

State of Oregon
Department of Environmental Quality Memorandum

Date: Sept. 4, 2020

To: Environmental Quality Commission

From: Richard Whitman, Director

Subject: Item D: Update on Air Quality Permitting Program
(Informational)
Sept. 17-18, 2020, EQC meeting

Purpose of item DEQ has committed to periodic updates to the commission on the status of agency efforts to eliminate a backlog of administratively extended permits in the Air Quality Permitting Program.

DEQ has made significant progress in implementing recommendations from external program reviews and decreasing the number of backlogged permits. However, eliminating the permit backlog is a long-term effort that requires a balanced approach and continued investment in the program.

Background The DEQ Air Quality Program's mission is to preserve and enhance Oregon's air quality to support healthy, clean air for all people in Oregon. The program protects Oregon's air through monitoring air quality trends, developing air pollution control programs and policies, issuing permits to stationary sources of pollution, review of major sources, conducting compliance inspections, data analysis and reporting, and implementing state and federal regulations.

The Air Quality Permitting Program issues more than 2,400 permits for industrial and commercial facilities that emit air pollution. These include both individual permits tailored to specific facilities and general permits to cover classes or categories of industries or activities under a single permit.

The Air Quality Permitting Program has three subprograms:

- Title V federal operating permits: The Title V program has approximately 100 permits issued to the state's largest and most complex stationary sources. These permits implement all applicable federal standards for controlling stationary source air pollution.
- Air Contaminant Discharge Permits: The ACDP program has approximately 2,300 sources and regulates the operation of stationary

sources not subject to Title V permitting or requirements. Sources vary in complexity, from small gas stations to large semiconductor manufacturing facilities.

- **Cleaner Air Oregon:** An air toxics risk evaluation and regulation framework that applies to all new sources when they apply for a permit and to existing sources based on a phased “call-in” implementation schedule.

All permits are issued for a fixed period of time that varies based on the permit type. For individual permits (i.e. Simple or Standard ACDPs and Title V Operating Permits), the permit term must not exceed five years. For Basic and General ACDPs issued for industry or activity types, the permit term must not exceed 10 years. Requirements resulting from a Cleaner Air Oregon risk assessment are incorporated into a source’s Title V or ACDP operating permit.

Collectively, these permitting approaches are essential for controlling emissions of criteria air pollutants in order maintain compliance with the National Ambient Air Quality Standards. Additionally, the permits address Hazardous Air Pollutants and Oregon-specific toxic pollutants known to cause cancer and other serious health effects. Administering an effective permit program is essential for both maintaining a healthy air shed and for protecting communities who live, work or recreate near industrial sources.

When a permit approaches its scheduled expiration date, the facility is required to submit an application to renew the permit. If the renewal application is complete and timely, then the current permit remains in effect until DEQ takes a final action on the application, typically meaning issuing the renewed and revised permit. This expired, but extended, permit is a backlogged permit. Backlogged permits presents a variety of risks to the agency, the permitted source and most importantly to the public’s health. Twenty-three percent of permits are currently backlogged or on administrative extensions across the Title V and ACDP programs. Cleaner Air Oregon, as a program new to DEQ in 2016, has no backlogged permits at this time.

DEQ implements its air permitting programs through three regional offices and an Air Quality Operations Section at headquarters. Program work includes:

- **Issuance of new construction permits:** Permits are required when

facilities are newly built or modified to reduce air pollution associated with construction.

- **Issuance and renewal of operating permits:** A permit is the primary document with enforceable operating, monitoring and reporting requirements. It includes conditions that ensure compliance with all applicable state and federal air quality rules.
- **Review reporting required by permits:** Operating permits contain varying levels of required recordkeeping and reporting based on the complexity of operations and emissions. Program staff receive and review routine permit and emissions reports for completeness and to assess any anomalies or deviations from operating requirements.
- **Compliance inspections:** Staff conduct routine and complaint-driven inspections to ensure the sources are operating in compliance with their permit conditions and the applicable state and federal air quality rules and regulations. Conducting compliance inspections can involve significant staff time, at times requiring multiple days of work to conduct and document one facility inspection.
- **Complaint response:** Staff respond to complaints with claims indicating there is a threat to public health or the environment.
- **Enforcement:** Staff use a variety of tools to help ensure that businesses and individuals comply with state and federal environmental laws. These tools include technical assistance, compliance inspections, and investigation of complaints. Permitting staff work in coordination with DEQ's Office of Compliance and Enforcement to issue warning letters and assess civil penalties and compliance orders.

Delivering this core work requires development and coordination of permits that are effectively integrated with current air quality standards and federal regulations. It also requires effective time management as permit renewals for Standard ACDP or Title V permits can take several months and must be accomplished in conjunction with the other core work previously described.

Permitting program evaluations

Between 2008 and 2018, the number of air quality permitted sources across Oregon more than doubled from 1,190 to 2,500. Over that same period, permitting staff declined by roughly 25 percent, from 34 FTE to 26. The reduction in overall staff levels with a dramatic increase in sources has also led to more backlogged permits over time.

In recent years there have been two external evaluations of the permitting programs: a Secretary of State Audit Division performance audit and an

EPA-lead State Review Framework.

In 2018, the Secretary of State's Audit Division completed a performance audit on DEQ's air quality permitting programs, concluding that, "DEQ is not issuing timely air quality permits or consistently performing timely compliance inspections." The audit also established that, in 2017, approximately 42 percent of the most complex ACDPs (Standard permits) are not renewed on time and that the backlog can be partially attributed to competing priorities and a reduction in staff levels. Staffing cuts have led to unmanageable workloads, especially as air quality regulations are becoming more complex.

The State Review Framework is a recurring review of state permitting programs that takes place every three years. EPA Region 10 reviews permits, reports, inspections, and supporting documents. The State Review Framework report allows EPA to identify recommendations and improvements within DEQ's permitting and inspection programs. The findings for air quality are grouped into five categories: Data, Inspections, Violations, Enforcement, and Penalties.

DEQ received the final State Review Framework report on March 6, 2020. EPA found areas that need attention and improvement in four of the five categories, with satisfactory performance noted for the 'Penalties' category. The findings echoed that of the Secretary of State Audit and recommended improvements in terms of consistency, quality, and completeness of permitting and inspections.

Quality improvement efforts

The 2018 Secretary of State Audit described ten recommended areas in which the program should focus:

1. Conduct a lean process improvement. As a first step, improve tracking of the permit backlog.
2. Centralize and improve inspection tracking.
3. Implement the Basic ACDP for auto body repair facilities in DEQ's Northwest Region
4. Determine requisite staffing levels to issue permits and conduct inspections within established timeframes based on current and projected workloads. Based on results, work with the legislature to identify sources of funding to align workload demands with staffing levels.
5. Fill vacancies in as timely a manner as possible.

6. Work with the Chief Human Resources Office within DAS to begin the succession planning process.
7. Headquarters should provide consistent guidance and support for regional permit writers, including: rule interpretation and implementation, checklists, policies/procedures/processes maintained in a centralized location, update permit writers' manual, and update forms and templates.
8. Improve pre-application guidance for applicants.
9. Improve Title V and ACDP webpages to enhance usability.
10. Provide clear information to the public on the public notice process.

A follow-up review by the Secretary of State's Audit Division documented that DEQ had either fully implemented, or was in the process of implementing, all ten recommendations. The follow-up review showed that DEQ:

- Conducted a lean process improvement in June 2018, which identified projects to improve the backlog and developed a plan to guide implementation of those projects.
- Developed an intermediate inspection-tracking tool as DEQ awaits the full implementation of EDMS.
- Issued over 120 Basic ACDPs to auto body repair facilities in the Portland metro area, a large part of the Northwest Region.
- Conducted a comprehensive air quality workload analysis to compare current staff levels with existing and expected workloads. The analysis identified the need for an additional six FTE. DEQ created Policy Option Package 116 for the 2019 legislative session, which received approval.
- Filled all of the positions that were vacant at the time of the audit.
- Hired a Training and Development Specialist in December 2018 to help facilitate succession planning following updated DAS succession planning directives.
- Created a comprehensive permit-writer's toolkit, containing relevant permit writing policies, procedures, and processes. Updated the permit writers' manual, improving forms, and creating application checklists.
- Implemented a Title V pre-application permit renewal process to help facilities submit complete applications. This includes a voluntary pre-application meeting for facilities and permit writers to discuss necessary information, forms, and answer any questions regarding renewal applications.

- Launched a revised DEQ website including a focus on enhancing the usability for permittees and applicants (this included a review of over 25 states' permitting websites). DEQ has dedicated specific staff to monitor, evaluate, and update the website moving forward.
- Created an engagement plan to improve the website and public notice documents. DEQ updated the public hearing and notice templates and created more welcoming environments for the public at the hearing, including slides displayed covering the topic of 'what DEQ can and cannot do.'

DEQ continues to work with EPA to establish best practices for more effective public communications. Since November 2019, DEQ developed the Air Quality's permits website to make all TV and ACDP permits, review reports, air toxic reports and annual reports electronically available for the public to use.

The State Review Framework (FY2018) identified a few specific areas in which the program should focus or improve. These are:

1. Test data entry and DEQ/EPA systems communication
2. Inspection report details
3. Violations misidentified
4. Identify and address violations timely, establish correction timelines

In response to EPA's initial review, DEQ implemented changes and coordinated improvement efforts before the final State Review Framework report was issued in March 2020. Those efforts included:

- Training need for staff who input source test data identified and conducting this training. Establishing a recurring communication and quality assurance step between source test reviewers and headquarters staff.
- Revisions and updates to inspection templates and subsequent training for air quality staff. Establishing a lead inspector group of regional and headquarters staff to update and revise inspection-related documents and be the lead for process improvements related to inspections.
- Updates to DEQ's violation form that was referenced by EPA to include guidance on timeliness and additional information. Training for air quality staff was provided by EPA to discuss violation topics including scope, criteria, examples, classifications, and timeliness.

Overall, the Air Quality program is committed to continually improving processes that support timely permitting and inspections in an effort to streamline and use resources as efficiently as possible. DEQ is confident that all of the efforts in response to external reviews have had positive impacts and increased the efficiency and quality of the permitting programs.

Importance of maintaining current permits

When permits are not renewed on time, they may not include the most up-to-date federal and state rules, or information on how facilities are to comply with them. This can lead to facilities being subject to differing requirements at the state and federal levels, and confusion for facility operators and agencies regarding compliance. Timely permit renewals provide opportunity for public review and input and backlogged permits delay that opportunity, in some instances for years.

Most importantly, a permit backlog has tangible environmental and public health consequences. ACDPs are fundamental to ensuring emissions of criteria air pollutants and harmful air toxics are adequately and appropriately controlled. When the agency cannot draft quality permits, regularly evaluate and renew those permits, and inspect sources' compliance with permit conditions, there is dwindling confidence that emissions are being well controlled and accounted for. Outdated permits increase the risk that permitted facilities are not operating according to the latest air quality standards and rules. Lastly, when inspections are not completed on time, the risk increases that violations will go undetected.

Process improvements

Leading up to the legislature's approval of Policy Option Package 116, DEQ had extensive conversations with program permit holders and fee payers to explain the need for additional program funding. Using the air quality workload analysis as a backdrop, DEQ and these entities came to agreement that there were several key areas that required additional resources. While some of these areas have benefitted from process improvement efforts and while the agency will continue to make these improvements, the key driver to ensuring the program can adequately and timely deliver on core work responsibilities is sufficient staffing levels.

These key areas are:

Accessible technical assistance for regulated entities

This includes ensuring the program is resourced to provide quality and regularly updated tools and resources for permittees and applicants. It also included ensuring the program has financing to retain expert permit

writers and support staff (air quality modelers, emissions inventory analysts, etc.)

Commitment to quality permits

Permits that accurately incorporate applicable requirements, clearly identify how compliance is demonstrated, and identifies specific reporting requirements.

Regulatory certainty

Permit holders need assurance that permits, new and renewals, are issued on schedule. Timely and quality permits build public trust in the program and minimizes opportunities for third-party intervention.

Efficient processes

Both DEQ and stakeholders are best served by a predictable, transparent, and timely permitting process. Creating a culture of - and attaining resources that allow for - continuous improvement to build and maintain efficient processes.

In addition to continual process improvement, the development and subsequent rollout of EDMS is expected to significantly help manage information, track core work deliverables, and help the program improve in these key areas. While all recommendations that have been provided to the program have been implemented, or are in the process of being implemented, there is always room for continuous improvement and the program will continue to do so.

Next steps and EQC involvement

DEQ has made progress towards meeting the goals of the air quality permitting program; however, there are still significant gaps. One gap is staffing - the comprehensive workload analysis demonstrated that an additional six FTE were necessary to meet the core work needs of the program. Projections show that the program needs to issue an additional 26 permits per year to reduce the backlog to 10 percent by fall 2024. As stated, the program is committed to continual process improvement, but it is unlikely that this amount of permitting time can be achieved with only process-related improvements. Without an increase in staffing, the program will need to reassess how permit-writers balance competing demands, including processing applications for new permits, renewing existing permits, responding to complaints and conducting compliance inspections.

DEQ will continue to implement the program and process improvements outlined above, including sharing lessons between Title V and ACDP improvements to capitalize on successes for both programs. DEQ will provide updates to the commission over the coming years as the process improvements and backlog reduction plans are realized.

**Supporting
materials**

1. EPA State Review Framework report (2020):
<https://www.epa.gov/sites/production/files/2020-04/documents/srf-rd4-rev-or.pdf>
2. Secretary of State audit report (2018):
<https://sos.oregon.gov/audits/Documents/2019-18.pdf>

Report prepared by Air Quality Division program staff