

May 6, 2021

To: Chair Beyer and Members of the Senate Committee on Energy & Environment
From: Sharla Moffett, OBI
RE: OBI Testimony in Opposition to HB 3372-A

Chair and Members of the Committee:

Thank you for the opportunity to submit written testimony on this important issue for Oregon Business & Industry members. OBI is Oregon's most comprehensive business association representing approximately 1,600 businesses that employ nearly 250,000 people.

OBI has been engaged in this bill since it was being debated in the House and we certainly acknowledge that important improvements were made that addressed some of our concerns, which we appreciate.

It is important to provide some context for our concerns:

This bill will affect every single Oregon DEQ permit that currently exists as well as all permit applications and renewals going forward. This includes manufacturing, heavy industrial, food processing, ports, homebuilders, utilities, concrete and aggregate, and agriculture to name a few.

These permitted entities are often responsible for implementing multiple permits at a site and, for more complex facilities, there are likely to be thousands of points of regulation which could result in violations over the course of a compliance year. Additionally, permits contain extremely stringent provisions to achieve the most protective environment and human health standards. In short, permits are written to be very challenging to achieve, which occasionally results in compliance issues.

OBI members work diligently every day to fully implement their permits. Unfortunately, there are businesses that are less diligent and we need strong laws to address those circumstances. At the same time, the denial or revocation of a permit is a business killing action and so we need to be thoughtful about how to deal with significant noncompliers in a way that doesn't result in unintended consequences for generally complaint businesses that conscientiously address problems.

We have heard that much of this bill is a clarification of DEQ's pre-existing authority. However, the bill dramatically expands DEQ's ability to make business killing decisions about one entity based on the compliance history of either an unrelated or a subsidiary business for noncompliance, when a person at that business had no direct control over implementation of another facility's permit. As a result of this substantial expansion of authority, we believe the bill should establish clear standards for determining the circumstances under which DEQ would more closely scrutinize certain permit holders or applicants for a potential permit denial or revocation.

The bill should also be amended to:

- Establish clear standards to determine when a permit holder or applicant would face increased scrutiny from DEQ. As currently drafted, the agency would have broad, subjective discretion to investigate permit holders in the absence of clear triggers.
- More narrowly focus on compliance history that is most relevant as to whether the permit holder can and will comply with a permit going forward. A business's most recent permit will be the most stringent and good compliance history with respect to a current permit is the best indicator of an ability and willingness to comply.
- Further clarify that the enhanced authority to evaluate businesses with common owners or board members only apply to those persons who engage in day-to-day decisions about the business's compliance with the effective compliance requirements. Additionally, the problematic compliance history of one facility should not reflect on another facility simply because they share common owners or board members. Compliance circumstances are site specific and should be evaluated as such.
- Provide a reasonable and fair process for appealing the denial or revocation of a permit. Decisions under this bill should be reviewable for abuse of discretion and should not be arbitrary or capricious.
- In addition to a refusal to issue a permit, require that a DEQ action to revoke, modify or suspend a permit be a DEQ director-level decision.

We hope that the Committee will provide time to understand and address these concerns so that a seemingly reasonable and appropriate bill does not result in unintended consequences for the vast majority of businesses that work in good faith to implement their permits every day.

Thank you for the opportunity to appear before you today.

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