge,” she says, referring to Beyond Toxics’ petition. “That’s not directly helping the community they’ve harmed for decades.”

JH Baxter did not respond to *Eugene Weekly*’s requests for comment.