



“Our eventual aim is to divert all wastes from the river. And I’m convinced it can be done. Maybe not tomorrow. But we’re moving in on the problem.”

— L.B. DAY, GOV. TOM MCCALL'S DIRECTOR OF ENVIRONMENTAL QUALITY, 1972

Part Three of Four

March 8, 2019

Story by **ROB DAVIS**

Photography by **BETH NAKAMURA**

The Oregonian/OregonLive

The threat was explicit.

Kevin Downing's job in Oregon government was to reduce cancer-causing pollution from diesel engines, and the state was interested in following

California's lead by requiring cleaner trucks. Texas was doing it. So were New Jersey, Connecticut and Georgia — a dozen states altogether.

Downing said when he pushed the idea, his boss at the Department of Environmental Quality told him to make a phone call.

The initiative would lead to less smog in Oregon, but truckers disliked it because the new engines got worse mileage. Oregon Trucking Associations Inc., and its chief lobbyist, Bob Russell, boasted online about a “direct line of communication” with state agencies.

“Call Bob Russell and see what he thinks,” Downing recalled being told by Andy Ginsburg, then Oregon's top air quality official.

Downing did, and he said Russell delivered a warning.

“The message that Bob told me to convey back to my managers was that if we were to proceed on this, he'd go after the agency's budget,” Downing said.



Kevin Downing, recently retired clean diesel coordinator for the Department of Environmental Quality.

Russell said he didn't recall making a threat against the department's budget.

"It's not my style to do that kind of stuff," he said.

But Oregon backed off on cleaner trucks.

The message Downing took from that phone call in 2001 reveals one way Oregon's corporate polluters get their way: by ensuring that Oregon's environmental regulators pay a steep price for one wrong move.

An expansive review of internal documents and dozens of interviews with current and former environmental regulators, lobbyists, advocates and lawmakers reveals that pressure tactics have instilled a deep culture of deference at the Department of Environmental Quality.

Contributions by legislator

Here's a breakdown of campaign contributions to each current Oregon legislator for election cycles from 2010 to 2018. Click on a button to see more info about a legislator. Type a name in the search bar to find a legislator.

Search:

Legislator	Total	Corporations & industry groups
Sen. Fred Girod	\$388,672	89%
Sen. Herman Baertschiger	\$264,356	80%
Rep. Mike McLane	\$2,592,084	80%
Rep. Duane Stark	\$255,634	79%
Rep. Carl Wilson	\$362,952	77%
Rep. Sherrie Sprenger	\$365,736	75%
Sen. Brian Boquist	\$580,253	75%

Sen. Jackie Winters	\$1,475,761	73%
Sen. Mark Hass	\$562,622	73%
Sen. Lee Beyer	\$728,989	72%

[Previous](#) [Next](#)

The pressure works because environmental officials know industry lobbyists can back up any threat. Business lobbyists have secured access to lawmakers by giving them vast quantities of cash under Oregon's unusually wide-open campaign finance laws.

Corporate interests give more to the average lawmaker in Oregon than almost anywhere else in the nation. Over a decade, industry groups donated \$43 million to winning candidates for the 90-seat Legislature. No other set of donors came close, according to The Oregonian/OregonLive's analysis of data from the National Institute on Money in Politics.

The trucking association funneled \$250,000 to winning Oregon campaigns during the period, including leading Democrats — Gov. Kate Brown, Senate President Peter Courtney and House Speaker Tina Kotek.

The industry as a whole gave 74 percent more money per legislative seat in Oregon than in Washington, which, unlike Oregon, limits campaign contributions. Oregon is one of just five states that set no caps on political donations whatsoever.

Budget threats cast long shadows. Department officials have been pushed around so often that overt ultimatums have seldom been needed. For years, the agency's No. 1 internal performance measure has been providing "good" or "excellent" customer service to the industries it regulates.

"DEQ was at the mercy of industry in order to get budgets for even basic things," said Jules Bailey, a former state representative who led the House Energy and

Environment Committee from 2012 to 2014. Because of the money corporations pour into state elections, “industry can make a credible threat that they have influence over their budget. It gives industry enormous negotiating power.”

Brown has installed new leadership at the department: a new director, oversight board and senior staff. They are seeking to change the atmosphere, pushing for greater funding and a shift in priorities toward human health during the 2019 legislative session.



Trucks on Interstate 5 in Portland during rush hour.

“DEQ is not intimidated into silence,” said Richard Whitman, who was hired as director in 2017. “We have asked for the resources needed to assure Oregonians that their health and our environment are being appropriately protected.”

It is not yet evident their point of view will prevail with state lawmakers.

Craig Johnston, a Lewis & Clark Law School professor and former U.S. Environmental Protection Agency enforcement attorney, interviewed to be the Department of Environmental Quality’s leader in 2016.

He met with a half-dozen legislators and talked to people within the agency. He said he was surprised to hear that nearly every time the department levies even

minor fines against companies, their state representatives complain.



DEQ'S COSTLY CLOCKS: In 2016 the cash-strapped agency found enough money to buy 19 internet-synchronized \$300 clocks. [▶](#)

“People think this is ecotopia,” he said. “But the political climate in Oregon is just that it doesn’t take environmental mandates very seriously.”

Johnston was clear with lawmakers and decision makers: If hired, he would change that.

He wasn’t picked.

Downing said his experience with the trucking lobbyist had a chilling effect for years. It changed his thinking about why bosses shot down his ideas. He said he became resigned to it.

“Environmental groups, even when they oppose an action, never threaten to cut an agency’s budget because it goes against their interest,” Downing said. “A business advocacy group can use this with little cost to them. People don’t realize, when they’re urging the department to become more aggressive, how profound that vulnerability is.”

Ginsburg, Downing’s former boss, eventually left the agency. He said he didn’t recall a threat from the trucking association. But he said the information would have been one factor in deciding if it was worth the effort to seek legislative approval.

“It wouldn’t have caused management to say, ‘Industry doesn’t like it, we won’t do it,’” Ginsburg said. “But we would say, ‘Do we have the votes? What else would we not take on to do it?’ We would’ve considered all those other questions and made a strategic call.”



Budgetary threats are a time-honored tactic for lawmakers who want to shield an industry from Oregon's environmental agencies.

Back in the 1980s, when the Oregon Water Resources Department proposed cutbacks on agricultural irrigation in the Umatilla Basin to address falling water tables, it provoked a reaction. Mike Thorne, a Pendleton senator who ran the Ways and Means Committee, stalled the water department's budget.

Thorne told *The Oregonian/OregonLive* in 2016 that he saw agency leaders rushing to regulate without considering the options.

"I wasn't trying to be punitive," the former Democratic senator said. "I just expected a level of performance that I didn't see."

In 2001, the Republican-controlled Legislature was angry with the Oregon Department of Fish and Wildlife, which members perceived as anti-development and allied with progressive federal agencies. Legislators forced the agency to move its main office from Portland to Salem. State workers wound up with two-hour commutes or uprooted their families to move.

Pressure brings agencies in line, and the Department of Environmental Quality is no exception.

"DEQ's budget is often held hostage on account of industry concerns," said Jackie Dingfelder, a former Democratic lawmaker who led the state Senate's environment committee from 2009 to 2013. "I saw that session after session after session, with both Republicans and Democrats.

"I would have Democrats come to me and say, 'What is DEQ doing?'" Dingfelder recalled. "I'd say, 'They're doing their job.'"

That's exactly what happened in 2017. Department officials that spring announced plans to test the air near Entek, a battery parts manufacturer in

Lebanon, for the cancer-causing solvent trichloroethylene. Computer modeling showed concentrations that concerned the department.

Entek co-founder James Young and CEO Larry Keith have personally contributed \$113,000 to lawmakers in elections since 2010.

Entek and its founders also donated \$95,000 in the past decade to Oregon Business & Industry and its predecessor, Associated Oregon Industries, a powerful lobbying group that gave lawmakers \$877,000.



When it rains during swimming season, the sewage treatment plant in the growing city of Molalla has dumped treated waste from its over-burdened storage ponds into the Molalla River. The Department of Environmental Quality took years to negotiate improvements. The deadline to build a new treatment plant? 2023. Victoria Ferguson, 21, said of the Molalla: "It's where my parents swam when they were teenagers, and where they took us to swim as kids, and where we still swim now with our friends as young adults. I would like my future children to be able to enjoy that river."

Eight people funded by the business group and Entek’s founders were in a position to voice the company’s displeasure with the state’s testing plan. All sat on the Legislature’s most powerful committee, Joint Ways and Means, which controls the budget of the Department of Environmental Quality. They attacked the agency at a hearing that May.

The department’s decision — to tell Entek’s employees and neighbors they might be breathing harmful pollution — “will go down as one of the most shocking displays of public perception miscalculation that I have seen in my career,” said then-House Minority Leader Mike McLane, an attorney from Powell Butte.



Rep. Mike McLane, R-Powell Butte (Photo: Stephanie Yao Long/Staff)

His campaign had accepted a \$50,000 contribution seven months earlier from a political action committee funded by \$320,000 from Entek’s founders.

Seven of the lawmakers voted to stall the state’s application for a \$649,000 federal grant – free money – to study diesel pollution around Portland’s rail and freight hubs. Some

of them also helped kill \$1 million for a clean air initiative proposed by Brown.

Sen. Fred Girod, R-Stayton, a dentist whose district includes Entek, said he was so angry he’d never vote for “a damn dime” for the state’s environmental agency until it cleaned up its act.

Sen. Betsy Johnson, a Democrat from rural Scappoose and one of the eight, didn’t hide why the money was being blocked.

“The way you guys went after Entek, I simply cannot support a grant application that advances your agency’s work on this issue,” she said. “It was Entek this time. Who knows who it’s going to be the next time?”

The message seemed to have an effect. The Department of Environmental Quality first delayed deploying air monitors outside Entek for a few months, then for more than a year. Whitman said the agency will put a monitor in Lebanon in 2019.

Meanwhile, before the current legislative session, Courtney, the Senate president, handed Johnson a promotion. She now shares control of the Ways and Means Committee, giving her sweeping authority over the Department of Environmental Quality budget.



The Legislature has overseen a protracted reduction of the agency’s workforce. The department shrank by 20 percent between 2001 and 2015, even as the state’s population rapidly grew.

The decline in staff has left the agency without the ability to do basic work.



A blue heron on the Willamette River in Eugene. Testing of the river in 2008 and 2009 found high concentrations of carcinogenic chemicals in northern pikeminnow, a resident fish that eats other fish. But the agency didn't find the source. It collected samples again in 2016 but hasn't analyzed the results. (Photo: Terry Richard/staff)

In Eugene, Willamette River testing in 2008 and 2009 found high concentrations of carcinogenic chemicals in northern pikeminnow, a resident fish that eats other fish. But the agency hasn't figured out the source, baffling environmental groups that advocate for a cleaner river. The department collected samples again in 2016. It still hasn't analyzed the results.

"Why on earth would you want a problem like that to persist and make it so this agency literally doesn't have the bandwidth to get out there and investigate?" asked Travis Williams, executive director of Willamette Riverkeeper. "Then we wonder why people aren't turning up to swim."

Greg Pettit, the agency's retired laboratory manager, said he once asked for approval to test samples of water after a fish kill.

"Literally I was told: 'We have more work on our plate than we can handle. Why would we want to go out and look for new problems?'" Pettit said.

Current and former employees said the budget assault established a clear mindset inside the agency: Don't be aggressive. Prioritize education, not enforcement.

Marianne Fitzgerald, who worked at the agency from 1977 to 2008, said the prime engineer of that approach was former director Stephanie Hallock. Fitzgerald said Hallock made clear the agency would only work on projects the Legislature specifically funded.

"That attitude fostered a culture of protecting budget resources over protecting the environment," Fitzgerald said.

Hallock disputed Fitzgerald's characterization of how she ran the agency as its director from 2000 to 2008. She pointed to a different issue, the department's reliance on money from permit fees paid by polluters, as a problem that "cries out fox in the henhouse."

"It puts the employees in the constant tension of having to be responsive to people who are paying for their services," Hallock said.



Polluted water from Douglas County's Reedsport landfill, where medical waste, lead batteries and arsenic-treated wood were left to decompose, seeped into Scholfield Creek (lower right). The Department of Environmental Quality allowed the landfill to coast on an expired permit for more than a decade, during which it exceeded its pollution limit. The county started pumping the waste to a sewage treatment plant in 2017. (Photo: Alex Derr, 2014)

Compared to its counterparts in other West Coast states, the agency has set less ambitious goals and enforced environmental laws less aggressively.

Oregon's health target for reducing diesel pollution is one-thirtieth as stringent as in Washington or California. And Oregon is not even close to meeting its goal. Diesel pollution contributes to what the U.S. Environmental Protection Agency estimates are as many as 460 premature deaths a year in Oregon.

Oregon is also less likely to inspect air polluters than regulators in California or Washington, federal data show. In 2016, the department fined major air polluters \$27,600 to Washington's \$700,000. It brought 12 enforcement cases to Washington's 129.

Dave Einolf, a Portland consultant who advises businesses about environmental compliance, said the state's fines — even for repeatedly ignoring the law — are so paltry that it's cheaper for companies to pay them than it is to comply in the first place. It's just a cost of doing business in Oregon.

The Department of Environmental Quality is so lacking in expertise, Einolf said, that "they do not have a proper basis for enforcement, let alone the technical ability to adequately enforce."



Lawmakers can still influence policymaking inside the Department of Environmental Quality with just a few words.

On Valentine's Day last year, a pesticide lobbyist dashed off a vague email on her iPhone to Johnson, the Democratic senator from Scappoose. Katie Fast, executive director of a pesticide trade group called Oregonians for Food and Shelter, wanted a meeting "regarding a DEQ issue."

At the time, the department was considering a new permit that would have required more reporting about pesticides sprayed in or near waterways across Oregon. The agency said it would improve water quality statewide.

Nine days later, Johnson drafted a letter to Democratic leaders on behalf of Oregon's Coastal Caucus, a bipartisan group of coastal lawmakers.



Sen. Betsy Johnson, D-Scappoose

Johnson's letter included a 57-word change to the Department of Environmental Quality's budget, specifying that any money for the new effort had to come from an existing program — whose funding the Legislature had killed years before.

Records show that the wording of the amendment came, verbatim, from three major contributors to Coastal Caucus members in the last decade: the Oregon Farm Bureau (a combined \$13,000 in donations); the Oregon Forest & Industries Council (\$44,000) and Oregonians for Food and Shelter (\$17,000).

“We have never made a political contribution contingent on any particular action, issue or outcome. Ever,” representatives for Oregonians for Food and Shelter and the Farm Bureau said in a joint statement.

Lawmakers active on the pesticide issue in 2018 represent rural districts and “care about and engage in our state’s natural resource policies. As they should,” the groups said.

The amendment wasn’t adopted. But it didn’t matter.

Inside the department, work on the new reporting requirements ground to a halt.

rdavis@oregonian.com

[Comment on this story »](#)

Next: Campaign perks and a watershed in peril

Sign up for our special projects newsletter

Be the first to read this story and all of our major projects and investigations.

* Email Address

Subscribe

© 2019 Oregonian Media Group

Design by Mark Friesen/Staff