



Oregon

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To: Co-Chair Levy, Co-Chair Frederick and members of the Joint Committee on Ways and Means, Natural Resources Subcommittee

From: Matt Davis, Policy and External Affairs Manager, Department of Environmental Quality

Re: Follow up questions on the Title V Budget Note, submitted April 13, 2025

- 1. My questions- is this accurate information if so I did not get the sense from the budget note report that DEQ has an adequate plan to work through the issues in the next biennium please report more on what would we expect in the next two years on progress.**

The fee increase authorized by the legislature was phased in over two invoicing cycles: 2023 and 2024. Title V invoices are typically due between September and October. DEQ anticipated, and noted, that it would be necessary to utilize 2023 receipts to build up enough revenue reserves to hire staff. It is worth noting that the phased-in approach to the increase resulted in a revenue shortfall of \$1,317,064 relative what was proposed in DEQ's 2023-2025 Governor's Recommended Budget.

As noted during our presentation, we are continuing work to find efficiencies. The proposal to establish a centralized team of permit writers will allow staff to focus on new permits and modifications and maintain its prioritization of permitting actions necessary for industry to move forward. At the same time, we have now been able to bring on additional staff. We have developed trainings and improved the accessibility of information and guidance regarding permits, and modeling tools. This helps both internally and externally improve the quality and timeliness of our permits.

- 2. Can you tell me how many (TV renewals) you have completed in the last 2 years?**

As noted in the HB 5018 Budget Note Report, between July 2023 and January 2025 the program completed 9 Title V renewals.

- 3. I understand that Title V entities are required to submit a renewal application one year before their permit expires and they must identify all changes to the facility including regulations that have been adopted since the last permit issuance date. Do I have that right?**

Yes. It is a permittee's responsibility to submit a timely renewal application providing sufficient detail for staff to determine applicable rules and compliance paths. That said, in practice Title V sources routinely rely on technical assistance from their permit writer to prepare a complete application. It is also common that DEQ requires information beyond what was provided initially for the agency to prepare a permit renewal.

4. With this level of detailed information that the regulated entity is providing to DEQ, how is it that the agency is unable to act on the permit renewal within the year that the application is received, and the permit is still valid? If they submit a timely and complete application, the TV source can continue to operate under the existing permit.

The federal Clean Air Act provides that upon submitting a timely and complete renewal application, on a date at least a year prior to the permit's expiration, a TV permittee can continue to operate under the existing permit until the permit renewal is completed.

While the rules require applicants to submit complete and accurate information, for complex permits in particular, applications rarely contain all applicable information. Sometimes business strategies prompt an applicant to modify their application mid-development. For fast moving industries, like semi-conductor manufacturing, it is common for DEQ to receive multiple modification requests during development.

Creating an air permit is an iterative process wherein we work with the facility in determining how to meet federal and state requirements. It is not like renewing a business license. Federal and state requirements change and must be incorporated into the permit renewal.

Additionally, DEQ does not currently have staff capacity to devote to every application permit renewal upon receipt of the materials, thus a "backlog." DEQ's practice is to prioritize applications that facilitate economic development (i.e. new permits, permit modifications, permit amendments, and notices to construct).

DEQ has demonstrated that when fully staffed we do begin reducing the backlog of renewal applications. The agency made good progress reducing the backlog between 2018 and 2020.

5. How is it that there are multiple large facilities with permits that were last issued in 2009? That is 16 years ago.

There are 6 Title V facilities operating under permits originally issued in 2009 or earlier. Issue date is not an indicator that no work has been performed on a permit. For example, Zenith's Title V permit was issued in 2007 (expired in 2012) has undergone extensive permitting work over the last decade, all working towards being re-assigned to a state-level permit. Zenith's permitting activities, while not typical, are an example of how issues outside of DEQ's purview can impact DEQ permitting timelines.

Because AQ Permits online is linked to DEQ's TRAACS system, which was replaced by the Your DEQ Online permitting portal in November 2024, it currently does not contain up-to-date information on all permits. You can access YDO at this website: <https://ydo.oregon.gov/pub/pub-rcd/submittals>.

6. How many Title V permits are currently past the expiration date? For each of those permits, can you provide the amount of fees you have collected since the last permit issuance? So, if the permit was last issued in 2009, what is the sum of annual fees you have collected since then, including 2025?

There are 37 facilities that would have received an invoice while on an administratively extended permit. Due to the cyber attack on April 9, 2025, we are still unable to access our database which

we would query the cumulated fees question. We are currently calculating this number manually. We hope to follow up with this information May 9th.

Title V permitting fees, as established in statute, support the program in its entirety. Fees represent a source's contribution to fund the program as required by the Clean Air Act. Program activities include permit issuance, modification, renewal, monitoring, annual report review, providing guidance responding to questions and complaints. Additionally, it is worth noting that during the time a facility is operating under an administrative extension, it may still be receiving modifications necessary to update the facility. DEQ does not charge a fee to renew a permit.

7. What is the significance of a permit that is not renewed in a timely manner?

So long as there is a timely request for renewal, there is no legal significance to a permit not renewed in a timely manner. Facilities are responsible for compliance with current rules and regulations. However, from the agency's perspective, we would prefer all permits be current. We believe that it provides transparency and peace of mind to businesses and communities alike. Adequate resources are fundamental to this goal and we appreciate the increase to fees provided for the 23/25 biennia.

8. Is it fair to say that a facility with an administratively extended permit may not have the latest rule requirements spelled out for them in their permit?

Yes. It is possible that a permit that has been extended administratively may not incorporate all applicable regulations. While it is the responsibility of a permit holder to understand and comply with all applicable regulations, a significant part of DEQ's work is providing technical assistance and information to permit holders, regardless of their permit status.

9. My understanding is the facility is still required to comply with and implement new regulatory requirements even if they not included in a permit. Is that accurate?

Yes. Under the Clean Air Act, it is a TV source's responsibility to stay in compliance with all current regulations. As noted above, a significant part of DEQ's work is providing technical assistance and information to permit holders, regardless of their permit status

10. Do you think it could cause community members to be concerned knowing the facility is on their own to know any new rules that might apply or new testing requirements that may not be spelled out in the permit?

Community members have expressed concern that DEQ does not have adequate resources to implement its permitting program sufficient to avoid any backlog in permit renewals.

11. Going back to the EPA's 2006 report on Oregon's Title V program, DEQ has been promising to improve the permit renewal backlog many times over the last 19 years, apparently. What do you think the consequences should be when improvement is not happening to such an important program?

A natural consequence of the question would be an investigation or study of hurdles to identifying and making improvements. We would welcome resources to further investigate ways we can improve the program. DEQ's water quality permitting program benefited from a similar review.

DEQ has made significant improvements to the permitting program over the past 19 years, all while responding to increasingly complex federal rules and requirements. The improvements have

contributed to more protective and more complete permits. We have created general permits to accommodate faster permitting of generic processes and we have created tools to help applicants prepare better and more complete applications. We have established online permitting capabilities that will streamline some processes and create transparency. The program has continued to innovate and maximize efficiency despite the Secretary of State identifying the program as under-funded and under-resourced.

12. Do we set statutory deadlines for DEQ to issue permits?

DEQ has timeliness goals established as part of its legislatively approved key performance measures. The program is currently conducting a workload analysis and time study that will inform future timeliness recommendations. Because DEQ has demonstrated that when fully staffed we can meet all of the program's demands and make progress on the renewal backlog, it does not appear to be lack of a statutory deadline but rather scarcity of resources that has the most significant impact.

13. Should there be impacts to DEQ's funding when it fails to deliver on promised improvements?

Because the Title V program is required to be 100% funded by fees and staff-time is the primary program expense, punitive revenue reductions would only erode the capacity of the program. Not only would this prevent progress on eliminating the permit renewal backlog, it would also jeopardize DEQ's ability to issue timely modifications and amendments, a priority shared by DEQ and the regulated community. Sustained under-resourcing also threaten federal sanctions and the possibility eventual revocation of our delegation from US EPA to operate the program. DEQ contends it is in everyone's best interest if Oregon businesses receive permit services from state of Oregon employees – who are most familiar with Oregon's unique business and environmental landscape.

14. Should the agency engage a third party to administer, draft and finalize permits in a timely manner?

This is already an option for permit holders. ORS 468.073 allows for a regulated entity to enter into an agreement with DEQ for the purposes of using a third-party to perform expedited permit and regulatory processes. DEQ is unaware of a permitted entity ever requesting an agreement or expressing interest in such an agreement for purposes of *renewing* a permit. Because a facility can operate under an administratively extended permit and the protections provided under permit shield provisions, it is our experience that the regulated community appreciates DEQ's practice of prioritizing available resources for permit actions that facilitate the construction/growth/modification of sources.

DEQ engaged deeply on proposed legislation this session to provide more clarity and certainty around the use of third-parties to expedite permit actions. That bill did not advance out of committee before the deadline.