

Testimony on HB 4102

Senate Energy and Environment Committee

February 16, 2026

My name is Susan Smith. I am a Professor Emeritus at Willamette University. I have spent the last fifty years practicing natural resources and environmental law & policy. I encourage the Legislature to enact legislation that allows timely processing of both new and renewal permits, but I strongly oppose HB4102 as currently written. Although the –1 amendment improves the bill, it remains an extremely lopsided fast track permit bill favoring big industry over the health and prosperity of ordinary Oregonians. Industry's siren call promising jobs should not deter us from writing a good, comprehensive, and balanced bill serving both the interests of Oregonians and legitimate industry interests. Even with the –1 amendment, HB 4102 is not such a bill. We should take the time between now and the long session to collaborate on writing a good bill.

I apologize for my frustration at trying to explain the effects of environmental legislation in a political atmosphere dominated by sound bites. I hope this written testimony clearly outlines my problems with HB 4102 as currently written, or even if amended under the –1 amendment.

HB 4102 does not adequately deal with environmental, energy, or labor issues associated with the construction of data centers and other large tech facilities. Remember, Oregon is 49th out of 50 states not just in environmental permitting delays, but also in the quality of our environmental permits.

First, be clear, DEQ concedes that permit applicants entering into agreements allowed in HB 4102 receive special treatment that expedites their permit, allowing them to cut into the front of an otherwise slow-moving line. This is fast track permitting legislation.

The Simplistic Argument That All Permits Must Nonetheless Comply with Existing Law Ignores DEQs Substantial Discretion in Permit Writing

Proponents of HB 4102 trumpet the fact that these fast-track permits still must comply with our environmental laws, suggesting that this protects our environment. Their argument utterly ignores reality. Writing an environmental permit involves a great deal of discretion about the terms and conditions included in the permit. That discretion allows DEQ to write a permit that genuinely protects human health and the environment **or** to write a permit that complies with existing law but fails to be protective. The permit may be inadequate because it does not limit enough pollutants, does not require the regulated party to comply with state water quality standards, or does not contain adequate monitoring, recordkeeping, and reporting requirements, yet still technically comply with law. The bill will turn this permit writing discretion over to third party contractors who have no incentive to exercise that discretion in favor of public health and the environment **and** have every incentive to please the permit applicant funding them. HB 4102 under the –1 amendment has some minimal conflict of interest safeguards for hiring third party contractors to write permits. However, it does not prioritize hiring state employees over third-party contractors to write these fast-track permits. In my experience, public employees are better than third-party contractors: they are more likely to be committed to protecting the public interest. Note

that even with promised jobs at stake, the labor unions don't support this bill; they have only shifted their position to neutral.

Prohibit DEQ from Issuing Fast-Track Permits to Environmental Offenders Who Repeatedly Violate Environmental Laws

HB 4102 does not prevent even the worst environmental offender, which repeatedly violates environmental laws, from buying fast track permits. It only provides for consideration of that factor by DEQ. Who honestly believes that DEQ will defiantly refuse to issue permits to repeat offenders if only required to "consider" that factor, especially if the permit applicant is a large, multinational corporation who has bought special treatment.

Require DEQ to Issue Renewal Permits Promptly, Charging Additional Fees to Reduce the Permit Backlog and Ensure Prompt Issuance

HB 4102 utterly fails to address the worst problem in Oregon's permitting process: DEQs continued failure to promptly issue renewal permits in the water and air pollution contexts. Under existing law, "zombie" permits allow industry to operate under far more lax expired permits for years, even decades, after they expire. Obviously, facilities with zombie permits have no interest in prompt renewal permit issuance when the renewal permits are stricter.

Why should we care? Facilities with zombie permits pollute more than current law allows and often violate air and water quality standards.

In addition, these facilities force new industrial facilities to locate in areas without existing polluters because permit requirements are more stringent in areas that violate air or water quality standards. In those areas where the existing permits cause violations of our state water or air quality standards, new permits cannot be issued easily. If state air quality standards are violated in an area, then new permits must meet strict new source permitting requirements to avoid making the air quality worse. If waters in an area violate state water quality standards, new permits again face demanding standards. Once violations of state water quality standards trigger a Total Maximum Daily Load, the level of collective pollutant discharges that would achieve the state water quality standards), new permits cannot be issued unless existing polluters receive tighter permits.

Recognize that Fast Track Permits Injure Applicants Who Cannot Afford Them

It matters when a facility receives its permit. Areas with clean air and water have a limited amount of distance between existing pollution levels and pollution levels set by air and water quality standards. The first permittee readily gets a permit. Applicants whose permits are processed later may not be able to secure a permit at all or will receive a more stringent permit than if they had been first in line.

Fast Track Permitting Authority Should Also Address Other Important Energy and Environmental Problems Caused by Large New Facilities

HB 4102 also fails to address other environmental issues of data centers and other new tech facilities. **An environmentally-sound fast track permit bill should ensure:**

- Large new facilities are energy self-sufficient, generating enough clean energy to cover their needs, rather than consuming electricity from the western grid with 50% generated by fossil fuels. This is essential to prevent these facilities from increasing greenhouse gas emissions and exacerbating a climate crisis that is already costing every Oregonian thousands of dollars each year.
- Permits have appropriate recycling and reclaimed water requirements to needless consumption of millions of gallons of water every day. Otherwise, these facilities will interfere with private and municipal wells and deprive rivers and streams of adequate stream flows.
- Permits prevent water pollution of both surface water and groundwater by nitrates, arsenic, and lead.
- Permits place strict emissions limits on particulate matter, nitrogen oxides, and greenhouse gases emitted from hundreds of diesel backup fuel generators.
- Permits minimize use of heavy metals, plastic and concrete in facility construction and operation.
- Permits impose appropriate requirements on recycled electronics and electronic waste and prevent release of any hazardous substances (including heavy metals and PFAS) into soil, air, and water.

Only by insisting that data centers and other large new facilities meet sensible environmental requirements can we prevent these facilities from creating even more rapid climate change or preserve the quality-of-life Oregonians expect and deserve to enjoy. We provide enormous tax incentives to attract these new industrial facilities placing an enormous future burden on public services. We may decide to grant these facilities fast track permits, but we certainly should not also sacrifice public health and environmental protection in the process.