



**Working with community wastewater treatment and stormwater management agencies across the state to protect Oregon's water quality since 1987**

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March 31, 2021

Representative Marsh, Chair  
Members, House Committee on Energy and Environment

**Subject: Testimony Opposing House Bill 2241-5 as amended – Requiring the Oregon Department of Environmental Quality (DEQ) to Solicit and Provide a List of Private Businesses that Can Provide Certain Permit Review Services and Limiting DEQ's Time to Approve or Deny Permits.**

Chair Marsh and Committee Members:

The Oregon Association of Clean Water Agencies (ACWA) appreciates the opportunity to submit written and provide verbal testimony in opposition to House Bill 2241-5. ACWA is a not-for-profit organization of Oregon's wastewater treatment and stormwater management utilities, along with associated professional consulting firms, which are dedicated to protecting and enhancing Oregon's water quality. Our members provide wastewater and stormwater services to over 2.5 million Oregonians, serving over 70% of Oregon's homes and businesses.

ACWA member agencies provide wastewater and stormwater facilities and programs that operate under water quality permits from DEQ. We offer the following points in opposition to this bill.

**HB 2241-5 would result in a subsidy to one industry—data farms--paid for by State general funds and water quality permit fee funds, which is not fair or equitable.**

DEQ's Water Quality Permitting Program is funded by a mix of general fund and fee-funded resources. State general fund investments in DEQ's water quality programs and water quality infrastructure needs in Oregon have lagged behind inflationary costs and the costs associated with increasing water quality challenges for many years. Permit fees paid by local government wastewater and stormwater service providers, businesses, and industries have, and will continue to play, a large role in funding DEQ's permitting programs; but overall funding for DEQ's water quality programs is not sufficient to meet every individual permittee's needs for timely and implementable permits.

HB 2241-5 makes no provision for the beneficiaries of the program to pay for the program costs, which, as noted above, would be significant. Without additional funding and staff provided to DEQ to implement the provisions of HB 2241-5, the existing fee- and general fund-funded budget for the permitting program would be tapped. This would be a fundamentally unfair and inequitable use of permit fees paid by public utility customers across the state, at a time when the costs of public water sector utilities are becoming increasingly unaffordable for Oregonians.

**HB 2241-5 would derail DEQ's ongoing progress in improving the water quality permitting process, quality, and timeliness.**

Although HB 2241-5 is narrowly focused to facilitate timely issuance of cooling water permits for data farms, all the water quality permittees who are in line to receive renewed permits in accordance with the DEQ's five-year permit issuance schedule would be negatively impacted by HB 2241-5. The bill would require DEQ to divert substantial permitting program resources and staff from their planned permit issuance responsibilities in order to perform the new work prescribed by HB 2241-5. This new program would provide a fast track for data farms to the detriment of several hundred permittees that have anticipated permit renewal dates based on the published permit issuance plan.

Under the provisions of HB 2241-5, DEQ staff would be required to conduct rulemaking, develop policies and standards, issue requests for proposals, establish contractual arrangements, manage public information, coordinate with contractors, manage ongoing oversight and review, and create special annual reports to the legislature on an on-going basis, among other things. By our estimation, this effort would cost hundreds of thousands of dollars, all dedicated to cooling water permits for data farms, which should be addressed under the 100J general permit. At the same time, progress in issuing all other scheduled water quality permits would suffer, impacting local governments and other industries that need renewed permits to make timely facility and environmental quality improvements.

ACWA, like many other stakeholders, has been actively involved in DEQ's water quality programs for many years. While ACWA has shared frustrations regarding DEQ's permit backlog and lack of timeliness in issuing permits, legislation like HB 2241-5 is not an appropriate solution to the problem. We have worked with DEQ, other stakeholders, and the legislature to get DEQ's Water Quality Permitting Program back on track, and it is now headed in the right direction. DEQ's program improvements have included: 1) implementation of a 5-year permit issuance plan to eliminate the backlog of expired permits and meet the requirements of a court-ordered litigation agreement; 2) implementation of permitting process improvements and tools to support timely issuance of permits with improved quality and transparency; and 3) increases in permit writing staff and other water quality program resources necessary to enable permit issuance.

In 2019, the Oregon legislature supported DEQ's efforts with increased general funds and additional water quality program staff positions, and the permittees are paying significantly increased fees to support a more robust water quality permitting program. DEQ should be supported in carrying out the performance improvement path that has been set in motion. This

progress should not be deterred by HB 2241-5, and funds needed to continue that process should not be drawn off to support a small group of data farm permits.

**Summary:**

HB 2241-5 would add significant workload and costs to DEQ's water quality permitting program without added benefit to the overall program or permittees in general. Our understanding is that the data center cooling water permits that would be addressed by HB 2241-5 could simply be addressed through an update to DEQ's 100J general permit for industrial cooling water. It seems that the most equitable and cost-effective approach to providing expedited permitting for cooling water permits would be to provide sufficient additional resources for DEQ to renew the 100J general permit in an expeditious manner.

Sincerely,

Susan L. Smith  
Executive Director