



Testimony in Support of House Bill 3372A  
Senate Committee on Energy and Environment

Speaker of the House Tina Kotek  
May 6, 2021

Chair Beyer and members of the committee, thank you for the opportunity to testify today in support of House Bill 3372A.

The goal of this bill is to provide the Department of Environmental Quality (DEQ) with permissive authority to take into account an applicant's history of environmental violations when considering permit applications or renewals. If there is a clear pattern of environmental abuses, that pattern may be a factor when approving or denying a permit. The bill seeks to balance the interests of regulated entities and the public interest of community health and safety without weakening the agency's current authority.

On March 12, 2018, a five-alarm fire at an auto dismantler business known as NW Metals in the Cully neighborhood in Northeast Portland destroyed four homes, killed at least 16 pets and sent plumes of toxic smoke into the air. During the 2019 session, Senator Lew Frederick and I sponsored legislation to allow more oversight of auto dismantling operations. However, more must be done to ensure problem operators, like NW Metals, do not continue to operate if they have a history of violating environmental laws and endangering public safety.

NW Metals has now moved to another location in the St. Johns neighborhood within my district, only one block from a public park. The community near the new location has been disproportionately impacted by air pollution and has many low-income households and residents of color. Residents are concerned because NW Metals has continued to demonstrate their unwillingness to comply with the DEQ's orders. The facility refused to comply with the DEQ's cleanup order after the fire and committed additional violations even after the agency pursued legal action. Despite the concerns, the DEQ issued an air quality permit to NW Metals.

When it was considering the new permit for NW Metals, the DEQ did not believe they could deny the permit based on past violations or a history of non-compliance with permits, rules, or laws related to other environmental protection programs. Even if a facility has a long and pervasive history of violating solid waste, storm water or other environmental regulations, the agency believes it still must issue the air quality permit or risk litigation.

Businesses that repeatedly violate our air quality and other environmental standards put our communities in danger. The DEQ should have the ability to consider multiple past violations when evaluating new permit applications so we can do more to prevent avoidable catastrophes like the 2018 fire at NW Metals.

House Bill 3372A does the following:

- Section 1: Allows the DEQ to require an applicant for a permit or license to provide the agency with “information reasonably sufficient” to evaluate the applicant’s history of compliance with environmental quality laws over the previous 10 years.
  - The information that may be required is on corporate entities who exercise substantial control on behalf of or over the applicant.
  - Documentation acquired during this request, if not previously public information, will be confidential and will not be subject to public disclosure.
  
- Section 2: If the DEQ opts to evaluate past violations, the agency shall consider several factors when making a decision. Namely, whether a violation:
  - Caused or had the potential to cause substantial environmental harm, was intentional, or was reckless.
  - Was caused by an entity that has a demonstrated practice of taking action to correct violations and works to ensure they won’t be repeated. (In other words, responsive actions to violations will be considered when looking at past history.)

Additionally, to ensure the highest level of approval to take action under this bill, the refusal to issue a permit is subject to the approval of the director of the DEQ.

I believe the clarified authority in this bill would be used rarely and only to hold accountable the most egregious violators of our environmental laws. I believe the large majority of regulated entities work hard to follow the law and protect their communities and our environment.

It is my understanding that some regulated entities would like to amend the bill further. I would ask that you not support any change that would subvert the current authority of the agency.

I want to thank the stakeholders who provided constructive feedback during the House committee process to refine the bill.

Colleagues, I urge your support of House Bill 3372A. Thank you for your time and consideration.