Zenith Energy's fossil fuel storage and transport facility located along the Willamette River faces criticism for potential environmental dangers, particularly in the event of an earthquake. (Photo by Jeremiah Hayden)

Newly obtained records show Portland officials' private interactions with Zenith Energy

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by **Jeremiah Hayden** **(/users/jeremiah-hayden)** | 23 Aug 2023

Portland City Council and a fossil fuel transportation and storage company with a history of violating safety and emissions requirements quietly coordinated to approve a land use permit as the company sued the city last year, new public records obtained by Street Roots show.

Now, the city is allowing the company to move forward with plans to construct underground pipes to transport fuel along the banks of the Willamette River. Previous city staff and officials initially rejected the franchise permit for pipes and the land use permit — decisions lauded by environmental advocates at the time.

Zenith Energy, a Houston-based multinational corporation, needed a Land Use Compatibility Statement, or LUCS, from the city to acquire a state permit to continue operations at the Critical Energy Infrastructure Hub, or CEI Hub.

The city — Zenith's last hurdle for the Oregon Department of Environmental Quality, or DEQ, to issue an air permit — declined Zenith's permit renewal Aug. 27, 2021, and faced public pressure to deny subsequent applications in response to growing public safety concerns regarding the CEI Hub — a massive cluster of fuel-filled tanks nested between Forest Park and the Willamette River.

Despite concerns and ongoing litigation, the Portland Bureau of Development Services, or BDS, approved a new LUCS Oct. 3, 2022, after city officials tasked with public oversight engaged Zenith in private meetings, conversations on a boat tour sponsored by Working Waterfront Coalition and coordinated public messaging, according to the records.

Zenith purchased the former asphalt terminal in 2017 and applied for a new franchise agreement in 2019, seeking to build three new pipes beneath Northwest Front Avenue. Facing considerable public pressure, the Office of Community Technology denied the request because the pipes could feasibly be used to transport fossil fuels, which would run contrary to the city's determination that fossil fuels pose risks to safety, health and livability — particularly in the event of an earthquake.

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> Breach Collective

Current city staff doesn't appear to share those concerns. Last month, the Bureau of Planning and Sustainability, or BPS, and Zenith discreetly signed a letter of agreement further defining roles, responsibilities and requirements for a new franchise agreement, new records show. BPS Director Donnie Oliveira and Grady Reamer, Zenith vice president of operations, signed the letter dated July 31. The new franchise agreement will allow Zenith to install two additional pipes to its system under Northwest Front Avenue.

"The intent of these conditions is to assure the city that the new pipelines are used solely to transport biodiesel or other renewable fuels," the letter said.

Oliveira and Reamer sent text messages in the lead-up to the franchise agreement, and a July 18 message from Oliveira to franchise compliance manager Andrew Speer suggests Reamer made edits to the letter before BPS sent it back to Zenith, according to records.

Oliveira said Reamer's edits made the franchise agreement language compatible with the language in the LUCS. The draft franchise agreement included inconsistencies around fuel testing, and the edits brought them into alignment with those standards, according to Oliveira.

"From our perspective, that was a way for us to ensure that we were consistently evaluating Zenith operations," Oliveira told Street Roots.

Zenith is required to select a third-party expert reviewer to test the fuels in the two new pipes twice a year at random until the pipelines are decommissioned, among other oversight procedures, according to the letter.

Advocates and environmental experts already voiced the opinion that the distinction the city and Zenith are making between fossil fuels and “renewable fuels” is a dubious one, particularly when it comes to the risk of environmental contamination and explosions.

Renewable fuels — a term climate advocates say is fashionable for fossil fuel companies who want to continue operations while appearing to address climate change — are chemically similar to fossil fuels, and the risk of storage tank leaks, train derailments, explosions or other accidents is not substantially different. A Canadian refinery explosion injured seven people and killed one as its owners were in the process of converting the site to produce sustainable aviation fuel and renewable diesel in September 2022.

For environmentalists in and around Portland, the risk of an earthquake-induced spill at the facility is acute. A 2021 Multnomah County seismic risk assessment reinforced public concerns about the potential for a massive oil spill in the event of an earthquake off the Oregon coast.

The new franchise agreement letter follows a pattern of practices critics say weakens the city as a regulatory agency and helps Zenith expand dangerous infrastructure. With an industry-friendly City Council, Zenith is making gains on what it lost since 2019.

Officials maintain the 2022 LUCS approval process was like any other. Handwritten meeting notes, emails and text messages show city staff helped guide Zenith toward approval and allowed Zenith to submit draft applications prior to its official application. In some complex projects, drafts can be emailed for initial review and feedback, according to BDS communications coordinator Rob Layne.

Why the sudden change?

Meeting notes from a July 29, 2022 tour of Zenith’s facilities tell a story of how Zenith sold regulators on a plan to transition Portland into a primary provider of renewable fuels on the West Coast. Portland is to become the first stop for renewable fuels imported from Singapore, then exported to facilities in British Columbia, Washington and California, according to the notes.

The tour, which took place while Zenith was actively suing the city, included city commissioners Carmen Rubio and Dan Ryan, Rubio's chief of staff Jillian Schoene, Ryan's senior policy advisor Karen Guillén-Chapman, BPS chief planner Patricia Diefenderfer and city building official Terry Whitehill, according to records.

Zenith’s public relations firm, Pac/West Communications, organized the tour. Paul Phillips, Pac/West president and Chris West, vice president of operations, participated alongside Zenith Portland terminal manager JT Hendrix and Zenith’s Reamer.

Reamer, West and Ryan’s offices did not respond to Street Roots’ request for comment.

Less than six weeks after the tour, city officials reversed the city’s prior position, approved the LUCS and worked alongside Zenith to sell Portlanders on the promise to shift to renewable fuels.

With the LUCS in hand, Zenith applied for a lower-tiered DEQ permit Nov. 18, 2022. DEQ is currently drafting that permit, which will include a 35-day public comment period, according to DEQ spokesperson Harry Esteve. For Zenith to arrive at this point in the permitting process relied on a number of changes in city policy.

For one, Portland amended its Renewable Fuels Standard, or RFS, on Dec. 7, 2022, in an effort to increase the amount of renewable fuels blended with petroleum diesel sold in Portland.

In an Aug. 9, 2022 email, four months before the city approved the amended RFS, Rubio's chief of staff, Schoene, emailed Zenith's Reamer to make clear the RFS ban on fossil fuel infrastructure and storage contains a loophole through which Zenith could maintain its movement of fossil fuels.

"The ban will happen over time — as supply grows — but we do need to move away from fossil diesel and (renewable diesel) is that answer," she said. "There (is) a provision in the draft policy to pay close attention to supply and adjust as required."

Rubio's office said the RFS, coupled with zoning code changes, sends a clear signal the city is moving away from traditional fuels.

"There is a shared recognition that we need to attract sufficient supplies of renewable fuels to meet the goals of this policy," Jimmy Radosta, Rubio's spokesperson, said.

Audrey Leonard, Columbia Riverkeeper staff attorney, said the carbon emissions and pollution from renewable fuels Zenith can transport are not substantially different from fossil fuels, and the RFS only applies to fuels sold in Portland. Columbia Riverkeeper sued Zenith in 2021 for violating its DEQ air permit, resulting in DEQ levying a $23,598 fine against Zenith.

"Renewable Fuels Standard rules are still in the process of being implemented, and we have a lot of questions about whether it will have the intended effect of reducing air emissions in overburdened communities," Leonard said.

Nick Caleb, climate and energy attorney at climate advocacy nonprofit Breach Collective (http://breachcollective.org), provided Street Roots with the records showing city officials operated internally to ensure approval despite considerable public opposition. While city officials characterized the communications differently, they did acknowledge the authenticity of the documents.

"By calling something renewable, it might give the impression that these things are quantitatively and qualitatively different," Caleb said. "And that's just not the case."

Caleb and other environmental advocates say the city should not assume Zenith is operating in good faith, referencing Zenith's history of operating outside legal requirements since taking over the former asphalt terminal in 2017. When Zenith applied for a permit to add 32 new rail spots at its facility in 2018, Zenith promised DEQ no new oil throughput and no increase in emissions or pollutants. However, Zenith reports filed with DEQ show a steady increase in throughput every year since 2019.

Zenith failed to pay its 2018 franchise fees on time and defied an order from state regulators in 2019 requiring it to practice a cleanup in the instance of a tar sands oil spill. DEQ fined Zenith nearly $25,000 for flagrant violations of its air permit in 2021. The same year, Willamette and Columbia Riverkeepers threatened to sue Zenith for violating its stormwater construction permit. Zenith paid a $115,000 settlement to the Portland Audubon Society, plus $55,000 in legal fees.

The city's apparently cozy relationship with a company it is expected to regulate — one that has flouted regulations in the past — is cause for concern, according to advocates.

"My understanding of what a government regulator is, is someone who is supposed to protect health and safety and the environment," Caleb said, while acknowledging everyone has the right to communicate with the city. "It starts to look like the city's not doing its job."

Friends and foes

Former City Commissioner Chloe Eudaly oversaw BDS from January 2017 to September 2018 as Zenith began ramping up operations at its new terminal. Ryan oversaw BDS when Portland denied the LUCS in 2021, arguing Zenith's operations were not compatible with the city's comprehensive land use plan and had the potential to negatively impact the environment and historically marginalized groups.

The month before the July 29, 2022 tour of Zenith's facilities, Tom Armstrong, BPS supervising planner, wrote a response to a constituent June 23, 2022, saying the city was unable to act on the LUCS due to litigation being held up in court, according to records.

"The City cannot take further action until the Oregon Supreme Court decides whether to accept review on that appeal," Armstrong said.

The state Supreme Court decided not to hear Zenith's appeal Oct. 6, 2022, leaving in place a May 2022 appellate court opinion upholding Portland's right to deny the LUCS. However, Ryan's BDS granted a new LUCS three days prior, on Oct. 3, 2022, effectively mooting the Supreme Court decision.

"I just find it very strange and concerning that all this was happening while there's an active lawsuit," Caleb said. "It just adds a flavor to it."

Columbia Riverkeeper and Willamette Riverkeeper, who independently sued Zenith in 2021 over DEQ air permit violations, intervened on behalf of the city in September 2021 to support its right to deny Zenith's LUCS. Leonard said despite supporting the city, the organization only learned of the July 29, 2022 tour from the same public records obtained by Street Roots.

"We were surprised to see that several high-level city officials toured Zenith's facility while we were waiting on the Supreme Court's decision," Leonard said. "Once we found out about the city's tour, it was clear to us that it was the precursor to the city approving Zenith's LUCS. We certainly did not expect the city to make a deal with Zenith during that time while we were winning in court."

Leonard said nonprofits do not always intervene on behalf of regulating agencies, but Columbia Riverkeeper felt it was important due to the risk Zenith presents to the community and the environment.

"We lent our own time and expertise to support the city's denial because it was the right decision, both in a legal sense and in its effect," she said. "The communities bearing risks deserve to have the best arguments put forward in court."

Asked why Riverkeeper staff did not attend the tour, Radosta said they were not invited by Pac/West Communications, which organized the tour.

"The tour had no impact on the LUCS process," Radosta said. "It is standard practice to engage with stakeholders who have business before the city."

A former staffer who worked in Eudaly's office when she was in charge of BDS told Street Roots LUCS decisions were traditionally made at the staff level, but the Zenith decision was elevated because of activists' attention to the issue and Zenith's legal threats. The staffer, who spoke on the condition of anonymity out of fear of retaliation, said Eudaly's office was unwilling to back down from threats by an oil company. Eudaly's staffer did not remember if Eudaly's office ever received a formal invitation from Zenith for a tour of its facilities.

“I doubt that it would have made sense if there was,” the staffer said.

Days before the city approved the new LUCS, records show city staff worked with Reamer and West to develop public communications about the agreement. BDS and Zenith initially planned to approve the LUCS days earlier, on Sept. 30, 2022, according to a text message BDS director Rebecca Esau sent Reamer on Sept. 29, 2022, alerting him to the delay.

"All headed in the direction we discussed," she said. "I know we were shooting for Friday as the day to issue the LUCS, but knowing they are the ones who will be dealing with the media calls, I want them to feel prepared and to be able to speak in a coordinated, consistent way about the decision, so we're going to give them one extra business day to prep, and issue the LUCS on Monday. Please call if you have any concerns with this. I'm sorry we couldn't quite make our Friday target, but hoping Monday is okay."

Esau did not respond to Street Roots’ request for comment.

These previously unreported communications add fuel to the fire for critics who accuse the city of approving the multinational oil company’s operations behind closed doors. Despite Zenith’s promises to phase out fossil fuels within five years, many critics argue the transition may not be possible in that timeframe, and the city lost bargaining power by caving to vague plans without including the public in the process.

Zenith began transporting tar sands and crude oil through old asphalt infrastructure in 2014. The city passed a resolution prohibiting new fossil fuel storage facilities and the expansion of old infrastructure in 2015.

“The City shall consult with its Tribal Government Partners, the State of Oregon, local governments, and other key stakeholders including labor, business, environment, neighborhoods and communities of color in advancing this policy,” the resolution stated.

Including other energy companies at the CEI Hub, many storage tanks are 100 years old, and none have been built in the last 30 years, contributing to the risk posed by seismic activity. Zenith’s facility has stored petroleum products since 1947, and as part of its new agreement with the city to obtain the LUCS, it is expected to remove 30 old tanks.

“Anybody who follows the fossil fuel industry close knows you should be pretty skeptical about their claims,” Caleb said. “They’re not the most honest industry. They've been lying about the climate for, you know, 50 years.”

A previous version of this story incorrectly identified Karen Guillén-Chapman's title in Commissioner Dan Ryan's office. Guillén-Chapman was a senior policy advisor. Street Roots regrets this error.

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