

LRAPA
1010 Main Street
Springfield, Oregon 97477

Re: J.H. Baxter & Co. Simple Air Contaminant Discharge Draft Permit No. 200502 and Draft Review Report

Submittal via permitting@lrpa.org

Date: 5/25/2023

Beyond Toxics is an environmental justice nonprofit serving Oregonians since 2001. We represent communities of color and lower income individuals that are impacted by toxic threats. We envision a society where everyone has equitable access to healthy food and clean air and water, and underserved communities are not shouldering a disproportionate burden of toxic chemical exposure.

On behalf of our thousands of the residents we serve in the Eugene area, Beyond Toxics submits these comments to express our conditional support to issue a new, limited ACDP permit to J. H. Baxter for the operation of a natural gas-fired boiler used to provide steam to a process water evaporator. We also support changing the SIC code from 2491, Wood Preserving – to 4961, Steam Supply (from the boiler). The permit renewal must be restricted to addressing the sole purpose of evaporating rain water that accumulates on the premises.

Beyond Toxics agrees with LRAPA that the facility should be required to comply with a Simple “low” ACDP renewal under LRAPA 37-0064(2)(a), and should no longer be allowed to operate as a wood preservation and treatment facility. However, although the community has been assured that the following is true, we would like to see the permit specifically and prominently indicate the change of SIC code to 4961. Further, we ask that the requirement of a Simple “low” ACDP permit be permanently assigned to the facility *as well as any future manufacturing facility on this site or any portion of the site*. It should be made extremely clear in plain language, so that the public can understand any future industrial use of the J. H. Baxter site, or a portion of the site, would be required to also comply with a Simple “low” ACDP permit and 4961 SIC code. Any other proposed uses for this industrial site would require a new air discharge permit, a new SIC code assigned, and would be evaluated under new source review.

We have the following concerns and recommendations that we feel would provide better regulation at the site towards the goal of air quality improvement and protection of public health for nearby residents in the Bethel neighborhood.

1. **[Review Report Page 3/18]** LRAPA states: “There are currently retorts and several storage tanks in the tank farm area of the facility that have a variety of liquids being stored including unused wood treating solutions and oil/water solutions that cannot be processed in the evaporator and will remain in the designated storage vessel. The solution volumes/levels in these areas are static while awaiting offsite transfer or disposal, and are not being pumped or moved to one location or another - so any releases to the air would be minimal/insignificant from “breathing losses” and not “working losses”.”

a. Concern: Off-site disposal of the unused wood treatment solutions is very expensive, and the property owner may be motivated to evaporate liquids and solutions other than stormwater to save money. For example, past practices by the J.H. Baxter facility included using retorts to evaporate wastewater in an illegal manner and doing so after operating hours. This practice, if continued in any capacity would be detrimental to the surrounding neighborhoods. LRAPA must clearly describe, in detail, how the agency will monitor the use of the equipment on the site in the permit. LRAPA states on page 4 of the Review Report that, when the facility was conducting wood preservation manufacturing, the evaporator system was primarily used to recover pentachlorophenol and creosote-based solutions after use in a treatment cycle. The current permit does not explain in sufficient detail how LRAPA will hold the property owner responsible to guarantee that no toxic solutions or liquids will be heated and released into the air. It is true that the Oregon DEQ determined that J. H. Baxter is a Significant Non-Complier and an intentional permit violator. Their history must be acknowledged when drafting this permit.

Recommendation 1: Knowing the history of this particular company, the LRAPA must ensure that the ACDP permit describes the steps that the agency will take to monitor and verify that the facility no longer abuses permit conditions. This would greatly relieve neighboring community concerns.

Recommendation 2: LRAPA should install or require the installation of continuous Co, NOx and VOC emissions monitoring onsite to measure air toxics generated at the site. This monitoring would greatly serve the community by providing real-time data and transparency. The current practice of occasional visual inspections are not sufficient. Requiring emissions monitoring would increase LRAPA’s ability to monitor the activities at J.H. Baxter in a manner that assures the public that J.H. Baxter does not take advantage of the permit conditions, or otherwise violate any conditions of the permit.

b. Concern: The facility is allowed to provide an estimate of monthly emissions to determine compliance with the rolling 12-month PSELs. A facility with a history of non-

compliance should not be allowed to “estimate” emissions, but should be held accountable to provide verifiable monitoring and measurement.

Recommendation 3: Require continuous emissions monitoring instead of an inadequate requirement that allows the polluter to estimate monthly emissions.

2. **[Review Report Page 4/18, No. 7]** “The emissions from EU-5 are based on the facility operating the evaporator at 24 hours per day, 365 days per year for a total of 2,737,500 gallons per year.”

a. Concern: This facility, with its verified history of multiple permit violations, should not be allowed to operate and emit pollution at full capacity as described in No. 7. The facility should be limited to operating during business hours when LRAPA or the DEQ can carry out inspections and can, if necessary, investigate complaints from impacted residents.

Recommendation 4: The permit should contain restrictions on the evaporator hours of operation if LRAPA has the authority to do so. The evaporator should operate only when employees are onsite to monitor operations and regulatory agencies can carry out inspections in the case of an odor complaint, and as necessary.

3. **[Review Report Page 5/18, No. 12 and No. 22]**

a. Concern: Calculations of PSEL emissions allowed in the permit are based on Potential to Emit (PTE). PTE is based on permitted hours of operation, which LRAPA granted at 24 hours per day, 365 days per year (calculated to 8,760 hrs/yr). This is an overly generous estimate of hours of operations. We have the same concern pertaining to allowing the evaporator to operate 8,760 hours per year, as stated in No. 22 in the Review Report. LRAPA should either limit hours of operation or prepare an explanation why the agency is not limiting hours of operation of the boiler. A more realistic definition of hours of operation will reduce emissions and lower the PTE calculation.

Recommendations 5: If LRAPA has the authority to do so, it should limit J. H. Baxter operating hours to no more than 9 hours per day, 5 days per week, and 52 weeks per year, as a condition of the permit, unless there is a precipitation event that necessitates additional pumping and water evaporation. This would reduce the PTE in the permit, which results in reduced emissions as well as more accountability for agency staff to inspect and monitor the activities at the facility.

4. [Review Report Page 6/18, No. 10]

We agree with the agency that a BER should not be assigned to this facility because it has ceased operations.

5. [Review Report Page 7/18, No. 11] “This facility currently primarily emits Toxic Air Contaminants (TACs) from their boiler when operating on fuel oil, as well as TACs from the evaporator operations. Polycyclic aromatic hydrocarbon (PAH) emissions are their primary risk driver from fuel oil combustion and benzene emissions are the primary risk driver from the evaporation operations.”

- a. Concern: TACs should be reduced as much as possible to protect air quality and public health.

Recommendation 7: Limit the boiler combustion of fuel oil *to less than 2,000 gallons per rolling 12-month period*. The reason behind this recommendation is that the boiler can operate using natural gas under most circumstances, and these circumstances should be strictly limited to times when natural gas is unavailable. LRAPA should limit the list of potential uses of fuel oil detailed in the Review Report. The list is unnecessarily expansive.

6. [Review Report Page 10/18, No. 25] LRAPA reports that in 2021, J. H. Baxter completed liquid-oil sampling of the process water, which resulted in findings of dioxins/furans, polycyclic aromatic hydrocarbons, pentachlorophenol, phenols, aldehydes, BTEX, methanol, ammonia, and metals.

- a. Concern: We have the following questions that we would like LRAPA to clearly answer: (1) How has LRAPA determined that these chemicals are completely filtered out of the process water prior to being evaporated? (2) Has LRAPA required testing of the process water in the evaporation process? (3) What steps have been taken to ensure that these toxic chemicals are not evaporated with the process water (particularly volatile chemicals)?

Recommendation 8: The J.H. Baxter facility or LRAPA should provide proof to the public that no toxic chemicals are leaving the site through the evaporation process. Process water should be sampled on a regular basis. We suggest a quarterly sampling requirement for process water to be added to the permit conditions. A sampling requirement, combined with emissions monitoring as previously recommended, would assure the public that they are protected from additional pollution exposure from this facility.

Lastly, we urge LRAPA to **remove language from G 26 (d)**, which allows J.H. Baxter to apply for, and for LRAPA to approve, an extension to pay the permit fees. There should be no opportunity to apply for an extension based on the history of this polluter. J.H. Baxter is known to have made legal agreements to pay fees, and then to ignore their legal obligations. If the facility does not pay the permit fees, then the permit should be revoked and the facility should be taken over by state or federal authorities.

Thank you for this opportunity and for your time. We hope that LRAPA will take into account J.H. Baxter's staggeringly unacceptable history of permit violations and repeated incidents of intentional misrepresentation and respond by issuing the most protective and restrictive permit possible.

Sincerely,

Lisa Arkin
Executive Director

Arjorie Arberry Baribeault
West Eugene Environmental Justice Organizer