



Oregon

Kate Brown, Governor

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Mr. Shannon Caldwell
VP of HSE and Regulatory
Zenith Energy Terminals Holdings, LLC
5501 NW Front Avenue
Portland, OR 97210

September 1, 2021

BY CERTIFIED MAIL and VIA ELECTRONIC MAIL

Re: Proposed Denial of Zenith Energy Terminal Holdings, LLC Air Quality Title V Permit Renewal Application

Dear Mr. Caldwell:

This letter is regarding the Title V permit renewal application for the Oregon Title V Operating Permit issued to Zenith Energy Terminals Holdings LLC (Zenith) for the facility located at 5501 NW Front Avenue, DEQ Permit No. 26-2025-TV-01. For the reasons explained below, by this letter DEQ is proposing to deny Zenith's application for permit renewal, and provides Zenith with notice pursuant to OAR 340-218-0120(1)(c). DEQ's proposed denial will become effective on the 60th day after date this letter is mailed to Zenith. The continued operation of the facility after that date will be in violation of ORS 468A.045, which prohibits the operation of an air contamination source without a required permit.

Zenith's Title V permit was issued by the Oregon Department of Environmental Quality (DEQ) on May 16, 2007, for a term of five years, with an expiration date of April 1, 2012. As provided in DEQ rules, a facility with a Title V permit may continue operating, in compliance with its Title V permit, past the expiration date of the permit if it has submitted a timely and complete permit renewal application. This authority to continue operations is known as the "application shield." Zenith submitted a timely renewal application that DEQ determined was complete and DEQ began processing that application. For that reason, Zenith's operation since its current Title V permit expired in 2012 has been lawful, under the application shield.

On January 11, 2021, however, DEQ determined that it needed additional information from Zenith in order to continue processing the renewal application. The information that DEQ requested from Zenith, in a letter of the same date, was an updated land use compatibility statement (LUCS) from the City of Portland. DEQ set a reasonable deadline of May 31, 2021, for Zenith to provide that additional information. Later, on May 13, 2021, in response to a request from Zenith, DEQ extended that deadline until August 31, 2021.

On August 27, 2021, the City of Portland issued a decision denying Zenith's application to the City for a LUCS for this facility. We acknowledge that you have appealed the city's decision to the Oregon Land Use Board of Appeals, and we also acknowledge receipt of your request on August 31, 2021 to further extend the deadline for you to provide us with an affirmative LUCS in support of Zenith's renewal

application. However, as the city's decision to deny land use compatibility remains in effect, DEQ must take this action pursuant to OAR 340-018-0050(2)(a)(D). That rule provides that: "If [DEQ] receives a LUCS which states that the proposed action is incompatible with the acknowledged comprehensive plan [of the local jurisdiction], [DEQ] *shall* notify the applicant that the application cannot be processed" (emphasis added). As a result, DEQ denies your request for an extension of the deadline for you to provide us with an affirmative LUCS, and this letter is your notification that DEQ will not continue to process Zenith's Title V permit renewal application.

Regarding Zenith's application shield, three separate DEQ rules are at issue. First, OAR 340-218-0040(1)(b) provides, in relevant part, that "[i]f the additional information [requested by DEQ] is not provided by the deadline specified, the application will be determined to be incomplete, and the application shield will cease to apply." Second, OAR 340-218-0120(2) provides, in relevant part, that the application shield "protection will cease to apply if, subsequent to the completeness determination...the applicant fails to submit by the deadline specified in writing by DEQ any additional information identified as being needed to process the application." Third, OAR 340-218-0130(2) provides, in relevant part, that when an applicant has filed a timely and complete renewal application, "the existing permit will remain in effect until final action has been taken on the renewal application to issue or deny a permit." (Consistent with ORS 183.430(1).) In compliance with those rules, upon the effective date of DEQ's denial of Zenith's renewal application, the application shield, which has authorized Zenith to continue its operations after the expiration of its Title V permit in 2012, will no longer apply and Zenith will not have an air quality permit that authorizes its continued operation.

Pursuant to ORS 183.430 and 183.435 and OAR 340-218-0120(1)(c), you have a right to request an administrative hearing on DEQ's proposed denial of Zenith's permit renewal application within 60 calendar days from the date this order was mailed. If a hearing is requested, it will be conducted, in accordance with ORS Chapter 183, OAR Chapter 137, division 003 and OAR Chapter 340, division 011.¹ You must send your written request to: Office of Director, DEQ, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232. If you fail to file a timely request for hearing, DEQ's denial of your permit renewal application will become final.

Sincerely,



Nina DeConcini
NW Region Administrator

Cc: Tom Wood, Stoel Rives
Paul Garrahan, Assistant Attorney General, Oregon Department of Justice

¹ Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information, contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.