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NEWS

'Concerned, anxious and kind of angry': Neighbors fear J.H. Baxter & Co. plant is harmful to health

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For years, people living around a wood treatment plant in west Eugene have blamed the industrial site for noxious smells and suspected chemicals used there are harming them.

Many residents are taking the news that state regulators are slapping J.H. Baxter & Co. with heavy fines for burning off toxic process waste into the air, among other claims, as validation of their complaints. Some residents now are stepping up efforts to hold the industrial plant to account by pressuring regulators and taking their neighbor to court.

At the same time, the J.H. Baxter & Co. wood treatment plant on Roosevelt Boulevard is being monitored by state and local regulators as a result of past violations. It also is engaged in mandatory clean-up programs and on the priority list of local sites in a new program meant to evaluate industrial sites not for how much crud they produce, but who it affects.

J.H. Baxter & Co. is appealing the most recent penalties from the Oregon Department of Environmental Quality. But the company doesn't deny the actions for which they were fined most heavily in its notice to appeal, and instead alleges DEQ lacks authority to levy those fines.

DEQ in its March penalty notice and J.H. Baxter & Co. in its April appeal notice say employees at the plant on multiple occasions over past years used a kind of kiln called a retort while an evaporation unit was broken. A retort is used in wood treatment to burn off toxic process waste.

But the company argues since it's the Lane Regional Air Protection Agency that has the jurisdiction to regulate what the plant puts in the air, DEQ cannot fine them.

DEQ officials say J.H. Baxter & Co. has discontinued using the retorts to burn off waste.

Beyond Toxics a vocal opponent

The use of the retorts now are included in two recently filed class-action lawsuits that allege using the retorts to burn off toxic process waste into the air, along with other practices at the industrial facility, put the health of people living around the plant at risk.

One of J.H. Baxter & Co.'s most vocal opponents, the local nonprofit Beyond Toxics, is calling on regulators to take more seriously long-voiced community concerns about the plant. Its leader says the details about the retorts released in the DEQ violations present a clear example of intentional disregard for regulations and health of nearby residents.

"The pollution probably stretches much farther than anybody understands," said Beyond Toxics Executive Director Lisa Arkin. "J.H. Baxter is going to deny culpability in detection of a lot of chemicals directly linked to their production process, so we'll have that battle. People are really worried all that's going to happen is they'll be shown how toxic their neighborhood is, but not get ways to solve the problem or hold the polluter accountable."

Beyond Toxics sent a letter May 3 to LRAPA and DEQ officials citing the most recent allegations against J.H. Baxter & Co. as validation of a years-long crusade. The letter calls for regulators to bring community members into the conversation about the plant.

"Residents near the J.H. Baxter facility have filed thousands of complaints about the facility's air emissions," the letter reads. "The recurrent history of J.H. Baxter's non-compliance with the requirements of their pollution permits combined with years of community complaints are ample reasons to suspect harm to the public's health."

Georgia Baxter, president of J.H. Baxter & Co., did not respond to questions sent in an email about her company's use of retorts to boil away toxic process wastewater.

In a May 11 email responding to The Register-Guard, Baxter said the company won't comment on pending litigation and said "we look forward to working closely with all regulators and the community."

Baxter in a March email issued a response to the \$223,440 in penalties by DEQ, which included the improper use of the retorts.

"J.H. Baxter & Co. has always done our best to comply with regulatory requirements," Baxter wrote. "We care about the health and well being of our neighbors and employees and will continue to work diligently to protect human health and the environment."

Her neighbors don't believe it.

Living around Baxter

The site of the J.H. Baxter & Co. plant was still fields and orchards in 1944, but within 10 years the area was being developed with residential subdivisions to the north and other industrial uses to the east and west, according to Eugene Associate Planner Rodney Bohner. Bohner said the site was annexed into Eugene around 1954.

The plant's industrial operations were excluded from zoning changes in the early 1980s that required special hazardous-use permits issued by the city's emergency services departments. Those industrial zoning changes required conditional-use permits for "uses that could be hazardous, obnoxious or offensive by reason of odor or biological agents," but buildings existing and permitted before 1982 were exempt, Bohner said.

The Bethel-Danbo area of west Eugene now is one of the fastest growing in the city. Homes there remain relatively inexpensive, and there still is room for homes to be built.

The J.H. Baxter & Co. facility sits on the south side of Roosevelt Boulevard between the Randy Pepe Beltline on the west and Highway 99 on the east. It has several industrial and commercial neighbors to the south and several hundred homes on its north side.

Baxter Street runs through that residential neighborhood to Fairfield Elementary School.

Ryan Josef-Maier, his wife and their 5-year-old daughter moved to that neighborhood more than four years ago, relocating from Seattle for a small-town family life. They liked the area and could afford it, but it wasn't long before they got the first whiff of mothballs.

"I started noticing it right away, intermittently, when we moved in," Josef-Maier said. "I didn't think very much of it in the beginning, but then it just came with such frequency."

It took only a little online sleuthing for him to learn about J.H. Baxter & Co. and a history of odor complaints associated with the plant. While he first considered joining an earlier version of the class-action suit filed last week, he instead put his energies into other plans.

"I felt concerned, anxious and kind of angry," he said. "I wanted to do something."

Those noxious smells have ruined more than a few family walks, Josef-Maier said. It's something his daughter Maeve now knows means its time to go home.

"I've talked to her about the smell being associated with getting sick," Josef-Maier said. "When I have a strong reaction to the smell, she's the loudest about saying it's stinky."

Jeremy AAsum and wife, Ali, bought their first home about a mile from J.H. Baxter & Co. three years ago. They'd been renting in Springfield and were happy to find a house under their budget, but soon were looking for answers about an irritating metallic smell.

AAsum filed a complaint with LRAPA.

"They explained to me that we were downwind of J.H. Baxter, which produces creosote, which is the smell that we were describing," AAsum said. "To me, it felt like an injustice."

AAsum said he feels he lives far enough from the plant that his personal complaint largely is a quality of life issue, though he considers that no small thing. But it's the effects plant operations might be having on his neighbors' health that's motivated him to speak out.

"They've only received slaps on the wrist over the past decade," AAsum said. "The community is so distraught. Most of the community members we talk to have given up."

Josef-Maier and AAsum now both are part of a core group of community members organized through Beyond Toxics to share their stories and represent the neighborhood.

"Whatever they say is the next step, we're helping out," AAsum said.

Arkin said she believes the plant has not been held sufficiently accountable in the past.

"A company that has shown such disregard of public health and being a good neighbor and has repeatedly been an intentional violator of pollution laws should not be operating in our community," Arkin said. "I believe, historically, this site has not been taken seriously in terms of proper regulation. We've complained about that for a long time."

Regulations and LRAPA violations

LRAPA has conducted eight enforcement actions at the J.H. Baxter & Co. plant since 1994, according to agency records. Four included penalties between \$800 and \$4,000.

In 1994, LRAPA, days after issuing it, rescinded its first notice of violation for failure to produce operational records required by the company's permit. J.H. Baxter & Co. produced correspondence showing it requested LRAPA change those requirements.

LRAPA didn't take enforcement action against the plant again for another decade. In 2004, the agency sent a notice of noncompliance concerning the plant's use in 2001 and 2002 of more No. 6 fuel oil, used for a variety of industrial purposes, than allowed by its permit.

The facility submitted to LRAPA \$2,184 in permit modification fees that allowed them to increase how much No. 6 fuel oil the J.H. Baxter & Co permit is allowed to use.

The company also was required to pay \$800 in fines in 2007 for not taking proper precaution to limit particulate matter during demolition operations; \$3,276 in 2011 for failure to perform emission testing; and \$2,850 in 2012 for failure to demonstrate a carbon adsorption unit's emission reduction efficiency, according to LRAPA records.

In 2012, LRAPA issued a notice of noncompliance concerning failure to include an evaporator tank in its air permit application and maintenance plan. LRAPA said tank emissions were a source of odors. The permit was updated and now regulates the tank.

The most expensive of those fines came in October 2019 concerning the use of a retort earlier that month to evaporate process wastewater beyond its permit requirements to operate vacuum pump systems, condensers, water pumps and a carbon adsorption unit.

LRAPA fined J.H. Baxter & Co. for one use of the retorts in that manner, settling the matter for \$4,000. But DEQ in March fined the company \$178,905 for using the retorts to boil off 1.7 million gallons of process waste water on 175 days between December 2015 and October 2019. The company has not denied doing so. The wastewater the plant put into the retorts includes chemicals such as creosote, arsenic and pentachlorophenol.

Other violations, including stormwater overflow and high copper levels found where the plant discharges into Amazon Creek, were part of a bevy of DEQ penalties in March.

DEQ pursuing toxic chemicals in soil around Baxter

DEQ also is investigating the unrelated matter of elevated levels of dioxins, a type of toxic chemical compound, found last year at soil sites around the facility. Though dioxin levels did not pose an immediate risk, one soil site was at a residence near the facility.

DEQ, LRAPA and the Oregon Health Authority plan to test additional soil samples from private and public sites, expecting more information to be available later this year.

It was the second time since 2019 elevated dioxin levels were detected near the plant. The company agreed to help clean up the area after the dioxin levels first were found.

DEQ has found violations and issued fines or correction orders a dozen times since 1993, according to agency records. Before March, the largest single fine was \$25,000 for violating waste discharge limits under the DEQ Water Quality Program in 2000.

DEQ issued another penalty and an \$1,800 fine for violating the same limits in 2002. DEQ and J.H. Baxter & Co. settled for \$12,000 for a 2018 violation over exceeding effluent limits, reducing water quality below standards and failing to submit a monitoring report.

DEQ withdrew the effluent limit violation as part of the settlement.

Five DEQ enforcement actions at the plant since 2003 concerned violations of the agency's hazardous waste program. The first three violations did not come with fines, but DEQ did fine J.H. Baxter & Co. \$2,400 in June 2019 and \$1,200 in December 2019.

Both 2019 fines included allegations the plant improperly managed hazardous waste, such as by failing to close and label containers, and for improper cleaning operations.

J.H. Baxter & Co. in 2018 agreed to pay a \$64,000 fine as part of an agreement with the U.S. Environmental Protection Agency when the agency found the plant had mishandled hazardous waste, including wood preservatives spreading outside containment areas.

Baxter told The Register-Guard in 2018 the plant would install new protective measures.

DEQ has identified the J.H. Baxter & Co. plant as a "significant non-complier" concerning their production and handling of hazardous waste, a designation that leads to more frequent regulatory scrutiny at the plant, according to a DEQ spokesman.

On Cleaner Air Oregon priority list

The J.H. Baxter & Co. site is on LRAPA's priority list for the Cleaner Air Oregon program, which evaluates facilities based on public health risk rather than on how much hazardous waste they produce. The program gives regulators power over a wider assortment of chemicals and uses demographics to estimate a facility's health risk.

Five Lane County sites — Arauco North America, Seneca Sustainable Energy, the Willamette Valley Company, International Paper and J.H. Baxter & Co. — were the first chosen for an LRAPA-led inventory of toxic chemicals and a health risk assessment as part of the program.

Only Seneca Sustainable Energy has completed the assessment, though it's not finalized. More facilities are expected to finish their assessments in 2021.

Arauco North America has since ended operations in the county and won't be assessed.

LRAPA, in taking inventory at sites such as the J.H. Baxter & Co. plant, will be looking for more than 600 chemicals and compounds over which Oregon regulators previously did not

have jurisdiction, according to director Steve Dietrich. The sites were prioritized based on nearby demographics, sufficiency of existing data and complaints from locals.

"Have we had a history of non-compliance? Have we had a history of complaints? Do we know what the facilities are emitting to the point we need more concern about this facility versus another? That's how the prioritization of facilities happens," Dietrich said.

The Cleaner Air Oregon program is giving some west Eugene residents hope for more concerted enforcement at the J.H. Baxter & Co. plant. But Beyond Toxics has for years tried to draw LRAPA's attention to the plant, and some feel problems likely will persist.

"This has been going on for too long where things are done behind closed doors," Arkin said. "We want to be watchdogs. We want to make sure every decision made regarding J.H. Baxter from here on out is based on protecting community health to the utmost."

Residents want Baxter to 'clean up their act'

The letter Beyond Toxics sent to LRAPA and DEQ May 3 urges the regulators to bring community voices into the Cleaner Air Oregon process for the J.H. Baxter & Co. plant as soon as possible. The group has questioned the sufficiency of past enforcement actions.

"For far too long, west Eugene residents have felt discouraged and silenced by the inaction of LRAPA," the letter reads. "Initiating a community engagement process now would rebuild confidence and trust in LRAPA as well as establish better understanding of community experiences and local conditions."

Signed by 17 community members like AASum, Josef-Maier and Active Bethel Citizens Chair Lin Woodrich, the letter notes the recent DEQ fines "further underscore the hazardous operations and practices intentionally carried out at the J.H. Baxter facility."

"The people who are being affected by this, we want to make sure we're not passed over anymore," Woodrich said. "We want to make sure that they clean up their act."

Dietrich on Monday responded to the Beyond Toxics letter promising "a commitment to further our efforts to provide transparency and receive valuable input from community members" and to be in touch with Arkin later this month to set up the asked-for meeting.

LRAPA and DEQ have participated in several community meetings with regulators and Beyond Toxics since December. A meeting on Cleaner Air Oregon is planned for June.

Two class-action lawsuits have been filed against J.H. Baxter & Co. since May 7, both alleging the company's use of retorts to boil off process waste harmed nearby residents.

A lawsuit filed May 7 in Lane County Circuit Court by Washington D.C.-based attorney Chris Nidel and Eugene law firm Johnson, Johnson, Lucas and Middleton is a class-action suit with four named plaintiffs, though more have signed on to the suit, Nidel said.

The multi-million dollar lawsuit calls for the class of plaintiffs to include those living within four miles of the plant over the past two years. The lawsuit seeks damage payments for members of the class and an injunction to stop improper, unsafe operations at the plant.

Nidel said he's been planning the lawsuit for years and informed J.H. Baxter & Co. of an intent to sue in February, before DEQ issued fines about the use of retorts to boil off liquid waste. But the lawsuit's allegations lead with claims about improper use of retorts.

"By intentionally 'disposing' of untreated hazardous wastes by vaporizing them in the retorts and releasing them into the community, defendants have intentionally created an unreasonable risk of harm," the lawsuit reads.

A class-action lawsuit filed April 30 in Oregon U.S. District Court names two local plaintiffs and claims operations at the J.H. Baxter & Co. plant have caused harm to people's health, property and quality of life. The lawsuit calls for its class to include people living within 1.5 miles of the plant to be paid damages.

"There are days when I will walk outside and feel sick to my stomach because of the smell. It limits our ability for outdoor activities and, when the smells are strong, I limit my 7-year-old son's activity outdoors as well. There are times when we cannot keep windows open," plaintiff Elizabeth Tanenbaum, a nearby resident, said in the lawsuit.

Why is the plant still open?

There's not much appetite — or legal cause — to shut down the J.H. Baxter & Co. plant.

"In cases presenting an imminent and substantial endangerment to public health, state law gives DEQ, under the direction of the governor, the ability to immediately order a facility to stop the action causing the endangerment," said DEQ spokesman Dylan Darling in a statement. "So far, DEQ's enforcement of Baxter has focused on bringing the facility into compliance with state and federal protections for water and land."

Dietrich said LRAPA's authority to renew a facility's permit is not contingent on how often it breaks rules and can only halt operations if there's an imminent public health threat.

"LRAPA is interested in allowing industry, which is essential to the function of our society, to conduct business, but we want to make sure when they're operating in compliance with our regulations," Dietrich said. "LRAPA cannot revoke permits based on the frequency of non-compliance. We can only revoke something at a facility, whether a permit or right to operate, if there's imminent danger to public health."

The Cleaner Air Oregon program may result in new regulations at the J.H. Baxter & Co. plant depending on the results of its toxins inventory and risk assessment, but that process is only beginning.

Some residents worry for their health in the meantime.

"At first, I wanted the plant closed. I thought it should just close and go away. But if there's a way to make it clean, there are a lot of people with jobs there who are counting on them," Woodrich said. "It just has to be cleaned up, and it has to happen fast."

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