

Chapter 345 Energy Facility Siting Council

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EFSC 13, f. & ef. 6-11-76; EFSC 5-1978, f. & ef. 5-9-78; EFSC 4-1981, f. & ef. 3-25-81; EFSC 10-1981, f. & ef. 12-28-81; EFSC 6-1986, f. & ef. 9-12-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-010-0026; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 1

GENERAL PROVISIONS

345-001-0000

Permanent Rulemaking — Notice Required

(1) Prior to the adoption, amendment, or repeal of a permanent rule, the Council shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the adoption, amendment or repeal;

(b) By mailing a copy of the notice at least 28 days before the effective date of adoption to persons on the Council's mailing list established pursuant to ORS 183.335(7); and

(c) By mailing a copy of the notice to the Associated Press and the Capitol Press Room.

(2) Notice of the proposed adoption, amendment or repeal of a permanent rule shall contain the following:

(a) Form SED 423 or Form SED 424 (available from the Secretary of State) or a facsimile acceptable to the Secretary of State;

(b) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(c) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the Council in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and, if so abbreviated, there shall be identified the location of a complete list; and

(d) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the Council shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

(e) If an advisory committee is not appointed under the provisions of ORS 183.025(2), an explanation as to why no advisory committee was used to assist the agency in drafting the rule.

(3) Notwithstanding the requirements of ORS 183.335, when the Council is required to adopt rules or regulations promulgated by an agency of the federal government and the Council has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the Council may adopt these rules or regulations under the procedures prescribed in ORS 183.337.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.490

Hist.: EFSC 1, f. & ef. 1-9-76; EFSC 4-1981, f. & ef. 3-25-81; EFSC 6-1986, f. & ef. 9-12-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-10-031; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0005

Rulemaking — Model Rules

The Attorney General's Uniform and Model Rules of Procedure (November 1995) governing rulemaking, OAR 137-001-0005 through 137-001-0085, are by this reference hereby incorporated and adopted by the Council.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.490

Hist.: NTEC 1, f. 12-16-71, ef. 1-1-72; NTEC 6, f. 11-19-73, ef. 12-11-73;

345-001-0010

Definitions

In this chapter, the following definitions apply unless the context requires otherwise or a term is specifically defined within a division or a rule:

(1) "Applicable Least-cost Plan" means the least-cost acquisition plan or integrated resource plan prepared by or for the specified energy supplier. For any energy supplier primarily providing retail electric service in the State of California that has not prepared a least-cost plan or integrated resource plan, the plan for that energy supplier may be based on the 1992 Electricity Report prepared by the California Energy Commission, until superseded by a subsequent report. For any energy supplier primarily providing retail electric service in the Pacific Northwest Region, as defined in **16 USC §839(a)(14)**, that has not prepared a least-cost plan or integrated resource plan, the plan for that energy supplier may be based on the 1991 Power Plan prepared by the Pacific Northwest Electric Power and Conservation Planning Council, until superseded by a subsequent report.

(2) "Associated Transmission Lines" means new transmission line or lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both to the Northwest Power Grid.

(3) "Background Radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background shall be determined as follows:

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility shall be provided and 6 to 10 measurements shall be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background shall be calculated at the average and at the 95% confidence level.

(b) Environmental samples shall be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples shall be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background shall be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations shall be selected and surveyed. Six to ten samples of each material shall be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements shall include direct radiation (beta-gamma and alpha), wipes, and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout shall be characterized as well.

(d) All measurements shall be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(4) "Biomass Energy Facility" means an electric generating plant which burns wood, solid waste as defined in ORS 459.005, agricultural products, plant or animal waste or gases from the digestion of such materials as fuels to run engine or turbine-generators to produce electricity or to produce steam, which is then converted to electrical energy.

(5) "Certificate Holder" means the person to whom a Site

Certificate has been granted by the Council pursuant to this chapter.

(6) "Chair" means the chairman or chairwoman of the Energy Facility Siting Council.

(7) "Committed Firm Energy and Capacity Resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(8) "Construction" means work performed on a site the cost of which exceeds \$250,000. It does not include surveying, exploration or other activities to define or characterize the site.

(9) "Corridor" means a location for a transmission line or a pipeline as defined in ORS 469.300(10). A corridor may be wide enough to accommodate two or more alternative transmission line or pipeline routes.

(10) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(11) "Damage to Resources" means that damage determined by the Council to be acceptable or inconsequential in ultimate effect in the event a standard or standards of the Council are waived in the decision to issue a site certificate. In considering such a waiver, the Council shall apply the following criteria in making findings regarding acceptable or inconsequential damage:

(a) The uniqueness and significance of the resource affected;

(b) The degree to which the resource is already affected by development pressures;

(c) Are there reasonable alternatives to allowing the damage to occur; and

(d) The magnitude of the anticipated impacts.

(12) "Department" means the Office of Energy created under ORS 469.030.

(13) "Direct Cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(14) "Energy Facility" means an energy facility as defined in ORS 469.300(10). The term "energy facility" does not include any related or supporting facility. If a rule is intended to apply to both the energy facility and its related or supporting facilities, the term "facility" is used.

(15) "Energy Supplier" means

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company; or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(16) "Existing Corridor" means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission line or 100 feet from the physical centerline of the outside lines if the corridor contains more than one transmission line.

(17) "Exemption From Council Jurisdiction" means the approval of an application for exemption pursuant to ORS 469.320(4) and OAR 345-015-0350.

(18) "Facility" means an energy facility defined in ORS 469.300(10), together with any related or supporting facilities as defined in this rule, unless otherwise stated or unless the context clearly indicates otherwise.

(19) "Facility That Is Substantially Similar To the Proposed Facility" means:

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(20) "Firm Deficits" means the year-by-year difference between forecast firm energy and capacity demands and committed firm energy and capacity resources.

(21) "Forecast Firm Energy and Capacity Demands" means the estimated annual and peak energy requirements of future retail customers and existing wholesale customers that the energy supplier is committed to supply on customer demand over a defined time period.

(22) "Fuel Chargeable to Power Heat Rate" means the net heat rate of electric power production during the first twelve months of commercial operation. Fuel chargeable to power heat rate shall be calculated by the following formula with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.

FCP = (FI - FD) / P, where

FCP = Fuel chargeable to power heat rate,

FI = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value),

FD = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value), and

P = Annual Net electric output of the cogeneration facility in kilowatt hours.

(23) "Fossil Fuel" means natural gas, petroleum, coal and any form of solid, liquid, or gaseous fuel derived from such materials which is used to produce useful heat.

(24) "Geothermal Reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(25) "High Efficiency Cogeneration Facility" means an energy facility, except coal and nuclear power plants, which sequentially produces electrical and useful thermal energy from the same fuel source and under normal operating conditions has a useful thermal energy output of no less than 33 percent of the total energy output or a fuel chargeable to power heat rate of no greater than 6000 Btu per kilowatt hour.

(26) "Impact Area" means the area or areas specifically described in the Project Order issued pursuant to 345-015-0160(1), containing resources that may be significantly affected by the proposed facility. A proposed facility may have different impact areas for different types of resources.

(27) "Injection Well" means a well drilled in a known underground reservoir which is proposed to be used for injecting and withdrawing natural gas as required in normal operation of the storage field.

(28) "Land Use Approval" means a final quasi-judicial decision or determination made by a local government that:

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;

(b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;

(c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;

(d) Applies the statewide planning goals to a proposed facility; or

(e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.

(29) "Local Government" means City or County.

(30) "Map" means a copy of a U.S.G.S. topographic map or its equivalent of appropriate size and scale. If practical, maps should be submitted on mylar and rolled, not folded. Mapping information may be submitted in digitized form for use with geographic information systems.

(31) "Mitigation" means taking one or more of the following actions listed in order of priority:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 - (c) Partially or completely rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;
 - (e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or
 - (f) Implementing other measures approved by the Council.
- (32) "Natural Gas" means all gas and all other fluid hydrocarbons not defined as oil in ORS 520.005(6), including condensate originally in the gaseous phase in the reservoir.
- (33) "Natural Gas Fired Facility" means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate fuel use shall not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.
- (34) "Net Electric Power Output" means the electric energy produced or capacity made available for use excluding electricity used in the production of electrical energy.
- (35) "Net Emissions" means all emissions of the specified pollutant less any offset in the form of the reduction of other sources or sequestration of the same pollutant achieved by the applicant. The total resource cost shall include estimates of the purchase cost or resale value of tradeable sulfur dioxide emission allowances under the Clean Air Act, as amended, **42 USC §§7401 to 7642**.

TABLE 1
MONETARY VALUE OF EMISSIONS

Pollutant	Value
Nitrogen Oxides	\$2000/ton
PM-10 Particulates	\$2000/ton
Carbon Dioxide	\$10/ton

- (36) "Nominal Electric Generating Capacity" means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.
- (37) "Overall Public Benefits" means those benefits determined by the Council to outweigh the potential damage to resources if a standard is waived. The Council shall consider the following criteria in making its findings:
- (a) Consistency with Oregon energy policy,
 - (b) The importance of the proposed facility in terms of strategic flexibility
 - (c) Recommendations of a special advisory group, and
 - (d) Improvements to environmental quality afforded by the construction or operation of the facility.
- (38) "Owner" means owner or lessee under a capital lease.
- (39) "Permit" means any permit, license, certificate or other approval required by state statute, state administrative rule or local government ordinance.
- (40) "Person" means an individual, partnership, joint venture, private or public corporation, association, cooperative, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.
- (41) "Pool" means an underground reservoir containing a common accumulation of oil and natural gas. A zone of a structure which is completely separated from any other zone in the same structure is a pool.
- (42) "Project Order" means the order, including any amend-

ments, issued by the office under ORS 469.330.

(43) "Related or Supporting Facilities" means any structure proposed to be built in connection with the energy facility, including but not limited to pipeline valves, regulators, compressors, vaults, enclosures, switching stations, substations, associated equipment, associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures or other structure proposed by the applicant to be constructed or substantially modified in connection with the construction of the energy facility. "Related or supporting facilities" does not include geothermal or natural gas reservoirs, production, injection, withdrawal, or monitoring wells, or wellhead equipment or pumps. The Council interprets the terms "proposed to be built in connection with" as meaning that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. "Related or supporting facilities" does not include any structure existing prior to construction of the energy facility, unless such structure must be significantly modified solely to serve the energy facility.

(44) "Reviewing Agency" means any agency as defined in ORS 183.310(1), and any local government, with legal authority to implement or enforce state statutes, state administrative rules or local government ordinances that must be satisfied in order for the Council to issue a Site Certificate for a proposed facility. "Reviewing agency" includes but is not limited to agencies with the authority to issue or deny permits.

(45) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

(46) "Site" means all land upon which a facility is located or proposed to be located. "Energy facility site" means all land upon which an energy facility is located or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

(47) "Site Certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the state on the applicant.

(48) "Special Nuclear Material" means Plutonium, Uranium-233, or Uranium enriched in the isotope 233 or in the isotope 235.

(49) "Strategic Flexibility" means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

(50) "Study area" means the area over which environmental impacts shall be assessed in the Notice of Intent. The study area is the area within the state measured by the distances described in this definition. If the facility is an electric power generating plant, excluding facilities powered by wind or solar energy, the distances shall be measured from the intersection of the transverse centerline axis and longitudinal centerline axis of the generator, or all such generators where the proposed facility includes multiple generators. If the facility is a synthetic fuel plant, a surface facility related to an underground gas storage reservoir, a liquified natural gas storage facility or a wind or solar powered electric generating plant, the distances below shall be from the proposed site boundary.

(a) For a facility that is a gas-fired combustion turbine electric power generating plant the following distances apply:

- (A) For air quality, five miles;
- (B) For surface water and groundwater quality and availability, 5 miles or the point of withdrawal, whatever is greater;
- (C) For solid and hazardous wastes, the site boundary;
- (D) For wildlife and wildlife habitat, except as provided in subsection (a)(E) of this rule, the site boundary;

(E) For threatened and endangered plant and animal species, 5 miles;

(F) For scenic and aesthetic areas, the line of sight from the highest point of the proposed energy facility site, not to exceed 30 miles;

(G) For cultural resources, the site boundary;

(H) For land use, one-half mile from the proposed site boundary;

(I) For recreational opportunities, 5 miles;

(J) For socio-economic impacts, 30 miles;

(K) For geological impacts, the site boundary; and

(L) For protected areas, 20 miles.

(b) For a facility that is a geothermal electric power generating plant, the following distances apply:

(A) For air quality, five miles;

(B) For surface water quality and availability, the site boundary or the point of withdrawal, whatever is greater, and for groundwater quality and availability, 5 miles;

(C) For solid and hazardous wastes, the site boundary;

(D) For wildlife and wildlife habitat, except as provided in subsection (b)(E) of this rule, the site boundary;

(E) For threatened and endangered plant and animal species, 5 miles;

(F) For scenic and aesthetic areas, the line of sight from the highest point of the proposed energy facility site, not to exceed 30 miles;

(G) For cultural resources, the site boundary;

(H) For land use, one-half mile from the proposed site boundary;

(I) For recreational opportunities, 5 miles;

(J) For socio-economic impacts, 30 miles;

(K) For geological impacts, the site boundary; and

(L) For protected areas, 20 miles.

(c) For a facility that is a biomass, oil-fired or coal-fired electric power generating plant, a synthetic fuel plant or a storage facility for liquified natural gas, the following distances apply:

(A) For air quality, ten miles;

(B) For surface water quality and availability, the point of withdrawal, or 1 mile upstream and 15 miles downstream, whatever is greater and for groundwater quality and availability, 10 miles;

(C) For solid and hazardous wastes, the site boundary;

(D) For wildlife and wildlife habitat, 10 miles;

(E) For threatened and endangered plant and animal species, 10 miles;

(F) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(G) For cultural resources, the site boundary;

(H) For land use, one-half mile from the proposed site boundary;

(I) For recreational opportunities, 10 miles;

(J) For socio-economic impacts, 30 miles;

(K) For geological impacts, the site boundary; and

(L) For protected areas, 20 miles.

(d) For a facility that is an electric power generating plant using solar power, the following distances apply:

(A) For air quality, the site boundary;

(B) For wildlife and wildlife habitat, the site boundary;

(C) For threatened and endangered plant and animal species, the site boundary;

(D) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(E) For cultural resources, the site boundary;

(F) For land use, one-half mile from the proposed site boundary;

(G) For recreational opportunities, 5 miles;

(H) For socio-economic impacts, 30 miles;

(I) For geological impacts, the site boundary; and

(J) For protected areas, 20 miles.

(e) For a facility that is an electric power generating plant using wind power, the following distances apply:

(A) For wildlife and wildlife habitat, the site boundary;

(B) For threatened and endangered plant and animal species, the site boundary;

(C) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(D) For cultural resources, the site boundary;

(E) For land use, one-half mile from the proposed site boundary;

(F) For recreational opportunities, 5 miles;

(G) For socio-economic impacts, 30 miles;

(H) For geological impacts, the site boundary; and

(I) For protected areas, 20 miles.

(f) For a facility that is a pipeline or a transmission line, "study area" means the following areas:

(A) For surface water and groundwater quality and availability, the proposed corridor(s) described in the Notice of Intent;

(B) For wildlife and wildlife habitat, and threatened and endangered plant and animal species, the proposed corridor(s) described in the Notice of Intent;

(C) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(D) For cultural resources, the proposed corridor(s) described in the Notice of Intent;

(E) For land use, one-half mile from each side of the proposed corridor(s) described in the Notice of Intent;

(F) For recreational opportunities, the proposed corridor(s) described in the Notice of Intent;

(G) For geological impacts, the proposed corridor(s) described in the Notice of Intent; and

(H) For protected areas, 20 miles.

(g) For a facility that is a surface facility related to an underground gas storage reservoir, "study area" means the following areas:

(A) For surface water and groundwater quality and availability, the site boundary;

(B) For wildlife and wildlife habitat, and threatened and endangered plant and animal species, the site boundary;

(C) For scenic and aesthetic areas, the line of sight from the highest point of the facility not to exceed 30 miles;

(D) For cultural resources, the site boundary;

(E) For land use, one-half mile from the center of the proposed surface facility related to an underground gas storage reservoir;

(F) For recreational opportunities, the area within 5 miles of the site boundary;

(G) For socio-economic impacts, the area within 30 miles of the site boundary; and

(H) For geological impacts, the site boundary.

(h) For the purposes of this definition, "site boundary" means the site of the proposed facility and its related or supporting facilities, including but not limited to access road rights-of-way.

(51) "Substantial Loss of Steam Host" means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(52) "Substantial Loss of Fuel Use Efficiency" means a reduction in fuel use efficiency at a high efficiency cogeneration facility to greater than 7000 Btu per kWh (fuel chargeable to power heat rate), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(53) "Surface Facilities Related To an Underground Gas Storage Reservoir" means structures or equipment adjacent to and associated with an underground gas storage reservoir which are proposed to be built in connection with an underground gas storage reservoir and shall include, but are not limited to:

(a) Major facilities such as compressor stations, stripping plants and main line dehydration stations;

(b) Minor facilities such as offices, warehouses, equipment

shops, odorant storage and injection equipment, and compressors rated less than 1,000 horsepower;

(c) Pipelines, such as gathering lines and liquid collection lines; and

(d) Roads and road maintenance equipment housing at the reservoir site.

(54) "Thermal Power Plant" means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to, a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. "Thermal Power Plant" includes a nuclear-fueled thermal power plant that has ceased to operate.

(55) "Total Energy Output" means the sum of the net electric power output and useful thermal energy output.

(56) "Total Resource Cost" shall be calculated using consistent financial assumptions between resource types. "Total Resource Cost" means the sum of:

(a) The direct cost of conservation or other non-generation resources;

(b) 1.1 times the direct cost of generation facilities, including incremental transmission and distribution costs; and

(c) The discounted sum of the net emissions of pollutants listed in Table 1 of the definition of "Net Emissions" in this rule, multiplied by their respective monetary values.

(57) "Underground Gas Storage Reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for the injection, storage and withdrawal of natural gas or other gaseous fuel substances including a pool as defined in ORS 520.005.

(58) "Useful Thermal Energy" means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(59) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(60) "Vice-chair" means the vice-chairman or vice-chairwoman of the Energy Facility Siting Council.

(61) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the Federal Government.

(62) "Wildlife" means fish, wild birds, shellfish, intertidal animals, invertebrates, amphibians, reptiles and wild mammals.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.300 to ORS 469.570, ORS 469.590 to ORS 469.619 and ORS 469.992

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 8-1981, f. & ef. 10-29-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 1-1993, f. & cert. ef. 1-15-93; Renum-

bered from 345-079-0025, 345-100-0025, 345-111-0020 & 345-125-0025; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-001-0020

Purpose

(1) The purpose of the rules of this Chapter is to establish application requirements, review procedures and standards for the siting, construction, operation and retirement of energy facilities to assure that such facilities are sited, constructed, operated and retired in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.

(2) Except as indicated otherwise, the rules of this Chapter will be used by the Council to determine whether Site Certificate should be granted or denied and, if granted, to oversee the construction, operation and retirement of the facility. The rules of this Chapter will be used also in proceedings for amendment, suspension, revocation, transfer or termination of a Site Certificate.

(3) When the Council deems appropriate, it may adopt additional rules governing the siting of facilities. Any additional rules will be adopted sufficiently in advance of the close of testimony at a hearing on a Site Certificate to allow parties to address the rule, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the new rule.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.310 & ORS 469.470

Hist.: EFSC 8-1978, f. & ef. 11-17-78; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-079-0010, 345-080-0010, 345-100-0010, 345-111-0005, 345-115-0010 & 345-125-0010; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0030

Applicability

(1) The rules in this chapter are applicable to all matters under Council jurisdiction, except a Site Certificate which has been executed by the Council before November 30, 1994.

(2) A certificate holder may request amendment to the Site Certificate, under the provisions specified in the Site Certificate, to make applicable to the facility any newly adopted division of this chapter.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.310 and ORS 469.320

Hist.: EFSC 8-1978, f. & ef. 11-17-78; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 8-1981, f. & ef. 10-29-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-079-0012, 345-079-0015, 345-080-0012, 345-080-0015, 345-100-0012, 345-100-0015, 345-111-0015, 345-115-0012, 345-115-0015, 345-125-0012 & 345-125-0015; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-001-0035

Electric and Magnetic Fields Committee

An Electric and Magnetic Fields Committee of the Council is established.

(1) The committee shall be comprised of representatives of the public, utilities, manufactures, state agencies and Council members, appointed by the Chair. The Chair may delegate the authority to set meeting dates and agendas to the Committee.

(2) The committee shall monitor information available and being developed on the health effects of exposure to low frequency electric and magnetic fields and report the committee's findings periodically to the Council. The Council shall report the findings of the committee to the Energy Policy Review Committee and the Legislative Assembly.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.480

Hist.: EFSC 1-1995, f. & cert. ef. 5-15-95

345-001-0040

Information Exempt from Public Records Law

All information filed with or submitted to the department or Council under the requirements of this chapter shall be made available for public inspection and copying pursuant to ORS 469.560(1), OAR 345-001-0050, and this rule unless the person filing or submitting the information designates, at the time of filing or submission, what information that person considers exempt from the public records law, ORS Chapter 192 as provided for in ORS 469.560(2). The Council and department shall treat information so designated as confidential unless, upon a written request, the Council or the Attorney General, pursuant to ORS 192.450, determines that the exemption is not applicable.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.560

Hist.: EFSC 1-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-100-0055 & 345-125-0100; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0050

Public Records Availability and Fees for Copying

(1) Except for permanent records that have been turned over to the State Archives, all public records of the Council and the department are available for public inspection and copying at the department during usual business hours except for that information which has been designated exempt from the public records law in accordance with ORS Chapter 192, ORS 469.560(2), and OAR 345-001-0040.

(2) Public records may be inspected by and copied for any person who makes a written request containing the following information:

(a) Name, address and telephone number of the person requesting the record;

(b) The date on which the request was submitted to the department and the date by which the requester would like the inspection or copying to occur;

(c) A description of the record requested including an index reference if the matter is indexed; and

(d) Whether a certified copy is requested.

(3) No fees are charged for inspection of public records unless the records are stored off the premises of the department in which case the department may charge for the staff time necessary to make the records available to the requester. Except as provided in section (4) of this rule, fees for the reproduction of any department or Council document or proceeding shall be as follows:

(a) Requesters will be charged a fee not to exceed five cents (\$.05) per page of copy for use of the department's photocopying equipment in cases where no significant staff time is utilized by the request. For requests which require significant staff time, photocopying costs may include, in addition to a per-page charge, the cost of that staff time not to exceed ten dollars (\$10.00) per hour. Charges for photocopying costs shall be paid prior to delivery of documents except no advance payment shall be required of other government agencies or parties in proceedings before the Council;

(b) Requesters will be charged a fee of five dollars (\$5.00) per tape for copies of cassette tapes of Council proceedings. Requesters will be charged five dollars (\$5.00) per disk for any public document in a medium and format utilized by the department on 3-1/2 or 5-1/4 inch floppy disk;

(c) The department may charge fees for reimbursement of expenses in providing printed reports and FAX services to the public.

(4) Any fee established in sections (1) through (3) of this rule may be reduced or waived by the secretary of the Council if the reduction or waiver is in the public interest because making the record or document available benefits the general public. A person may request a fee reduction or waiver of a fee by submitting a Fee Reduction/Waiver Request Form to the secretary of the Council. Forms are available at the secretary's office in the department. A

person who believes that there has been an unreasonable denial of a fee reduction or fee waiver may petition, in writing, the Attorney General or the district attorney pursuant to ORS 192.440 and 192.450.

(5) Any permanent record of the Council kept by the State Archivist can be reviewed at the State Archive building, 800 Summer St., Salem, OR 97310.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.560

Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-001-0060

Council Representation in Other Agency Hearings

(1) A Council member, an officer of the department, or an employee of the department is authorized to appear, but not make legal argument, on behalf of the Council in a hearing or in a class of contested case hearings in which the Attorney General or the Deputy Attorney General has given written consent to the Council member, the department officer, or department employee pursuant to ORS 183.450(7) to represent the Council. Prior to each contested case hearing in which the Council wishes to appear by a member, department officer or department employee, the Council shall request written consent from the Attorney General or the Deputy Attorney General for the designated representative to appear on behalf of the Council. A copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given consent is maintained by the department and the Department of Justice.

(2) Legal argument as used in this rule has the same meaning as in OAR 137-003-0008(1)(c) and (d).

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 1-1988, f. & cert. ef. 5-11-88; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-010-0028

345-001-0070

Declaratory Rulings

The Attorney General's Uniform Rules of Procedure (November 1993) governing declaratory rulings, OAR 137-002-0010 through 137-002-0060, are hereby incorporated by this reference and adopted.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.490

Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0080

Reconsideration and Rehearing — Orders in Other Than Contested Cases

(1) A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration or rehearing with the Council within 60 days after the date of the order. A person seeking reconsideration or rehearing shall deliver or mail a copy of the petition to all other persons and agencies required by statute or rule to be notified.

(2) The petition shall set forth the specified grounds for reconsideration. The petition may be supported by a written argument.

(3) The petition may include a request for a stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).

(4) The petition may be granted or denied by summary order, and, if no action is taken, shall be deemed denied as provided by ORS 183.484(2).

(5) Any Council member may move for reconsideration of a final order in other than a contested case within 60 days after the date of the order. Reconsideration shall be granted if approved by a majority of the Council. The procedural and substantive effect of granting reconsideration under this subsection shall be identical to the effect of granting a party's petition for reconsideration.

(6) Reconsideration shall not be granted after the filing of a

petition for judicial review unless permitted by the court.

(7) A final order remains in effect during reconsideration until stayed or changed.

(8) At the conclusion of a reconsideration, the Council shall enter a new order, which may be an order affirming the existing order.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94

345-001-0090

Interpretation of Added Capacity — Existing Facilities

(1) Expansion or modification of a facility for which the Council has issued a Site Certificate is subject to the provisions of, and must be undertaken under, division 27 of this chapter.

(2) Energy facilities for which the Council has not issued a Site Certificate that had operable generating equipment on August 2, 1993 are exempt from the requirement to obtain a Site Certificate for a modification that uses the same fuel type and increases electric generating capacity if:

(a) The site is not enlarged; and

(b) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million BTU per hour greater than it was on August 2, 1993, or the facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(3) In a proceeding to issue a Site Certificate for an existing energy facility the Council shall limit its consideration to the effects that may result from the proposed expansion of the facility.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.320

Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 11

COUNCIL MEETINGS

345-011-0000

Authority and Purpose

The purpose of these rules is to provide procedures for the orderly conduct of meetings of the Council. These rules are adopted pursuant to ORS Chapter 183 and ORS 469.470.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0005

Quorum and Rules of Order

(1) Five members of the Council constitute a quorum. The Council may meet to discuss any matter in the absence of a quorum, but may take no formal action on any matter unless a quorum is present.

(2) A majority of the Council members present at a meeting must concur in order for the Council to act on any matter before it; however, in accordance with ORS 469.370(1), a Council decision to approve or reject an application for a site certificate requires the affirmative vote of at least four members.

(3) Any proposed Council action must be moved by a Council member and seconded by another Council member before a vote may be taken by the Council.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.370, ORS 469.460 & ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0010

Officers

(1) The Council shall annually elect a chair, and vice-chair. The chair and vice-chair, shall serve for one year or until their successors are elected. A member may serve successive full terms as chair or vice-chair. The chair or vice-chair may be removed by a unanimous vote of the other Council members.

(2) The chair shall preside over all Council meetings; shall determine, in cooperation with the Council secretary, the location of the Council meetings; and shall execute all written documents which must be executed in the name of the Council. The administrator of the department's Division of Nuclear Safety and Energy Facilities shall serve as Council secretary.

(3) The chair may take action on behalf of the Council in emergencies which arise between meetings, subject to ratification by the Council. Where practicable, the chair shall advise all members by telephone of any action proposed to be taken in an emergency.

(4) The vice-chair shall act in lieu of the chair when the chair is unable to perform any of his or her responsibilities.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 2-1985, f. & ef. 2-5-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1987, f. & ef. 4-21-87; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0015

Meetings — Date and Location Notice

(1) The Council shall meet periodically as determined by a majority of the Council, at a time and place specified by the chair. The Council may vary the locations of its meetings in order to give persons throughout the state an opportunity to observe and participate in its activities. The Secretary, consistent with the requirements of ORS 192.610 to 192.690, shall give notice of each meeting of the Council.

(2) The Governor or chair may call a special meeting to be held at any place in this state, designated by the person calling the meeting, upon 24 hours' notice to each Council member and the public. In the event of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.460 & ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0020

Agendas for Regular Meetings

(1) The secretary shall prepare an agenda for each regular Council meeting after consulting with the chair. The agenda shall specify all matters scheduled to come before the Council at the meeting and shall identify the proponent of items placed thereon at the request of members of the public pursuant to the rules of this division.

(2) The agenda may contain a consent calendar, identifying items which are considered routine, such as minutes of previous meetings and personnel recognitions, which will be acted upon without public discussion. However, if a Council member objects to an item on the consent calendar, it will be removed from the consent calendar and placed on the regular agenda for discussion.

(3) Each agenda shall include a designated time period which has been reserved for the presentation of concerns by interested citizens who wish to address the Council regarding any item within the Council's jurisdiction. The duration of this period will be established by the chair and may be lengthened or shortened at the Council meeting by the chair as the length of the meeting, timing and duration of other Council business dictate.

(4) The agenda, together with minutes of all previous meetings which have not been approved by the Council, shall be mailed to Council members at least one week prior to a regular meeting. The secretary shall also send the agenda to each person or organization on the Council's general mailing list.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.460 & ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0025

Consideration of Matters not on Agenda

A Council member or the Council secretary may, with the approval of a majority of Council members, raise matters at a meeting which were not placed on the agenda. A matter not on the agenda may not be acted upon unless a majority of the members present agree that the matter is so substantial and of such immediate concern that it cannot be deferred until the next regular Council meeting.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0030

Order of Business

(1) The order of business of Council meetings shall be as follows:

(a) Introduction of new Council members, resolutions for retiring Council members, and other personnel recognition;

(b) Announcements;

(c) Minutes of previous Council meetings including corrections, additions and approval. If minutes have been mailed to Council members prior to the meeting, the reading of the minutes may be waived;

(d) Reports of standing and special committees;

(e) Consideration of agenda items.

(2) The chair, unless a majority of the Council disagrees, may revise the order of business, and may limit debate on any item as necessary to conduct the meeting fairly and efficiently.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0035

Request to Place Action and No-Action Items on Agenda

(1) Any person may request the Council to take formal action on a particular subject. The Council intends to employ a first and second reading approach for all such requests. The requester shall notify the department in writing of the agenda request. The request must be received by the Council secretary at least 14 days before the regularly scheduled meeting for which the agenda item is proposed as a discussion item. With the concurrence of the chair the request will be placed on the agenda for the next regularly scheduled meeting occurring more than 14 days after the request is received by the Council secretary. The request shall be treated as a discussion item at that meeting, and may be scheduled as an action item at any subsequent Council meeting. The Council will not take final action on any discussion item unless the request at issue constitutes an emergency.

(2) Any person may request placement of an item for discussion only on an agenda of a regular Council meeting, including a suggestion for a meeting location. The requester shall notify the department in writing of the agenda request. The request must be received by the Council secretary at least 14 days before the regularly scheduled meeting for which the agenda item is proposed. With the concurrence of the chair, the item will be placed on the agenda for the next regularly scheduled meeting occurring more than 14 days after the request is received by the Council secretary.

(3) The provisions of section (1) of this rule do not apply to petitions requesting the Council to initiate a rulemaking proceeding, OAR 137-001-0070, or petitions requesting the Council to issue a declaratory ruling, OAR 137-002-0010.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-011-0040

345-011-0045

Committees and Subcommittees

(1) The chair may appoint Council members to committees and subcommittees, alter the number of members of such committees and subcommittees, and abolish committees and subcommittees at any time unless disapproved by a majority of the Council. The individuals on such committees and subcommittees need not act as a group nor reach a consensus, but may report to the Council individually.

(2) Membership of the committees and subcommittees appointed by the chair shall be recorded in the minutes of the Council. The secretary, consistent with the requirements of ORS 192.610 to 192.690, shall give notice of each meeting of Council committees and subcommittees.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0050

Council Files — Duties of Secretary

Minutes of all Council meetings, Council committee meetings and other records of the Council shall be maintained by the Council secretary in the Council's office at the department for at least five years and thereafter deposited in the State Archives. The Council secretary shall keep a record of the location of all files.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0055

Council Communications

No member of the Council may write letters, other than routine or form letters, in the name of the Council unless authorized by a majority of the Council. Any letter issued on behalf of the Council shall be prepared by the Council Secretary with a copy retained in the Council office and a copy transmitted to each Council member. Any correspondence which may materially affect policies and procedures of the Council shall be approved by a majority of the Council members prior to issuance. In an emergency, when delay may impair the Council's ability to carry out its responsibilities, the chair may take immediate action and report such action at the next meeting of the Council.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0060

Waiver and Suspension

Inadvertent failure by the Council to comply with the rules of this division shall not invalidate any action taken by the Council. The Council may, by a majority vote of the quorum present, temporarily suspend application of the rules of this division.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93

345-011-0070

Council Requests for Information

The Council may at any time request the filing of information from any person subject to the Council's jurisdiction with respect to any matter within its jurisdiction.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.350 & ORS 469.470

Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-010-0015

345-011-0080

Appearances Before Council

The chair or the Council's hearing officer at any Council

meeting or hearing may expel a person from the Council proceeding if that person engages in conduct that disrupts the proceeding.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 4-1981, f. & ef. 3-25-81; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-010-0021

DIVISION 15

PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF ENERGY PROCEEDINGS, INCLUDING SITE CERTIFICATE HEARINGS

345-015-0001

Purpose and Authority

These rules, authorized by ORS 469.040, 469.470 and 469.490, establish procedures governing department and Council review processes, including contested case hearings.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.040, ORS 469.470 & ORS 469.490

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-015-0002

Model Rules

The Attorney General's Uniform and Model Rules of Procedure (November 1995) governing contested cases, OAR 137-003-0001 through 137-003-0092 and 137-001-0005, with the exception of 137-003-0007(5), are hereby incorporated by this reference and adopted. Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of notice of a contested case hearing, the Council shall direct staff to enter into the record the substance of any significant contact between a Council member and department staff from that point forward, concerning facts in the record. The provisions of these Model Rules shall apply to all contested case hearings required under the provisions of this chapter. In any conflict between the Model Rules and Council rules, the Council rules shall apply.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

Procedures for the Conduct of Contested Cases

345-015-0012

Filing and Service of Documents in a Contested Case

(1) The hearing officer shall specify permissible means of filing and service of any pleading or document. The methods of filing with the Council or its hearing officer, and service upon any party or limited party, may include, but are not limited to personal delivery, first class or certified mail (properly addressed with postage prepaid), facsimile or other electronic means. After the appointment of a hearing officer in a contested case, any pleading or document which must be filed with the Council under this chapter shall be filed with the hearing officer.

(2) A pleading or document filed with the Council shall be accompanied by as many copies as required by the Council or its hearing officer and a certificate of service stating the names and addresses of the persons upon whom a true copy of the document was served and the date of service.

(3) Upon motion by any party, the hearing officer may waive requirements for serving parties who are no longer actively participating in the proceeding and may modify the requirements for serving a limited party consistent with such party's limited interest.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93;

EFSC 5-1994, f. & cert. ef. 11-30-94

345-015-0014

Contested Case Notices

(1) Following a Council decision to grant a contested case, or if for a mandatory contested case on a Site Certificate Application, following the issuance of a proposed order on the Site Certificate Application, the department shall issue a contested case notice as described in ORS 183.415(2). The notice shall specify a date by which others must request party or limited party status, and shall set a date for the prehearing conference. If the contested case is for an application for Site Certificate, the notice shall be sent to the applicant and to all persons who appeared in person or in writing at the public hearing on the Site Certificate Application. For any other contested case, the notice shall be sent to parties, to the Council's general mailing list and to any mailing list established for the matter that is the subject of the contested case hearing.

(2) If the contested case is for a Site Certificate Application:

(a) The Council will permit any person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the Site Certificate Application, and

(b) The contested case notice shall advise that a party may not advance an issue unless that party raises it in person or in writing on the record of the public hearing on the department's proposed order, unless the action recommended in the department's proposed order, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case a party may only raise new issues related to such differences.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370, ORS 469.380

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0016

Requests for Party or Limited Party Status

(1) A request to participate as a party or limited party in a contested case proceeding shall meet the requirements of OAR 137-003-0005 except that the request shall be filed by the date established in the department's public notice of a contested case issued under OAR 345-015-0014(1).

(2) The hearing officer's determination on a request to participate as a party or limited party shall be final unless appealed to the Council within seven days of the date of service of the written determination on all parties.

(3) The hearing officer may allow state or local government agency staff to participate as an interested agency. The department shall participate in the contested case and shall have all the rights of a party. As used in this division, the term "party" shall include such an interested agency.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.380

Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0018

Authorized Representative

A party or limited party participating in a contested case hearing before the Council may be represented by an authorized representative as provided in OAR 137-003-0008.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 1-1988, f. & cert. ef. 5-11-88; EFSC 1-1993, f. & cert. ef. 1-15-93

345-015-0022

Petition for Indigent Status

(1) By petition to the hearing officer in a contested case hearing a party or limited party may request to be treated as an indigent. A petition for indigent status shall state in detail the facts demonstrating that the petitioner is indigent in the context of the

financial burdens associated with full participation as a party or limited party in the contested case hearing and the reasons why petitioner would be prejudiced if indigent status were not granted.

(2) The hearing officer shall issue a determination on a petition for indigent status in writing and shall state the grounds for the determination, which shall be final unless appealed to the Council within seven days of the date of service of the determination on all parties.

(3) The hearing officer may excuse a person granted indigent status from such requirements of the rules of this division as the hearing officer determines appropriate. As determined by the hearing officer, the Council may provide for the cost of service of pleadings and other documents, reasonable travel expenses of witnesses and copies of the record necessary to enable a person granted indigent status to participate fully in the contested case hearing.

(4) Petitions for indigent status shall be filed by the time of the prehearing conference.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93;

EFSC 5-1994, f. & cert. ef. 11-30-94

345-015-0023

Duties of Hearing Officer

(1) The Council shall appoint a hearing officer to conduct a contested case hearing on behalf of the Council or to compile the record and recommend resolution of objections to the record of a local land use proceeding held pursuant to ORS 469.503(2)(a). The Council may appoint a Council member, department staff, or some other person or persons as it sees fit.

(2) A hearing officer shall take all necessary action to:

- (a) Ensure a full, fair and impartial hearing;
- (b) Facilitate presentation of evidence;
- (c) Comply with statutory time limits on Council decisions;
- (d) Maintain order; and
- (e) Assist the Council in making its decision.

(3) At the commencement of a contested case hearing, the hearing officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing officer shall maintain a complete and current record of all motions, rulings, testimony and exhibits during the course of the hearing. The hearing officer shall keep the Council informed regularly on the status of the contested case.

(5) The hearing officer is authorized to carry out the responsibilities assigned in this rule, including but not limited to the authority to:

- (a) Administer oaths and affirmations;
- (b) Rule on offers of proof and receive evidence;
- (c) Order depositions and other discovery to be taken and to issue subpoenas;
- (d) Order and control discovery as provided in OAR 137-003-0025 and all other aspects of the contested case hearing, the order of proof, and the conduct of the participants;
- (e) Dispose of procedural matters and rule on motions;
- (f) Call and examine witnesses;
- (g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0035, before or during the hearing for settlement, simplification of issues, or any other purpose the hearing officer finds necessary. The hearing officer may limit the issues of the contested case including determining those issues that have been raised with sufficient specificity in the public hearing;

(h) Continue the hearing from time to time;

(i) Issue protective orders in accordance with the standards of Rule 36(C) of the **Oregon Rules of Civil Procedure**.

(j) At the request of the Council, or upon motion of a party for good cause shown as provided in OAR 345-015-0062, and with reasonable notice to all parties, reopen the hearing for reception of further evidence on issues identified in the notice at any time prior to final decision by the Council;

(k) Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its con-

sideration and disposition;

(l) Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and

(m) Take any other action consistent with the Council's governing statutes and the Council's rules.

(6) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of contested case hearing, the hearing officer shall enter into the record the substance of any significant contact with department staff or the parties from that point forward concerning facts in the record.

(7) The Council may, on its own motion or upon the motion of a party, remove a hearing officer if it determines that the hearing officer is not competent to conduct the proceeding, is demonstrably biased against any of the parties thereto, or is otherwise unable to conduct the proceeding.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.370, ORS 469.380

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC

1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0027; EFSC 5-1994,

f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0024

Suspension of Hearing and Exclusion of a Party

(1)(a) If any person engages in conduct which interferes with the hearing officer's duty in connection with any aspect of a contested case proceeding, or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently;

(b) Conduct which interferes with the hearing officer's duties may include, but not be limited to, conduct impeding discovery, hearing schedules or the conduct of the contested case hearing.

(2) An order permanently excluding a party, limited party, or legal counsel from further participation in a contested case proceeding shall be in writing, shall state the grounds for the order, and shall be final unless an appeal is filed with the Council within seven calendar days of service of the order on all parties.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC

1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0027; EFSC 5-1994,

f. & cert. ef. 11-30-94

345-015-0038

Separate Hearings

The Council or its hearing officer may order separate hearings on particular matters at issue in a contested case in order to conduct the entire proceeding expeditiously.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93

345-015-0043

Evidence: Prefiled Testimony

A hearing officer may require the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits which a party or limited party proposes to introduce in conjunction with the testimony of a witness to be filed in writing with the hearing officer and served upon all parties in the contested case.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93

345-015-0046

Evidence: Official Notice

(1) In a contested case proceeding the hearing officer may take official notice of the following:

(a) All facts of which the courts of the State of Oregon may take judicial notice;

(b) Administrative rulings and reports of the Council and other governmental agencies;

(c) Facts contained in permits and licenses issued by the Council or any other government agency;

(d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and

(e) General, technical or scientific facts within the Council's or department's specialized knowledge.

(2) The hearing officer shall notify parties of facts to be officially noticed. Parties shall be afforded an opportunity to contest the facts so noticed.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370 & ORS 469.380

Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0051

Evidence: Resolutions of Municipal Corporations and Civic Organizations

A certified copy of a resolution of a governing body of a municipal corporation or a civic organization shall be received in evidence if offered by a member of the governing body. Such resolutions shall be received subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. Such resolutions shall only be received for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution but shall not be deemed proof of such facts.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93

345-015-0054

Motions

(1) All motions in a contested case shall be addressed to or filed with the hearing officer. Unless made orally on the record during a contested case hearing, or unless the hearing officer directs otherwise, a motion shall be in writing, shall state with particularity the grounds and the relief sought, and shall be accompanied by any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. All written motions shall be served on all parties to the contested case.

(2) Within seven calendar days after the date of service of a written motion, or such other period as the hearing officer may prescribe, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the presiding officer.

(3) No oral argument may be heard on a motion unless permitted by the hearing officer. A motion shall be disposed of by written order of the hearing officer which shall be served on all parties or read into the hearing record.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0057 & 345-015-0059

345-015-0057

Prohibitions on Interlocutory Appeals to Council

(1) Except as otherwise specifically provided for in the rules of this division, no party may take an interlocutory appeal to the Council from a ruling of the hearing officer unless such ruling would terminate a party's right to participate in the contested case proceeding.

(2) An appeal involving a party's right to participate in a contested case proceeding, with supporting arguments and documents, shall be filed with the Council within seven calendar days of the date of the ruling of the hearing officer.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0054(6)

345-015-0059

Prohibitions on Stays

Unless otherwise ordered by the hearing officer, neither the filing of a motion nor the certification of a question to the Council shall stay a contested case proceeding or extend the time for the performance of any act.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0054(7)

345-015-0062

Reopening Record Prior to Decision

The Council or its hearing officer, on its own motion or for good cause shown, may reopen the hearing record for the taking of additional evidence while the proceeding is under advisement with the hearing officer or the Council. In addition to good cause, the moving party shall show that:

(1) The evidence is material to the proceeding; or

(2) The evidence would substantially affect the outcome of the proceeding.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0048

Specific Procedures for Site Certificates Applications and Amendments of Site Certificates

345-015-0080

Participation by Other Government Agencies

Reviewing agencies shall participate in a contested case hearing for a proposed facility, as appropriate, by providing testimony and other evidence on the proposed facility's compliance with statutory standards, administrative rules and ordinances that are applicable to the proposed facility and administered by the reviewing agency, and by proposing conditions to ensure compliance with such statutes, rules and ordinances.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 14, f. & ef. 10-12-76; EFSC 8-1980, f. & ef. 10-31-80; EFSC 6-1986, f. & ef. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0026; EFSC 5-1994, f. & cert. ef. 11-30-94

345-015-0083

Prehearing Conference and Prehearing Order

(1) Following the department's notice of contested case hearing, the hearing officer shall conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0035. At the conclusion of the conference(s) the hearing officer shall issue a prehearing conference order stating the issues to be addressed in the contested case hearing, and in a contested case for a Site Certificate Application, limiting parties to those issues they raised on the record of the public hearing on the department's draft proposed order. The hearing officer shall not receive evidence or hear legal argument on issues not identified in the prehearing order.

(2) Failure to raise an issue in the prehearing conference(s) for the contested case hearing on the application constitutes a waiver of that issue.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370 & ORS 469.380

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0085

Hearing Officer's Proposed Order — Exceptions

(1) Consistent with a schedule set by the hearing officer, and

in any event prior to the close of the taking of evidence in a contested case on an Application for Site Certificate, the hearing officer shall allow any party to propose in writing the conditions to be attached to the issuance of a Site Certificate which the party believes are necessary or appropriate to implement the policy of ORS 469.310 and to meet the requirements of any other applicable statute, administrative rule or local government ordinance.

(2) Any party may present evidence relating to the appropriateness, scope or wording of any other party's proposed Site Certificate conditions and may present written proposed findings of fact, briefs and other argument concerning proposed conditions.

(3) At the conclusion of the hearing on the Application for Site Certificate, the hearing officer shall issue a proposed order granting or denying the site certificate, which shall be served on all parties. The proposed order shall include the hearing officer's recommended resolution of objections to the local land use record, if any. The hearing officer's recommendation shall be part of the decision record for the application, but shall not be made part of the Council's order.

(4) Parties may file exceptions to the proposed order within the time set by the hearing officer, not to exceed 30 days after the hearing officer issues the proposed order. Service of exceptions must be on all parties. Exceptions must specifically identify the finding of fact, conclusion of law or condition to which the party excepts, and state the basis for the exception.

(5) Parties may file responses to exceptions within the time set by the hearing officer, not to exceed 15 days after the time set for filing exceptions. Service of responses to exceptions must be on all parties.

(6) The Council may either adopt, modify or reject the hearing officer's proposed order.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 8-1980, f. & cf. 10-31-80; EFSC 6-1986, f. & cf. 9-12-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0053; EFSC 5-1994, f. & cert. ef. 11-30-94

Procedures for Oregon Department of Energy Review of an Application for Site Certificate

345-015-0100

Notice of Intent to Submit an Application — Submission

(1) In accordance with ORS 469.330, any person intending to submit an Application for Site Certificate must submit a Notice of Intent containing the information and in the form required by Division 20 of this chapter. The Notice of Intent shall be accompanied by the fee required by the fee schedule established under ORS 469.442, made payable to the Oregon Department of Energy.

(2) Notwithstanding the requirement of section (1) of this rule, any person intending to submit an application for an energy facility with a nominal electric generating capacity of greater than 25 but less than 100 megawatts, and who requests expedited review pursuant to ORS 469.370(4), is not required to submit a Notice of Intent.

(3) Six copies of the Notice of Intent shall be submitted with the original. The department may request additional copies if necessary for review.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-015-0110

Notice of Intent — Public Notice

(1) The department shall notify, by certified mail, the person submitting the Notice of Intent of the Council's procedural requirements. The notice shall include a brief description of the state agency review process set forth in OAR 345-020-0040 and 345-021-0050 and 345-021-0060 and an explanation that the applicant must apply for the permits necessary to the construction and operation of the proposed facility by filing separate applications with the agencies with authority to issue such permits. The

notice shall also state that the department will conduct a completeness review of the NOI to determine if the information submitted has sufficient detail on which to base the issuance of the project order. The department may withhold issuance of the project order if it feels there is not sufficient information in the NOI on which to base the order.

(2) The department shall inform the public of the submission of the Notice of Intent by mailing notice to persons on the Council's general mailing list and:

(a) Except as provided in section (2)(b), by publishing notice in a newspaper of general circulation available in the study area of the proposed facility; or

(b) If the energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, by publishing notice in one or, if possible, two newspapers of general circulation in the study area of the proposed facility. Additionally, the department shall mail notice to those landowners within and adjacent to the corridor(s) described in the Notice of Intent whose names and addresses the applicant has supplied pursuant to OAR 345-020-0011(1)(c).

(3) Public notice that a Notice of Intent has been submitted shall contain the following information:

(a) A description of the proposed facility;

(b) The location of the site of the proposed facility by section, township, range and county, as described in the Notice of Intent;

(c) A summary of the anticipated environmental impacts of the proposed facility, as described in the Notice of Intent;

(d) A brief discussion of the need for the proposed facility, as described in the Notice of Intent;

(e) The date anticipated for the filing of the Application for a Site Certificate;

(f) A brief description of the Council's review process, including a statement that failure to raise an issue in person or in writing by the close of comment for the public hearing on the department's draft proposed order will preclude participation in the contested case portion of the review, and preclude any appeal of the Council's final decision;

(g) An explanation that the applicant may choose to meet the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval from the affected local government and that any person interested in land use issues should participate in that affected local government's land use process if it is not yet complete;

(h) The date, time and location of any informational meeting that has been scheduled on the Notice of Intent;

(i) The address of the department where more information regarding the Notice of Intent may be obtained; and

(j) If the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, the notice shall include:

(A) An explanation that the Council will select one corridor, unless the applicant requests the selection of more than one corridor, for inclusion in the Application for Site Certificate after the informational hearing on the Notice of Intent;

(B) A deadline for submitting written comments on alternative corridors and corridor selection; and

(C) The name and address of the person to whom written comments should be submitted.

(4) It is Council policy to encourage public participation in local land use decisions on energy facilities. To that end, the Council encourages the department to send notice to the Council's mailing list if the department learns that a potential applicant has applied for local land use approval.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0120

Circulation of Submitted Notice of Intent to Other Agencies - Department Memorandum

The department shall prepare a memorandum to accompany the Notice of Intent to be distributed by the person submitting the Notice of Intent as provided for in OAR 345-020-0040(2). The memorandum shall:

(1) Request the recipient to return comments or recommendations to the department by a specified date;

(2) Describe the matters to be covered in the comments or recommendations, as set forth in OAR 345-020-0040(3) and (4); and

(3) State the date, location, agenda and purpose of any informational meeting that has been scheduled on the Notice of Intent and shall encourage each reviewing agency's attendance at and participation in the informational meeting. The Agency notice shall also state that failure to identify issues in person or in writing in the public hearing to be held on the draft proposed order after an application has been filed will preclude participation in the contested case portion of the review, and preclude any appeal of the Council's final decision.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0130

Informational Meetings on Notices of Intent

(1) After the Notice of Intent is submitted, and notice provided, the department shall hold one or more informational meetings on the proposed facility in the general proximity of the site of the proposed facility. The informational meeting is not a contested case hearing.

(2) The department shall inform the public of the date, time and location of the informational meeting(s) by publishing notice in a newspaper of general circulation available in the study area of the proposed facility and by mailing notice to persons on the Council's general mailing list and any special mailing list set up for the proposed project.

(3) During an informational meeting the department shall present the following information:

(a) An explanation of the Notice of Intent process and the application process, including the means and opportunities for the general public to participate in these processes;

(b) A description of the proposed facility and the study area(s);

(c) The need and proposed purpose for the proposed facility;

(d) A summary of the anticipated environmental, social and economic impacts of the proposed facility; and

(e) If the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, an explanation that the Council will select the corridor(s) for inclusion in the Application for Site Certificate based on the information submitted at the meeting and on written information submitted to the department by the deadline established in the public notice issued pursuant to OAR 345-015-0110.

(4) Any person may present information to the department during the course of an informational meeting held pursuant to this rule without administration of an oath.

(5) The person who submitted the Notice of Intent may be present at the informational meeting to provide information and to answer questions from the public.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0140

Department Review

(1) The department shall review the Notice of Intent, comments and recommendations submitted by the agencies, officers and tribes listed in OAR 345-020-0040, comments submitted by members of the public during the informational meeting, and written comments on alternative pipeline and transmission line corridors. The department shall provide copies of any written com-

ments or recommendations to the person submitting the Notice of Intent.

(2) The department may convene a meeting of the applicant and any reviewing agency or agencies or interested parties before or after issuance of the Project Order described in OAR 345-015-0160(1) to review and discuss agency or interested party comments.

(3) If requested in writing by the person submitting the Notice of Intent no later than 60 days from the date the Notice of Intent is submitted, the department may waive or modify those requirements in OAR 345-021-0010 which the department determines are not applicable to the facility as described in the Notice of Intent.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0150

Council Decision on Pipeline and Transmission Line Corridors

If the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, the Council shall select, pursuant to OAR 345-024-0050 or 345-024-0080, whichever is applicable, a single corridor for inclusion in the Application for Site Certificate, unless the applicant requests the selection of more than one corridor for inclusion in the Application for Site Certificate. The Council shall evaluate the alternatives, and may make a decision, at its next regularly scheduled meeting following the last informational hearing held as provided under OAR 345-015-0130. The Council shall base its determination on the information in the Notice of Intent, information received at the informational hearing, and written comments submitted to the department within the written comment period. The Council's determination is not a final order.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-015-0160

Project Order

(1) Following the review and any meeting described in OAR 345-015-0140, or in the case of an expedited review approved by the department under OAR 345-015-0300 following the submission of an Application for Site Certificate, the department shall issue an order (the "Project Order") establishing the following:

(a) All state statutes and administrative rules containing standards or criteria that must be met in order for the Council to issue a Site Certificate for the proposed facility, including applicable standards of divisions 22, 23 and 24 of this chapter;

(b) All local government ordinances applicable to the Council's decision on a proposed facility; and

(c) All application requirements in OAR 345-021-0010 applicable to the proposed facility, including information necessary to enable the department to provide notice as described in OAR 345-015-0190 for a proposed transmission line or pipeline as defined in ORS 469.300;

(d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits;

(e) Any other data and information that must be included in the Application for a Site Certificate in order to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances;

(f) The impact area(s) for the proposed facility;

(g) Except in the case of an expedited review approved by the department under OAR 345-015-0300, if the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, the corridor(s) selected by the Council, and the alternatives the applicant must evaluate in lieu of construction and operation of the proposed facility; and

(h) Except in the case of an expedited review approved by the department under OAR 345-015-0300, the expiration date of the Notice of Intent, pursuant to OAR 345-020-0060(1).

(2) In determining the application and study requirements to be included in the Project Order, the department shall consider the size, type and the anticipated impacts of the proposed facility. The Project Order shall note and give the reason for any application or study requirements waived by the department.

(3) Except in the case of an expedited review approved by the department under OAR 345-015-0300, the department shall notify the person submitting the Notice of Intent by certified mail of the Project Order issued pursuant to section (1) of this rule. In the case of an expedited review approved by the department under 345-015-0300, the department shall notify the person submitting the Application for Site Certificate by certified mail of the project order issued pursuant to section (1) of this rule.

(4) The Project Order is not a final order.

(5) Except in the case of an expedited review approved by the department under OAR 345-015-0300, to the extent practicable, the department shall issue the Project Order within 140 days following the date of submission of the Notice of Intent.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0170

Submission of an Application for Site Certificate

(1) An Application for Site Certificate may not be submitted before the Project Order is issued. If the applicant chooses, a draft application may be submitted prior to the issuance of a project order.

(2) Notwithstanding the requirement of section (1) of this rule, any person proposing to construct and operate an energy facility with a nominal electric generating capacity of greater than 25 but less than 100 megawatts, may submit an Application for Site Certificate any time following a request for expedited review pursuant to OAR 345-015-0300.

(3) The Application for Site Certificate shall be submitted to the department and shall contain the information and be in the form required by division 21 of this chapter.

(4) The Application for Site Certificate shall be submitted with 25% of the fee determined by the department to be necessary for review of the application pursuant to ORS 469.421(3), made payable to the Oregon Department of Energy. The balance of the fee shall be paid periodically, as specified by the department.

(5) The department may conduct one or more informational meetings on the application for Site Certificate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0180

Circulation of Application to Other Agencies

The department shall prepare a memorandum to accompany the Application for Site Certificate to be distributed by the applicant as provided for in OAR 345-021-0050(1). The memorandum from the department shall:

(1) Request the recipient to return comments or recommendations described in OAR 345-021-0050(2) to the department by a specified date;

(2) Describe the matters to be covered in the comments or recommendations as set forth in OAR 345-021-0050(2); and

(3) Explain that the recipient's written comments, recommendations and reports shall become part of the decision record for the Application for Site Certificate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350 & ORS 469.360

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0190

Determination of Completion — Date of Filing — Public Notice

(1)(a) Within 60 days of receipt of an Application for Site Certificate the department, in consultation with the reviewing agencies, shall determine whether it is complete. If the department cannot make this determination within 60 days, it shall so notify the applicant, indicate a deadline for this determination and explain the reasons for the delay. If the department fails either to complete review of the application or to notify the applicant within the specified time period, the application shall be deemed filed at the end of the 60 day period;

(b) If the application is incomplete, the department shall notify the applicant of the insufficiencies by certified mail and require the applicant to submit necessary information by a specified date. At the request of the applicant, the department may extend the deadline for the submission of the information requested. Ten copies of the information requested shall accompany the original of the information requested by the department to complete the application. If the applicant fails to submit the information required by the deadline established by the department including all extensions, the department may reject the application.

(2) If the department determines the application is complete, the date of the determination of completion shall be deemed the date of filing. The department shall notify the applicant of the filing date by certified mail. The department shall inform the public of the filing of the Application for Site Certificate by publishing notice in a newspaper of general circulation available in the impact area of the proposed facility. The department shall provide for notice to those property owners listed in Exhibit E of the application. Additionally, notice shall be mailed to persons on the Council's general mailing list and any special mailing list set up for the proposed project.

(3) Notwithstanding a determination that an application is complete, the department may require additional information from the applicant if the department identifies a need for that information during its review of the application. Such information shall not be subject to the provisions of OAR 345-021-0090(2), requiring approval to amend the application.

(4) Public notice of the filing of an Application for Site Certificate shall contain the following information:

(a) A description of the proposed facility;

(b) The location of the site of the proposed facility by section, township, range and county;

(c) A summary of the applicant's analysis of need for the proposed facility;

(d) A brief summary of the types of anticipated environmental impacts of the proposed facility;

(e) A description of the procedure for review of the application, including the date, time and location of any informational hearing that has been scheduled on the application;

(f) Addresses of locations where copies of the application may be reviewed;

(g) The name, address and telephone number of the presiding officer in the informational hearing on the Application for Site Certificate; and

(h) If the applicant has elected to seek local land use approvals pursuant to ORS 469.503(2)(a), a statement of the status of the land use approvals, and the name, address and telephone number of the local governments(s) making or having made the land use determination.

[ED. NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-015-0200

Notice to Agencies of Filed Application

The department shall notify each reviewing agency, tribe, special advisory group or affected local government of the filing of any application deemed complete. This notification shall:

(1) State the deadline for issuance of the agency reports described in OAR 345-021-0060, and request the agency to send a copy of the report to the applicant;

(2) Establish a deadline by which the department must receive any final land use decisions to be made pursuant to ORS 469.503(2)(a); and

(3) Explain that the recipient's written comments, recommendations and reports shall become part of the decision record for the Application for Site Certificate, but that any issues the agency wishes to raise for the purpose of the contested case must be raised in person or in writing in the public hearing on the department's draft proposed order.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350 & ORS 469.360

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0210

Draft Proposed Order

(1) Following its receipt of the agency reports described in OAR 345-021-0060 the department shall prepare a draft proposed order on the application that includes the department's recommendation to approve with conditions or deny the application, as well as a discussion of the reasons for the department's recommendation. The draft proposed order may include, but is not limited to:

(a) Draft proposed findings of fact and conclusions of law concerning the proposed facility's compliance with all state statutes and administrative rules and ordinances applicable to the issuance of a Site Certificate for the proposed facility;

(b) Draft proposed conditions for inclusion in the Site Certificate;

(c) Draft proposed monitoring plans to ensure the proposed facility's continued compliance with applicable state statutes and administrative rules and ordinances; and

(d) A description of the status of other applications for state permits and local government land use permits for the proposed facility, and:

(A) If the applicant has elected to address the Council's land use standard under ORS 469.503(2)(a), the draft proposed order shall include the local government's land use decisions on the proposed facility, if available, including findings of fact, conclusions of law, and conditions; or

(B) If the applicant has elected to address the Council's land use standard under ORS 469.503(2)(b), the draft proposed order shall include the department's proposed findings of fact, conclusions of law, and proposed conditions under the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations, under the applicable statewide planning goals, or under the exception criteria set forth in ORS 469.503(3).

(2) The draft proposed order shall be issued not less than 20 days prior to the public hearing on the application under OAR 345-015-0220 to allow sufficient time for public review.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0220

Public Hearings on Site Certificate Applications

(1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Council or its hearing officer shall conduct at least one public hearing on an Application for Site Certificate. The public hearing is not a contested case hearing. At least one public hearing shall be held in the vicinity of the site of the proposed facility.

(2) The department shall, at least 20 days before the hearing:

(a) Inform the public of the date, time and location of the public hearing(s) by publishing notice in a newspaper of general circulation available in the study area of the proposed facility;

(b) By mailing notice to persons on the Council's general

mailing list and any special mailing list, including a mailing list made up of those persons entitled to notice under ORS 197.763(2) set up for the proposed project; and

(c) Include in the notice that in order to have the right to participate in the contested case or to appeal a Council decision, one must appear in person or in writing in the public hearing on the draft proposed order stating any concerns with sufficient specificity for the Council to be able to address the concern. The notice must contain the information specified in ORS 469.370(2)(b), (c), (d) and (e).

(3) During the public hearing the department shall present the following information:

(a) An explanation of the application process, including the means and opportunities for the general public to participate in the process and any local government land use process. This explanation shall include notice that failure to comment in person or in writing in the public hearing on the draft proposed order will preclude any participation in the contested case, or the right to appeal the Council's final decision;

(b) A description of the proposed facility and the impact area;

(c) The need for the proposed facility; and

(d) A summary of the anticipated environmental, social and economic impacts of the proposed facility and a statement of the department's proposed findings concerning the facility's compliance with applicable standards.

(4) At the commencement of the hearing the Council or the hearing officer shall state that:

(a) Any issue that may be the basis for a contested case must be raised in person or in writing not later than the close of the record at or following the final public hearing prior to the issuance of the department's proposed order and only if such issues are raised with sufficient specificity to afford the Council, the department and the applicant an adequate opportunity to respond to each issue;

(b) The Council will not permit public comment on the draft proposed order during the first reading of the draft proposed order.

(5) Any person may present information regarding the pending application without administration of an oath. All presentations made during a hearing on an Application for Site Certificate shall be recorded and made part of the decision record for the Application. Any party in the contested case hearing on the Application for Site Certificate shall be allowed the opportunity to rebut written statements provided or oral statements recorded during a public hearing, if such statements relate to an issue identified in the prehearing order.

(6) Following the public hearing on the draft proposed order and prior to the Council review described in OAR 345-015-0230, the department may amend the draft proposed order.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0230

Council Review — Issuance of Proposed Order

(1) The Council will review the draft proposed order prepared by the department. Council consideration of the draft proposed order will be the first reading of the decision record for the application. The Council shall not permit public comment on the draft proposed order during the first reading.

(2) Following the Council's first reading of the draft proposed order, the department shall consider comments of the Council, testimony at the public hearing and agency consultation and shall issue the proposed order, recommending approval, and the conditions of approval, or rejection of the application.

(3) The department's notice of the proposed order shall provide notice of a contested case hearing on the proposed order, specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0240

Close of the Decision-Making Record

The record shall include the decision record for the department's proposed order, as well as the record of the contested case hearing.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

Procedures for Expedited Review of Certain Energy Facilities

345-015-0300

Request for Expedited Review

(1) In accordance with ORS 469.370(4) any person proposing to construct and operate an energy facility with a nominal electric generating capacity of greater than 25 megawatts but less than 100 megawatts may request expedited review of the application.

(2) A request for expedited review shall include:

(a) A description of the facility and the proposed site;

(b) The applicant's name and address;

(c) A proposed schedule for filing an Application for Site Certificate;

(d) A list of statutes, rules and ordinances applicable to the facility;

(e) An election whether the applicant will satisfy the Council's land use standard by obtaining local land use approval pursuant to ORS 469.503(2)(a), or by obtaining a Council determination pursuant to ORS 469.503(2)(b); and

(f) The reason and justification for any request for exception to an impact area as provided under section (3) of this rule.

(3) The department shall issue a Project Order for facilities requesting expedited review. For the purposes of expedited review, the impact areas shall be the study area as defined in division 1 of this chapter unless the applicant requests an exception in the request for expedited review and the department approves the applicant's reason and justification for the exception. The department may, in consultation with reviewing agencies, make changes to impact areas before the Application for Site Certificate has been filed. Submission of the Application for Site Certificate and the department's review of the application shall in all other respects be the same for expedited review as for other Site Certificate applications.

(4) The Council hereby grants any request for expedited review for applicants proposing a facility meeting the definition in section (1) of this rule, provided the request satisfies the requirements of section (2) of this rule. Notwithstanding OAR 345-015-0230(1), an Application for Site Certificate for such facilities may be submitted any time following a request for expedited review.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

Exemptions from Council Jurisdiction

345-015-0350

Council Determination of Exemption

The Council shall, upon request, determine whether a proposed facility is exempt under ORS 469.320(2) from the Site Certificate requirement. No Site Certificate is required for:

(1) A facility for which no Site Certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if the site is not enlarged and:

(a) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993; or

(b) The facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(2) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory commission or successor agency.

(3) A facility, except coal and nuclear power plants, if the facility:

(a) Sequentially produces electrical energy and useful thermal energy from the same fuel source; and

(b) Under normal operating conditions, has a useful thermal energy output of no less than 33 percent of the total energy output or the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0360

Contents of Request for Exemption

(1) Any person wishing to construct and operate a facility exempt from Council jurisdiction under ORS 469.320(2) must submit a request for exemption with the department.

(2) For an exemption under OAR 345-015-0350(1)(a) for modification of a facility for which no Site Certificate has been issued, and which will not increase the ability of the facility to use fuel for electricity production under peak steady state operating conditions to more than 200 million Btu per hour greater than it was on August 2, 1993, the requestor must provide the following information in support of the request:

(a) A detailed description of the proposed upgrade or expansion;

(b) The proposed and current facility fuel use;

(c) The proposed and current nominal electric generating capacity;

(d) The proposed and current related or supporting facilities and site boundary;

(e) The proposed and current heat rate; and

(f) Verification that the facility had operable electric generating equipment on August 2, 1993.

(3) For an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no Site Certificate has been issued that was called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon, the requestor must provide the following information in support of the request:

(a) The information described in subsections (2)(a)-(f) of this rule;

(b) Identification and discussion of the portion of the short-term plan of action of an energy resource plan that calls for the facility expansion; and

(c) The Public Utility Commission of Oregon Order acknowledging the plan described in subsection (3)(b) of this rule.

(4) For construction or expansion of an interstate natural gas pipeline or associated underground natural gas storage facility under the jurisdiction of the **Federal Energy Regulatory Commission**, the requestor must provide a certificate of public convenience and necessity issued by the **Federal Energy Regulatory Commission** for the proposed pipeline, or other comparable evidence that the proposed pipeline is within that agency's jurisdiction.

(5) For an exemption based on a very efficient use of fuel (high efficiency cogeneration) under OAR 345-015-0350(3), a requestor must provide the following information in support of the request:

(a) Detailed information on proposed fuel use, power plant design, steam or heat output to the thermal host and proposed electric output;

(b) Detailed information on the current facility, including fuel to be displaced, current steam or heat use and current electric

output if any;

(c) A detailed engineering assessment of fuel efficiency, showing a fuel chargeable to power heat rate of 6000 BTU per kilowatt hour or better, or an efficiency of at least 33% (thermal/thermal+ electric). For facilities that use natural gas, the heat rate calculation shall be based on high heating value. Calculations shall be provided in sufficient detail to facilitate independent review by the department. The applicant shall state the underlying assumptions necessary to support the calculation including assumptions concerning the energy content of fuel displaced; and

(d) A description of the facility, including the thermal host, the proposed energy facility, location by address as well as township and range and any associated linear equipment needed.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-015-0370

Consideration of Request for Exemption

(1) Any request for exemption will be processed in accordance with a first reading/second reading approach in accordance with OAR 345-011-0035.

(2) Within 45 days, the department shall review the request for exemption for completion, and provide the requestor with either a notice of filing of the request for exemption, or a request for additional information. Once the submitted request for exemption is found to be complete, the department shall issue a notice of filing. Within 60 days after issuing the notice of filing, the department shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.

(3) In accordance with ORS 469.421 and 469.441, the requestor shall submit the fee established by Council order with the request for exemption, and shall be liable for reimbursement of any review expenses beyond the initial fee incurred by the department and Council relating to the review and decision by the Council.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.320, ORS 469.421 & ORS 469.470

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-015-0380

Loss of Exemption

(1) In accordance with ORS 469.320(6), any person operating a facility for which the Council previously granted an exemption under ORS 469.320(2)(c), which has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an Application for Site Certificate within 12 months of the loss.

(2) Any person proposing to enlarge the site of a facility previously determined to be exempt under 469.320(2)(a), must submit an Application for Site Certificate.

(3) Any person submitting an Application for Site Certificate under section (1) or (2) of this rule may request an expedited review process under OAR 345-015-0300 if the nominal electric generating capacity of the energy facility is greater than 25 megawatts but less than 100 megawatts.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.320

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

DIVISION 20

NOTICE OF INTENT

345-020-0006

Notice of Intent — When Required

(1) The purpose of the Notice of Intent is to notify the department and the Council of a proposed facility and to provide information about the site and the characteristics of the facility sufficient for the preparation of the Project Order described in OAR 345-015-0160. Any person who intends to apply for a Site Certificate

for a facility shall submit a Notice of Intent to the department.

(2) Notwithstanding section (1) of this rule, no Notice of Intent shall be required for facilities with a nominal electric generating capacity of less than 100 megawatts if the applicant requests expedited review. Such facilities are eligible for expedited review pursuant to OAR 345-015-0300.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 4-1981, f. & ef. 3-25-81; EFSC 2-1991(Temp), f. & cert. ef. 6-5-91; EFSC 1-1992(Temp), f. & cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-020-0011

Contents of Notice of Intent

(1) A Notice of Intent shall contain the information described in the following subsections to the extent reasonably practicable. If the Notice of Intent proposes alternative sites, each alternative shall be separately described. Information that can be submitted in a format compatible with Geographic Information Systems may be submitted in such format. The information shall be designated with the appropriate exhibit label identified at the end of the following subsections:

(a) The name and address of the person submitting the Notice of Intent including all co-owners of the proposed facility and the following information (**Exhibit A**):

(A) If the person submitting the Notice of Intent is a corporation, it shall give the date and place of incorporation with the full name and official designation of the officer responsible for submitting the Notice of Intent and, in case of a foreign corporation, the name and address of the resident attorney-in-fact in this state, and proof of registration to do business in Oregon. The corporation shall submit its articles of incorporation and its authorization for filing the Notice of Intent;

(B) If the person submitting the Notice of Intent is an association of citizens, a joint venture or a partnership, it shall submit its articles of association, joint venture agreement or partnership agreement, a list of its members, including their cities of residence, the name, official designation, mailing address and telephone number of the person responsible for submitting the Notice of Intent, and its registration to do business in Oregon. If there are no articles of association, joint venture agreement or partnership agreement, that fact shall be stated over the signature of each member;

(C) If the person submitting the Notice of Intent is an individual, the mailing address and telephone number of the individual;

(D) If there is a contact person other than the person submitting the Notice of Intent, the name, title, mailing address and telephone number of that person shall be stated;

(E) If the person submitting the Notice of Intent is a public or governmental entity, it shall submit written authorization to submit a Notice of Intent from the entity's governing body;

(b) A description of the proposed facility, including identification of related or supporting facilities, for which an Application for Site Certificate will be submitted, and the following information (**Exhibit B**):

(A) If the facility generates electricity, its approximate nominal electric generating capacity;

(B) If the facility is a transmission line, its approximate load carrying capability, length, voltage, and current type;

(C) If the facility is a natural gas pipeline, its approximate diameter, length, operating pressure, and delivery capacity in thousand cubic feet per day;

(D) If the facility is a surface facility related to an underground gas storage reservoir, estimates of its daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;

(E) If the facility is to store liquified natural gas, the approximate volume, maximum pressure, liquification and gasification capacity in thousand cubic feet per hour;

(c) **(Exhibit C)**: The location of the site of the proposed facility identified by section, township, range, and county, the approximate land area involved, and, if the proposed facility or related or supporting facility is a pipeline or a transmission line as defined in ORS 469.300, a list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within the preferred and alternative corridors and:

(A) Within 100 feet of the corridors, where the corridors are within an urban growth boundary;

(B) Within 250 feet of the corridors, where the corridors are outside an urban growth boundary and not within a farm or forest zone; and

(C) Within 500 feet of the corridors, where the corridors are within a farm or forest zone;

(d) If the proposed facility or related or supporting facility is a pipeline or a transmission line as defined in ORS 469.300, identification of a preferred corridor and at least one alternative corridor for the proposed facility or related or supporting facility. The Notice of Intent shall include all information that is available from existing maps, aerial photographs, and a search or readily available literature for each corridor, as described in subsections (e), (h), (i), (k), and (l) of this rule **(Exhibit D)**. Alternative corridors shall not be required for:

(A) Segments of a proposed transmission line which meet the exclusion criteria of ORS 469.300(10)(a)(C)(i) or (ii);

(B) Transmission lines greater than 10 miles in length, portions of which do not meet the exclusion criteria of ORS 469.300(10)(a)(C)(i) or (ii), but only if the sum of the lengths of such portions does not exceed 10 miles; or

(C) Related or supporting facilities that, standing alone, would not be required to obtain a Site Certificate;

(e) A map showing **(Exhibit E)**:

(A) The location of the site of the proposed facility, including the preferred corridor and any alternative corridors, identified by section, township, range and County, and the approximate land area involved;

(B) The study area(s) for the proposed facility;

(C) The topography of the study area(s) including streams, rivers, lakes, major roads and contour lines; and

(D) Any protected areas in the study area;

(f) A summary statement of the need and justification for the proposed facility **(Exhibit F)**;

(g) A list, including names, addresses and telephone numbers of energy suppliers proposed to use or purchase the capacity or energy output of the proposed facility. For any energy supplier proposed to use or purchase output from or capacity of the facility, the name, address and telephone number of the person responsible for preparing the least-cost plan or integrated resource plan of the energy supplier, if such a plan exists. If the person submitting the application is responding to a competitive bid or request for proposals, a description of the amount, types and on-line date of resources requested and the name, address and telephone number of the person at each energy supplier responsible for the solicitation of bids **(Exhibit G)**;

(h) Identification of the potential environmental impacts, if any, of the proposed facility on the study area, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic and aesthetic areas, recreation, and land use **(Exhibit H)**;

(i) Identification of the potential social and economic impacts of the proposed facility on the study area **(Exhibit I)**;

(j) If water must be used by the proposed facility, the source and estimated quantity. If a new water right is required, the approximate location of the points of diversion with the estimated quantity of water to be taken at each point **(Exhibit J)**;

(k) An expected schedule for filing an Application for Site Certificate **(Exhibit K)**;

(l) Identification of each permit necessary to the construction and operation of the proposed facility; the name, address and tele-

phone number of the agency or office for each permit required; citation to the state statutes and administrative rules and local government ordinances applicable to each permit; citation to other state statutes and administrative rules and local government ordinances applicable to the issuance of a Site Certificate; an analysis of any potential problems anticipated in satisfying the requirements of any such statute, rule or ordinance; and an indication, if possible, of whether the person submitting the Notice of Intent will satisfy the Council's land use standard by obtaining local land use approval pursuant to ORS 469.503(2)(a) or by seeking a Council determination pursuant to ORS 469.503(2)(b) **(Exhibit L)**;

(m) Evidence of consultation with the State Commission on Indian Services to identify each appropriate tribe to consult with regarding the proposed facility's possible effects on Indian historic and cultural resources **(Exhibit M)**;

(n) For thermal power plants and electric generating resources producing energy from wind or solar energy **(Exhibit N)**:

(A) A discussion of the source, quantity, availability, and energy content of all fuels or sources of energy used to generate electricity or useful thermal energy;

(B) A description of the size and type of equipment used to generate electricity and useful thermal energy including power cycle and steam cycle diagrams to describe the energy flows within the system, the configuration of the equipment, and fuel chargeable to power heat rate if applicable; and

(C) The source of cooling water, estimated consumptive use of cooling water, and the general method for disposal of waste heat and waste material.

(2) The original Notice of Intent shall be accompanied by an affidavit from the person submitting the Notice of Intent that, to that person's best knowledge and belief, the Notice of Intent is complete, contains all the information required by this rule, and the information in the Notice of Intent is true and accurate. If the person submitting the Notice of Intent is not an individual, the affidavit must be signed by an individual authorized to act on behalf of the person submitting the Notice of Intent. Copies of the affidavit may be included in the copies of the Notice of Intent required to be submitted to the department.

(3) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the **National Environmental Policy Act of 1970**, if any, may be used to supply all or a part of the information required by this rule to the extent that the information in such documents addresses the requirements of this rule. Relevant sections of such documents shall be identified with exhibit labels that correspond to the exhibits required by this rule.

(4) Each Notice of Intent submitted to the department shall be accompanied by an index clearly identifying by page number the location of each exhibit required by this rule. Six copies of the Notice of Intent shall be submitted with the original.

[ED. NOTE: The Exhibit(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 13, f. & ef. 6-11-76; EFSC 2-1991(Temp), f. & cert. ef. 6-5-91;

EFSC 1-1992(Temp), f. & cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-

92; EFSC 5-1995, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-020-0016

Amendment of Notice of Intent

(1) The person submitting the Notice of Intent may amend the Notice. The person submitting the amendment shall submit to the department the original and six copies of the proposed amendment.

(2) The department shall inform the public, in the manner described in OAR 345-015-0110, of any amendment that:

(a) Changes the site boundary;

(b) Changes the fuel type;

(c) Increases water consumption or disposal by more than 5 percent; or

(d) Changes the source of water.

(3) For any amendment described in section (2) of this rule, the person submitting the Notice of Intent shall deliver copies of the amendment to agencies, tribes and governing bodies as described in OAR 345-020-0040.

(4) If the person submitting the NOI amends the NOI as described in section (2) of this rule after the informational hearing on the original Notice of Intent described in OAR 345-015-0110, the department may hold one or more additional informational hearings concerning the amendment.

(5) If the person submitting the NOI amends the NOI as described in section (2) of this rule after issuance of the Project Order as described in OAR 345-015-0160, the department shall issue a revised Project Order. Such amendment, however, shall not extend the expiration date of the Notice of Intent. The person submitting the Notice of Intent, however, may petition the Council to extend the duration of the Notice of Intent as provided in OAR 345-020-0060.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 5-1995, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-020-0040

Circulation to Other Agencies

(1) As soon as is practical after the submission of the Notice of Intent, the person submitting the Notice of Intent shall either hand deliver or mail copies of the Notice of Intent to the following officers, agencies and tribes:

(a) Department of Environmental Quality;

(b) Water Resources Commission and the Water Resources Director;

(c) Department of Fish and Wildlife and the Fish and Wildlife Commission;

(d) State Geologist;

(e) Department of Forestry;

(f) Public Utility Commission;

(g) Department of Agriculture;

(h) Department of Land Conservation and Development;

(i) Department of Parks and Recreation;

(j) Northwest Power Planning Council;

(k) Building Codes Division;

(l) Office of State Fire Marshal;

(m) Division of State Lands;

(n) State Historic Preservation Office;

(o) Any other reviewing agency identified by the department or in the Notice of Intent;

(p) Any tribe identified by the State Commission on Indian Services as impacted by the proposed facility;

(q) The governing body of any city or county within 10 miles of the site of the proposed facility;

(r) Any special advisory group designated by the Council pursuant to ORS 469.480; and

(s) The federal land management agency with jurisdiction over the proposed site, in any case where the facility is proposed to be sited on federal land.

(2) The Notice of Intent shall be accompanied by a memorandum from the department as provided for in OAR 345-015-0120.

(3) Comments or recommendations of reviewing agencies shall include:

(a) A list of all the state statutes, administrative rules and local government ordinances administered by the agency which are applicable to the issuance of permits necessary to construction and operation of the proposed facility or the issuance of a Site Certificate for the proposed facility;

(b) Specific information regarding the proposed facility or study areas described in the Notice of Intent which is not required in the Application for Site Certificate but is necessary for determining compliance with the statutes, rules and ordinances identified

in subsection (3)(a) of this rule;

(c) A list of the permits under the jurisdiction of the agency, if any, that are necessary to the construction and operation of the proposed facility, an explanation of the timelines applicable to the agency's permit issuance process, a description of the filing fee for each permit and a description of the information that the agency will need in order to review an application for its permit(s);

(d) A description of issues raised by the Notice of Intent relevant to the agency's permit(s) or to the state statutes and administrative rules or ordinances administered by the agency;

(e) The name, telephone number and address of the agency employee(s) who will be in charge of the review of the application and related applications submitted to the agency;

(f) Recommendations regarding the size and location of impact area(s);

(g) A list of studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures; and

(h) If the proposed facility or related or supporting facility is a pipeline or a transmission line as defined in ORS 469.300, a discussion of the relative merits of the corridors described in the Notice of Intent and the agency's recommendation, if any, on the selection of a corridor.

(4) Comments or recommendations of governing body officers, tribes and agencies other than reviewing agencies, listed in section (1) of this rule shall include:

(a) A list of requirements or tribal codes which the governing body or tribe recommends to the Council for its review of the application; and

(b) Specific information regarding the proposed facility or study areas described in the Notice of Intent which is not required in the Application for Site Certificate but is necessary for determining compliance with the requirements or tribal codes recommended in subsection (4)(a) of this rule;

(c) Comments on aspects of the proposed facility that are within the commenting agency's particular responsibility or expertise;

(d) The name, telephone number and address of the individual who will be in charge of the review of the application; and

(e) If the proposed facility or related or supporting facility is a pipeline or a transmission line as defined in ORS 469.300, a discussion of the relative merits of the corridors described in the Notice of Intent and the entity's recommendation, if any, on the selection of a corridor.

(5) The person submitting the Notice of Intent shall provide additional copies of the Notice to the department upon request, and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330 & ORS 469.350

Hist.: EFSC 2-1991(Temp), f. & cert. ef. 6-5-91; EFSC 1-1992(Temp), f. & cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-96

345-020-0060

Expiration Date -- Petition to Extend the NOI

(1) A Notice of Intent shall expire 18 months following the date of issuance of the Project Order. The person submitting the Notice of Intent may petition the Council to extend the duration of the Notice of Intent beyond 18 months upon good cause shown. A petition to extend the duration of a Notice of Intent shall be submitted to the department no later than 45 days prior to the expiration date of the Notice. Timely submittal of a petition shall stay the expiration of the Notice of Intent until the Council's decision to grant or deny the extension.

(2) If an Application for Site Certificate for the facility described in a Notice of Intent has not been submitted prior to the expiration of the Notice, or any extension period granted by the Council, a new Notice of Intent must be submitted for the facility in order to satisfy ORS 469.330.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.330

Hist.: EFSC 2-1991(Temp), f. & cert. ef. 6-5-91; EFSC 1-1992(Temp), f. &

cert. ef. 3-4-92; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 21

APPLICATION FOR SITE CERTIFICATE

345-021-0000

General Requirements

(1) Except for those facilities exempt under ORS 469.320(2), no person may construct or expand a facility unless a Site Certificate or an amendment to an existing Site Certificate has been granted by the Council.

(2) An Application for Site Certificate may not be submitted before the Project Order is issued for the proposed facility as described in OAR 345-015-0160. If the applicant chooses, a draft application may be submitted prior to the issuance of a project order.

(3) Notwithstanding the requirement of section (2) of this rule, any person proposing to construct and operate an energy facility with a nominal electric generating capacity of greater than 25 megawatts, but less than 100 megawatts, may submit an Application for Site Certificate any time after filing a request for expedited review under OAR 345-015-0300.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320 & ORS 469.350

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-95; EFSC 3-1995, f. & cert. ef. 11-16-95

345-021-0010

Contents of Application

(1) The Project Order issued pursuant to OAR 345-015-0160(1) shall identify the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. An Application for Site Certificate shall contain information that addresses each provision of this rule identified in the Project Order. Such information shall be designated with the appropriate exhibit label identified at the end of the following subsections. If the same information is required in each of several exhibits the application may provide the required information in one exhibit and include appropriate references in the others:

(a) The name and address of the applicant including all co-owners of the proposed facility (**Exhibit A**):

(A) If the applicant is a corporation, it shall give the date and place of incorporation with the full name and official designation of the officer responsible for submitting the application and, in case of a foreign corporation, the name and address of the resident attorney-in-fact in this state, and proof of registration to do business in Oregon. The corporation shall submit its articles of incorporation and its authorization for filing the application.

(B) If the applicant is an association of citizens, a joint venture, or a partnership, it shall submit its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence, the full name, official designation, mailing address and telephone number of the person responsible for submitting the application, and its registration to do business in Oregon. If there are no articles of association, joint venture agreement or partnership agreement, that fact shall be stated over the signature of each member.

(C) If the applicant is an individual, the mailing address and telephone number of the individual.

(D) If there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person shall be stated.

(E) If the applicant is a public or governmental entity, it shall submit written authorization to submit an application pursuant to this chapter from the entity's governing body.

(b) A description of the proposed facility including identification of related or supporting facilities; the nominal electric generating capacity of the facility if it generates electricity; design

capacity and throughput if the facility is a natural gas pipeline, a synthetic fuel plant, a liquified natural gas storage facility or a surface facility related to an underground gas storage reservoir; and rated voltage and load carrying capability if the facility is an electric transmission line. The description shall include approximate dimensions of facility structures and outstanding visible features in sufficient detail to enable the department to describe the facility at public information hearings, and general design drawings of facility structures, equipment and their appurtenances (**Exhibit B**);

(c) A map showing the proposed location of facility structures, facility equipment and related or supporting facilities; and, a description of the approximate land area of the site. This exhibit shall include a written description of the energy facility location identified by section, township, range and county. (**Exhibit C**);

(d) A description of the organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility including (**Exhibit D**):

(A) The applicant's previous experience, if any, in constructing and operating similar facilities;

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted; and

(D) A plan, including a proposed schedule, to apply for all major federal, state and local permits that are necessary for construction and operation of the facility.

(E) An assessment of the impact of the facility on any permits which have been obtained by any third party and on which the applicant relies to comply with any applicable standard.

(e) A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment roll, of property located within the site, or if applicable, the corridor(s) selected by the Council as described in OAR 345-015-0150, and (**Exhibit E**):

(A) Within 100 feet of the site or corridor(s), where the site or corridor(s) is within an urban growth boundary;

(B) Within 250 feet of the site or corridor(s), where the site or corridor(s) is outside an urban growth boundary and not within a farm or forest zone; and

(C) Within 500 feet of the site or corridor(s), where the site or corridor(s) is within a farm or forest zone;

(f) A materials analysis including an inventory of substantial quantities of industrial materials flowing into and out of the proposed facility (**Exhibit F**);

(g) Information from reasonably available sources, regarding the geological and soil stability in the impact area including (**Exhibit G**):

(A) A description of the geological features, topography and soil conditions of the site;

(B) An assessment of the anticipated impacts of construction and operation of the proposed facility on the stability of the site or its vicinity, including soil compaction, erosion, mass wasting, slumping and sliding;

(C) A map showing the location of existing and potential geological and soil hazards and problems, if any, on the site or in its vicinity, which could be aggravated by the construction and operation of the proposed facility;

(D) An assessment of seismic hazard, as defined in ORS 455.447(d), at the site and a description of the probable behavior of the substrate and surficial materials during the maximum credible seismic event, including mass movement, differential soil compaction, settling or liquefaction. The assessment shall include a description of any recorded earthquakes within 50 miles of the site and of recorded earthquakes greater than 50 miles from the site that caused significant ground shaking at the site. The description shall include the date of occurrence, the magnitude and high-

est intensity, and a description of the epicenter location or region of highest intensity;

(E) A description of site specific geotechnical work performed or planned to be performed prior to construction. The description shall include a proposed schedule for geotechnical work, the nature and extent of such work, a list of the professional literature relied on in characterizing the site, and the identities and prior experience of personnel responsible for the work.

(F) For transmission lines as defined in ORS 469.300 and for related or supporting facilities which are transmission lines as defined in ORS 469.300, a description of locations along the proposed route where site specific geotechnical work is proposed, including but not limited to railroad crossings, major road crossings, river crossings, dead ends, corners, and portions of the proposed route where the ground slope is greater than thirty degrees.

(h) Either (1) a completed application, on the joint form approved by the U.S. Army Corps of Engineers and the Oregon Division of State Lands, for a permit under **§404 of the Clean Water Act** and for a state fill and removal permit, or (2) a map identifying the location of any jurisdictional wetlands on the site and the source of the water for the wetlands, accompanied by a description of the nature and amount of material to be removed from or placed in such wetlands, if any, and the specific location from which it is to be removed or where the fill will be placed (**Exhibit H**);

(i) A map showing the comprehensive plan designations and zoning of the site and property adjacent to the site, accompanied by a statement explaining whether the applicant elects to address the Council's land use standard by obtaining local land use approvals pursuant to ORS 469.503(2)(a), or by obtaining a Council determination pursuant to ORS 503(2)(b). An applicant may elect different processes for an energy facility and a related or supporting facility, but may not otherwise combine the two processes. Notwithstanding OAR 345-021-0090(2), once an election is made, the application may not be amended to make a different election. For a facility on federal land, the application must explain any differences or conflicts between state or local land use requirements and federal land management requirements. The statement required by this subsection shall include the following (**Exhibit I**):

(A) If the applicant elects to obtain local land use approvals, the statement shall identify the local government(s) from whom land use approvals will be sought, describe the land use approvals required in order to satisfy the Council's land use standard, describe the status of its application for each land use approval, and provide an estimate of time for issuance of local land use approvals;

(B) If the applicant elects to obtain a Council determination on land use:

(i) The statement shall describe how the proposed facility complies with the applicable substantive criteria of the affected local government(s) and any Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);

(ii) If the special advisory group(s) for the affected local government(s) has not identified the applicable substantive criteria, the statement shall identify the applicable substantive criteria and describe how the facility complies with the criteria. If the applicant cannot demonstrate compliance with one or more of the applicable substantive criteria, the statement shall describe how the proposed facility complies with the statewide planning goals. The applicant may demonstrate compliance with the Council's land use standard by showing compliance with a combination of the statewide planning goals and applicable substantive criteria from the affected local government(s);

(iii) If the applicant cannot demonstrate compliance with the Council's land use standard by providing the information described in either subsection (i) or (ii) of this section, the statement shall describe why an exception to any applicable statewide planning goal is justified under ORS 469.503(3).

(iv) Notwithstanding subsections (i) through (iii) above, if

the applicant proposes that the Council make land use goal findings in accordance with ORS 469.503(6), the applicant must request Council approval. Approval will be based on a justification provided by the applicant, staff recommendations, input from the Special Advisory Group appointed pursuant to ORS 469.480 and public comment taken by the Council prior to making its decision.

(C) If the proposed facility will be located on federal land, the statement shall describe the proposed facility's consistency with the applicable land management plan adopted by the federal agency with jurisdiction over the federal land. If federal law or the land management plan conflicts with any applicable state or local land use requirements, the applicant shall explain the differences in the conflicting requirements, and may request Council waiver of the land use standard described under subsection (A) or (B) of this section.

(j) A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the impact area, and a description of the anticipated impacts of the proposed facility, if any, on such protected areas (**Exhibit J**);

(k)(A) For the applicant and each co-owner (**Exhibit K**):

(i) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant and each co-owner have the legal authority to construct and operate the facility without violating their respective bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements; and

(ii) Financial statements of the applicant and each co-owner for the current fiscal year and preceding three fiscal years.

(B) Nothing in this section shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law.

(l) Information about the need for the facility, including (**Exhibit L**):

(A) Identification of the rule in division 23 of this chapter under which the applicant chooses to demonstrate need and the proposed disposition of the energy or capacity of the facility including, unless the facility is exempt from need under OAR 345-023-0010(1)(a) through (h), the names, addresses and telephone numbers of each energy supplier relied upon to demonstrate need for the proposed facility and the amount of energy or capacity which may be used or purchased by each such supplier.

(B) For each energy supplier relied upon to demonstrate need for the proposed facility which has solicited or evaluated competitive bids, a discussion of the results of the solicitation or evaluation with regard to the proposed facility;

(C) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier or suppliers which determine these dates;

(D) If the facility is applying for an exemption from determination of need under OAR 345-023-0010, a discussion of the basis for an exemption from need;

(E) If the applicant seeks an exemption from need under OAR 345-023-0010(1)(a) as a high efficiency cogeneration facility:

(i) Estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat;

(ii) Estimated annual net electric output, and annual fuel input in British thermal units higher heating value for the facility and the basis of such estimates;

(iii) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and an estimate of the fuel displaced by cogeneration including supporting assumptions;

(iv) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility supported by fuel use and steam production records; and

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(v) Estimated changes to paragraphs (i) through (iv) of this subsection over the five years after the proposed in-service date.

(F) If the facility is a generating facility producing electricity from solar energy:

(i) Estimates of solar insolation at the site summarized at least monthly, and the source of the estimates;

(ii) Efficiency of solar to electric energy conversion of the facility under expected operating conditions;

(iii) Nominal electric generating capacity for the solar portion of generating capacity;

(iv) Expected monthly net electric output derived from solar insolation and total net electric output; and

(v) The basis of the estimates in paragraphs (i) through (iv) of this subsection.

(G) If the facility is a generating facility producing electricity from biomass:

(i) Description of the source, cost, higher and lower heating value, and seasonal availability of the biomass fuel;

(ii) Expected monthly fuel input, in million British thermal units per year higher heating value for all fuels consumed at the facility;

(iii) Expected monthly net electric output, useful thermal energy, and waste thermal energy; and

(iv) The basis of the estimates in paragraphs (i) through (iii) of this subsection.

(H) If the facility is applying for an exemption from determination of need pursuant to OAR 345-023-0010(1)(g) as a storage facility for liquified natural gas with storage capacity less than three million gallons, the storage capacity of the facility and the basis of the estimate of such capacity.

(I) If the facility is applying for an exemption from a determination of need pursuant to OAR 345-023-0010(1)(h), self-generation:

(i) Estimated annual net electric output, and annual fuel input in British thermal units higher heating value for the energy facility, summarized monthly, and the basis of such estimates;

(ii) A description of the electric and non-electric thermal processes, and an estimate of the fuel displaced by cogeneration if applicable including supporting assumptions; and

(iii) A description of the products produced and the electric and thermal energy needed for production of the primary products made by the persons contracting for the electric energy produced by the proposed facility supported by electric consumption or production records and;

(iv) Estimated changes to sub-paragraphs (i) through (iii) over the five years after the proposed in-service date;

(v) A description of the ownership of the proposed energy facility and the facility contracting for the electric energy from the proposed energy facility;

(vi) The location of the facility or facilities contracting for the output from the proposed energy facility;

(J) If the facility is applying for an exemption from determination of need under OAR 345-023-0010(3), the record of decision of the Pacific Northwest Electric Power and Conservation Planning Council regarding the approval of the preconstruction expenses for such facility under the requirements of **Section 6(f)(1) of the Pacific Northwest Electric Power Planning and Conservation Act 16 USC §839**.

(K) If the need for the facility is established under OAR 345-023-0020(1), the least cost plan rule:

(i) For each energy supplier relied on to demonstrate need:

(I) The least-cost plan or integrated resource plan of the energy supplier;

(II) The name, address, and telephone number of the person responsible for preparing the least-cost plan;

(III) The names, addresses and telephone numbers of members of any public advisory groups which participated in the preparation and review of the plan;

(IV) If the plan has been reviewed by a regulatory agency, the findings of that agency and the public record accompanying that decision;

(V) A discussion of how the plan conforms to the standards

in OAR 345-023-0020(1)(a) through (h) including citations to relevant portions of the plan documents or other supporting evidence; and

(VI) A discussion of the short-term action plan that calls for the siting of the facility or a substantially similar facility; and

(ii) For the proposed facility:

(I) The expected monthly net electric output and peak capacity,

(II) The estimated direct cost of the facility with documentation and supporting calculations;

(III) Expected annual emissions in tons of the pollutants in Table 1 of the definition of "Net Emissions" in division 1 of this chapter and a discussion of other environmental impacts, as compared to resources in the applicable least cost plan; and

(IV) The attributes of the facility that qualify it as one called for in the short-term action plan of the least cost plan or integrated resource plan or a demonstration that the facility is a facility that is substantially similar to the proposed facility called for in the least cost plan.

(L) If the facility is an electric generating facility for which need is established under OAR 345-023-0020(1) with an acknowledged least-cost plan, the applicant shall supplement the application with the information in subparagraph (R) of this subsection if the least-cost plan or integrated resource plan does not contain such information. If such information is included in the applicable least cost plan, the applicant shall provide a list of citations.

(M) If the facility is a natural gas pipeline or storage facility for liquified natural gas for which need is established under OAR 345-023-0020(1) with an acknowledged least-cost plan, the applicant shall supplement the application with the information in paragraph (Q) of this subsection if the least-cost plan or integrated resource plan does not contain such information. If such information is included in the applicable least cost plan, the applicant shall provide a list of citations;

(N) If the facility is an electric transmission line for which need is established under OAR 345-023-0020(1) with an acknowledged least-cost plan, the applicant shall supplement the application with the information in sub-paragraph (P) of this subsection if the least-cost plan or integrated resource plan does not contain such information. If such information is included in the applicable least cost plan, the applicant shall provide a list of citations;

(O) If the need for the facility is established under OAR 345-023-0020(3), as a qualifying public utility, the applicant shall submit:

(i) Charters or other documentation that qualify the proposed user of facility output as an Oregon municipal utility, people's utility district or electrical cooperative;

(ii) A summary of the resource acquisitions of the qualifying public utility for all resources acquired or planned including conservation, renewable resources, fuel substitution, generation, power purchases and the proposed facility. The resource acquisition summary shall include the two years before the application date and the period after the application date until at least seven years after the expected in-service date of the facility;

(iii) A year-by-year forecast of retail revenue requirements for the qualifying public utility with and without the proposed facility along with the assumptions and supporting calculations used to forecast such requirements;

(iv) For the proposed facility:

(I) The expected monthly net electric output and peak capacity;

(II) The estimated direct cost of the facility with documentation and supporting calculations; and

(III) Expected annual emissions in tons of the pollutants in Table 1 of the definition of "Net Emissions" in division 1 of this chapter and a discussion of other environmental impacts of the proposed facility compared to power purchases available to the qualifying public utility.

(P) If the facility is an electric transmission line for which need is established under OAR 345-023-0030, load-resource balance tables for peak capacity or annual energy for the area to be served by the proposed facility. Such tables shall include demands

and resources for each of the years from the date of application to at least five years after the expected on-line date of the facility. Such tables shall include annual energy balances only if the need for the facility is based on annual energy demands. The tables shall include:

(i) A forecast of peak capacity and annual energy demands for the area to be served by the proposed facility. Peak capacity and annual energy demands shall be separated into firm and non-firm loads of retail customers, system losses, reserve margins and each wholesale contract for firm and non-firm sale. Forecasts of firm peak capacity demands shall include a discussion of how the forecast incorporates:

(I) Energy and capacity conservation resulting from existing federal, state, or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice.

(ii) A forecast of existing and committed firm resources which produce energy or capacity for the area to be served by the proposed facility. Firm energy and capacity resources include existing resources, firm contract resources, and committed new resources minus expected resource retirements or displacement. Each committed energy or capacity resource shall be listed separately in the load-resource balance tables;

(iii) A discussion of the reasons each facility is being retired or displaced if the forecast of committed firm resources includes expected retirements or displacements;

(iv) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast of firm energy resources;

(v) A discussion of the reliability criteria used to demonstrate the facility will be required including a discussion of the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility; and

(vi) A table, and documentation of supporting assumptions and calculations, which lists the amounts of peak capacity or annual energy available from, and the estimated direct cost of such energy or capacity of, the proposed facility and each alternative resource considered in lieu of construction and operation of the proposed facility and a discussion of the reasons the proposed facility is considered by the applicant to be economically reasonable compared to the alternatives.

(Q) If the facility is a natural gas pipeline or a facility for storing liquified natural gas for which need is established under OAR 345-023-0040:

(i) Load-resource balance tables for the area to be served by the proposed facility. Such tables shall include peak demands and resource availability for each of the years from the date of application to at least five years after the expected on-line date of the proposed facility. The load resource balance tables shall list flowing supply and storage supply separately and be accompanied by load duration curves of peak firm and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date;

(ii) A forecast of peak capacity demands for the area to be served by the proposed facility. Peak capacity demands shall be separated into firm and non-firm demands of retail customers, system losses, and each wholesale contract for firm and non-firm sale. Forecasts of firm capacity demands shall include discussion of how the forecast incorporates:

(I) Capacity conservation resulting from existing federal, state, or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier;

(III) Conservation that results from responses to price; and

(IV) Retail customer fuel choice.

(iii) A forecast of existing and committed firm resources which produce capacity for the area to be served by the proposed

facility. Firm capacity resources include existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements. Each committed energy or capacity resource shall be listed separately in the load-resource balance tables;

(iv) A discussion of the reasons each facility is being retired or displaced if the forecast of committed firm resources includes expected retirements or displacements;

(v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast of firm energy resources;

(vi) A discussion of the reliability criteria used to demonstrate the facility will be required including a discussion of the capability of existing gas system facilities supporting the area to be served by the proposed facility;

(vii) A table, and documentation of supporting assumptions and calculations, which lists the amounts of peak capacity available from, and the estimated direct cost of, the proposed facility and each alternative resource considered in lieu of construction and operation of the proposed facility and a discussion of the reasons the proposed facility is considered by the applicant to be economically reasonable compared to the alternatives;

(viii) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier which determine these dates;

(R) If the facility is an electric generating facility establishing need under OAR 345-023-0050:

(i) Load-resource balance tables for annual energy and peak capacity which include at least each of the seven years after the date of application and a discussion of such tables;

(ii) A forecast of annual firm energy and peak capacity demands for the energy supplier. Firm energy and peak capacity demands shall be separated into firm loads of retail customers by customer class, system losses, reserve margins and each wholesale contract for firm sale;

(iii) A discussion of how retail customer fuel choice is considered in the demand forecast;

(iv) A discussion of how forecasts of firm energy and peak capacity demands incorporate energy and capacity conservation resulting from:

(I) Existing federal, state, or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(II) Conservation programs provided by the energy supplier; and

(III) Conservation that results from responses to price;

(v) A forecast of annual firm energy and peak capacity provided by each existing and committed firm resource which produces energy and capacity for the energy supplier to be served by the proposed facility. Committed firm energy and capacity resources include existing resources, firm contract resources, and scheduled and budgeted new resources minus expected resource retirements or displacement. Each committed resource shall be listed separately in the load-resource balance tables;

(vi) A discussion of the reasons each facility is being retired or displaced if the forecast of committed firm resources includes expected retirement or displacements;

(vii) A discussion of the annual capacity factors assumed for any facilities listed in the forecast of firm energy resources;

(viii) A discussion of the nature and probability and expected timing of any contingent loss of resources included in the calculation of firm deficits;

(ix) A table, and documentation of supporting assumptions and calculations, for each resource used in the least-cost plan to meet firm deficits which lists:

(I) The expected annual net electric output and peak capacity available;

(II) The estimated direct cost;

(III) Expected annual emissions in tons of the pollutants in Table 1 of the definition of "Net Emissions" in division 1 of this chapter, and a discussion of other environmental impacts; and

(IV) The attributes of the facility that qualify it as one called for in the short-term action plan of the least cost plan or integrated

resource plan, or a demonstration that the facility is a facility that is substantially similar to the proposed facility called for in the action plan of the least cost plan.

(x) The forecast of fuel prices used in estimating the costs of operation, the forecast of purchased power prices used and the source of such forecasts; and

(xi) For the resource plan or strategy that calls for the proposed facility and for any alternative resource plans or strategies considered to meet firm deficits, estimated direct costs and total year by year emissions of the pollutants in Table 1 of the definition of "Net Emissions" in division 1 of this chapter from the mix of facilities in that resource plan or strategy;

(m) A copy of permit application(s) filed with the Department of Environmental Quality (DEQ) in any case where the permit(s) will be required as a precondition to construction or operation of the proposed facility (**Exhibit M**). If any federally delegated DEQ permit application is not available at the time the Application for Site Certificate is submitted to the department, the applicant shall submit a schedule demonstrating a reasonable expectation that such federally delegated permit will be issued at approximately the same time the Site Certificate is issued;

(n) Identification and description of major ecological communities and soil types in the impact area of the proposed facility (**Exhibit N**), including:

(A) A map showing major ecological communities with emphasis on areas of native vegetation; and

(B) Identification of the common plant species within each major ecological community.

(o) A completed application, on a form approved by the Oregon Department of Water Resources, for a groundwater permit, a surface water permit, a water rights transfer, or an explanation why no such permit or transfer is required for the construction and operation of the proposed facility, a discussion of any steps proposed by the applicant to reduce consumptive water use, and a discussion of any mitigation steps proposed by the applicant to address the impact on affected resources of the applicant's water use. If the applicant will obtain water from a third party holding an existing permit, a discussion of any arrangements between the applicant and the third party, an assessment of consumptive water use by the applicant, an assessment of the facility impact on that party's water permit, a discussion of any steps proposed by the applicant to reduce consumptive water use, and a discussion of any mitigation steps proposed by the applicant to address the impact on affected resources of the applicant's water use. (**Exhibit O**);

(p) A description of the fish and wildlife species, other than the species addressed in subsection (1)(r) of this rule, and their habitats that may be affected by the proposed facility, a description of the habitat categories as set forth in OAR 635-415-0030 which may be affected by the proposed facility, a description of the nature, extent and duration of the impacts on such species and habitat categories that may result from construction and operation of the proposed facility, and a description of any mitigation measures the applicant proposes to take (**Exhibit P**);

(q) An analysis of the impacts, if any, the proposed facility will have on recreational facilities and recreational opportunities in the impact area including (**Exhibit Q**):

(A) A detailed description of existing recreational facilities and recreational opportunities in the impact area, including a discussion of any unique, unusual or irreplaceable features of such recreational opportunities, and the impacts the construction and operation of the proposed facility will have on recreational facilities and recreational opportunities in the impact area;

(B) A map of the impact area showing the types and number of existing recreational facilities and proposed recreational facilities which may include access roads and trails, and facilities for camping, picnicking, swimming, boat docking and launching, fishing and hunting as well as provisions for sanitation and waste disposal; and

(C) A description of any new or replacement recreational facilities proposed to be provided by the applicant, or any plans to mitigate the impact on recreational opportunities described in sub-

part (A) of this rule.

(r) A description of the locations, extent, nature and duration of use of any threatened or endangered species listed under ORS 496.172(2), ORS 564.105(2) or **16 USC §1533** that may be affected by the proposed facility, accompanied by (**Exhibit R**):

(A) For species listed under ORS 496.172(2) or ORS 564.105(2), a description of the proposed facility's compliance with any applicable conservation program adopted pursuant to ORS 496.172(3) or ORS 564.105(3) or the proposed facility's anticipated impacts on such species; and

(B) For species listed under **16 USC §1533**, a description of the anticipated impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species (**Exhibit R**);

(s) An analysis of the proposed facility's anticipated impacts, if any, on scenic and aesthetic areas identified as significant or important in the acknowledged local comprehensive land use plans for the impact area including (**Exhibit S**):

(A) For an area from which the facility would be clearly visible, not to exceed 30 miles from the proposed facility, the following information:

(i) Identification of key observation points and a description of criteria used to select these points;

(ii) A description and evaluation of the compatibility of the proposed facility with the viewed area of the landscape; and

(iii) A description and evaluation of the opportunities for and effectiveness of available topographic screening; and

(B) A map showing the location of the visible scenic and aesthetic areas analyzed under subsection (1)(s)(A) of this rule;

(t) Identification of (**Exhibit T**):

(A) Historic and cultural resources within the impact area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places;

(B) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the impact area;

(C) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the impact area; and

(D) The anticipated impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in subsections (A), (B) and (C) of this section, and a plan for protection of these resources that includes at least the following:

(i) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer and the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in subsections (A), (B) and (C) of this section;

(ii) The results of surveys, inventories, and subsurface testing work recommended by the state and federal agencies listed in subsection (1)(t)(D)(i) of this rule, together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended;

(iii) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in subsection (1)(t)(D)(i) of this rule or discovered during construction; and

(iv) A completed copy of any permit applications submitted pursuant to ORS 358.920. If the same information required by subsections (1)(t)(D)(i) through (iii) above is contained in the permit applications, then the permit applications may be submitted in substitution;

(u) An evaluation of the facility's socio-economic impact, including (**Exhibit U**):

(A) An evaluation of the ability of the communities in the impact area to provide the following governmental services: sewer and sewage treatment, water, stormwater, solid waste, housing, traffic safety, police and fire protection, health care and schools; and

(B) Any new essential services that will likely be required as a direct or indirect result of the proposed facility, and the commu-

nity's ability to finance such improvements;

(v) A description of the applicant's plans to minimize, to the greatest extent practicable, the generation of solid waste or wastewater and to recycle or reuse solid waste and wastewater (**Exhibit V**);

(w) Mitigation plans necessary to satisfy the requirements of this chapter and other applicable state statutes and rules identified in the Project Order. If the facility is a transmission line, the application shall contain an evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways (**Exhibit W**);

(x) A construction schedule including a filing schedule for required construction permits, the dates when construction shall commence and end, and a map showing all areas temporarily disturbed by any activity related to the design, construction and operation of the proposed facility (**Exhibit X**);

(y) A description of each monitoring plan required to show compliance with standards of this chapter and other state statutes and rules identified in the Project Order and the techniques and equipment which will be utilized to implement each plan (**Exhibit Y**);

(z) A description of the estimated life of the proposed facility, reasonable methods for restoring the site to a useful condition following facility retirement, estimated costs of such methods, and provisions to set aside funds for retirement (**Exhibit Z**);

(aa) (**Exhibit AA**):

(A) Citations to all state statutes and administrative rules, and local government ordinances containing standards or criteria that must be met in order for the Council to issue a Site Certificate for the proposed facility, as identified in the Project Order, and identification of the agencies administering those statutes, administrative rules and ordinances;

(B) Identification of each permit that will be required by state or local government agencies for the construction and operation of the proposed facility; and the name, address and telephone number of the agency or office for each permit required;

(C) To the extent not addressed by other materials in the application, a discussion of the conformity of the proposed facility and with the statutes, administrative rules and ordinances cited in subsection (1)(aa)(A) of this rule; and

(D) Identification of any state or federal permits for which the applicant will rely on a third party and an assessment of the facility's impact on such permits.

(bb) Any other information that the department has requested in the Project Order (**Exhibit BB**).

(2) The original application shall be accompanied by an affidavit from the person submitting the application that, to that person's best knowledge and belief, the information in the application is true and accurate. If the person submitting the application is not an individual, the affidavit must be signed by an individual authorized to act on behalf of the person submitting the application. Copies of the affidavit may be included in the copies of the application required to be submitted to the department.

(3) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may be used to supply all or a part of the information required by this rule to the extent that the information in such documents addresses the requirements of this rule. Relevant sections of such documents shall be identified with exhibit labels that correspond to the exhibits required by this rule.

(4) Each Application for Site Certificate submitted to the department shall be accompanied by an index clearly identifying by page number the location of each exhibit required by this rule. Ten copies of the application shall be submitted with the original.

[ED. NOTE: The Exhibits referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350, ORS 469.360 & ORS 469.370

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0140, 345-080-0090, 345-100-0055, 345-111-0075, 345-115-0055 & 345-125-0100; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-021-0020

Specific Application Requirements for Siting of Surface Facilities Related to Underground Gas Storage Reservoirs

In addition to the requirements of OAR 345-021-0010, an Application for Site Certificate for a surface facility related to an underground storage reservoir shall contain the following information:

(1) The design rates of natural or synthetic gas injection or withdrawal;

(2) The compression horsepower required to operate at design injection or withdrawal rates;

(3) The fuel type of the compressor; and

(4) The proposed location of all wells.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.350

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1992, f. & cert. ef. 8-28-92; Former section (2) renumbered to 345-001-0040; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-100-0025 & 345-100-055; EFSC 5-1994, f. & cert. ef. 11-30-94

345-021-0050

Circulation to Other Agencies

(1) The applicant shall send copies of a submitted Application for Site Certificate to the tribes, officers and agencies listed in OAR 345-020-0040(1) identified by the department as reviewing tribes and agencies. The department shall include the name, address and telephone number of the person at each reviewing tribe and agency who should receive the application. The application shall be accompanied by a memorandum from the department as provided for in OAR 345-015-0180.

(2) The comments or recommendations of the officers, tribes and agencies listed in OAR 345-020-0040(1) shall:

(a) State whether any additional information is required to enable the officer, tribe or agency to review the application under the statutes, administrative rules or ordinances administered by the officer, tribe or agency and describe such information; and

(b) Describe the status of applications for permits, if any, that have been filed with the agency and that are necessary to the construction and operation of the proposed facility.

(3) If an agency comment prepared pursuant to this rule identifies additional information needed by the agency to review the application, the department shall forward a copy of each such comment to the applicant, by certified mail, within two working days of receipt of the report.

(4)(a) If the applicant has elected to demonstrate compliance with the Council's land use standard pursuant to ORS 469.503(2)(a), the comments and recommendations of each local government with land use jurisdiction over the proposed facility shall describe the status of the local land use proceedings and give an anticipated date for issuance of a final land use decision.

(b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard pursuant to ORS 469.503(2)(b), the comments and recommendations of each local government with land use jurisdiction over the proposed facility shall include a complete list of applicable substantive criteria from the local government's comprehensive plan and land use regulations as well as any interpretations of ambiguous terms and matters arising from the local government's land use regulations. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding. If possible, the local government's recommendations, comments and interpretations should be made in the form of a resolution adopted by the local governing body. If the local government does not recommend applicable

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substantive criteria by the date specified for return of the comments and recommendations, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals.

(5) The applicant shall provide additional copies of the submitted application to the department upon request, and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.350 & ORS 469.360

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-021-0055

Distribution of Filed Application

(1) The applicant shall distribute 10 copies of the filed application to the department, and one copy to each reviewing agency, tribe, special advisory group, and affected local government, accompanied by the notice from the department specified in OAR 345-015-0200.

(2) The applicant shall provide additional copies of the filed application to the department upon request, and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-021-0060

Reports from Other Agencies

Prior to the date specified in the notification described in OAR 345-015-0200, each reviewing agency shall submit to the department and mail to the applicant a report containing the following information:

(1) The status of applications, if any, for permits that have been filed with the reviewing agency and that must be issued by the reviewing agency if a Site Certificate is granted for the proposed facility;

(2) Identification of issues raised in the report that the agency considers to be significant;

(3) Its preliminary conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the reviewing agency;

(4) A preliminary list of conditions that the reviewing agency proposes for inclusion in the Site Certificate; and

(5) Any other information that the reviewing agency believes will be useful in reviewing the application in light of applicable standards.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.350

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-021-0080

Coordination of Agencies' Review of Applications for Proposed Facility

(1) Each reviewing agency is encouraged to conduct its review of the Application for Site Certificate, and other permits for the proposed facility filed with the reviewing agency, on a timeline and in a manner that enables the reviewing agency to:

(a) Make recommendations to the department and Council as to whether the applications comply with the state statutes, administrative rules or ordinances administered by the reviewing agency;

(b) Recommend conditions for inclusion in the Site Certificate that will ensure compliance with such statutes, rules and ordinances;

(c) Present testimony and evidence at the contested case hearing on the Application for Site Certificate; and

(d) To the extent consistent with applicable law, consolidate all of its public hearings and written comment periods with the procedures established by this chapter.

(2) Following the deadline for comment from the agencies under OAR 345-015-0200, the department may convene a meet-

ing of the reviewing agency personnel identified in the reviewing agency responses, for the purpose of coordinating the department's and reviewing agencies' review of the Application for Site Certificate and other applications for permits for the proposed facility.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350, ORS 469.360 & ORS 469.370

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-021-0090

Amendment of Application

(1) Prior to the date of filing pursuant to OAR 345-015-0190, the applicant may amend the application without prior approval of the department. An amendment to an application pursuant to this section and ten copies of the amendment shall be filed with the department.

(2) After the date of filing pursuant to OAR 345-015-0190, the applicant may not amend the application without the approval of the department or, if a contested case has been noticed pursuant to 345-015-0014, the Council's hearing officer. Notice of the amendment and service of copies of the amendment shall be in accordance with the order of the department or hearing officer and any applicable contested case procedures.

(3) Information submitted in response to a request from the department does not constitute an amendment to the application, as provided in OAR 345-015-0190(3).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350 & ORS 469.360

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-021-0100

Hearing on Application — Parties — Burden of Proof

(1) The hearing officer shall conduct a contested case hearing on a filed application for a site certificate in accordance with the provisions of OAR Chapter 345, Division 15.

(2) The applicant for a site certificate shall have the burden of proving, by a preponderance of the evidence in the decision record, that the facility complies with all applicable statutes, administrative rules and applicable local government ordinances.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350 & ORS 469.370

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 22

GENERAL STANDARDS FOR SITING NON-NUCLEAR FACILITIES

345-022-0000

General Standard of Review

(1) In order to issue a Site Certificate for a proposed facility the Council must determine that the preponderance of evidence on the record supports the following conclusions:

(a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to ORS 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet;

(b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order as applicable to the issuance of a Site Certificate for the proposed facility. If compliance with applicable Oregon statutes and rules, other than those involving federally delegated programs, would result in conflicting conditions in the

Site Certificate, the Council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(2) For the purposes of determining the conclusions required by subsection (1) of this rule, the Project Order issued pursuant to OAR 345-015-0160(1) or as later amended shall include a complete list of the state statutes and administrative rules and local ordinances applicable to the issuance of a Site Certificate for the facility.

(3) The Council may issue a Site Certificate for a facility that does not meet the standards adopted pursuant to ORS 469.501 if it determines that the overall public benefits of the facility outweigh the damage to the resource that is protected by the standard the facility does not meet. Notwithstanding this requirement, the Council may issue a Site Certificate for a facility that does not meet the standard set out at 345-022-0040 if it determines that the overall public benefits of the facility outweigh the damage to the resource that is protected by that standard, provided that the statutes or administrative rules governing the management of the protected area do not prohibit location of the proposed facility in that area.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Oregon Energy Facility Siting Council statutes if other agencies have special expertise, consultation with such other agencies shall occur during the Notice of Intent and Site Certificate application process. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.501 and ORS 469.503

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0080, 345-80-075, 345-100-052, 345-115-052, 345-115-070(8); EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0010

Organizational, Managerial, and Technical Expertise

(1) To issue a Site Certificate, the Council must find that the applicant has the organizational, managerial and technical expertise to construct and operate the facility. To conclude that the applicant has the organizational, managerial and technical expertise to construct and operate the proposed facility, the Council must determine that the applicant has a reasonable probability of successful construction and operation of the facility considering the experience of the applicant, the availability of technical expertise to the applicant, and, if the applicant has constructed or operated other facilities, the past performance of the applicant, including but not limited to the number and severity of regulatory citations, in constructing or operating a facility, type of equipment, or process similar to the proposed facility.

(2) If the applicant will not itself obtain any state or local government permit or approval for which the Council would ordinarily determine compliance with applicable standards, but will rely on a permit or approval issued to a third party, the Council must determine that the named third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(3) If any third party named by the applicant does not have the necessary permit or approval at the time the Application for Site Certificate is approved, the Council may require as a condition that the Site Certificate holder may not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0125, 345-080-0080, 345-100-0053, 345-111-0060, 345-115-0053 & 345-125-0090; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0020

Structural Standard

To issue a Site Certificate, the Council must find that:

(1) The applicant, through appropriate site-specific study, has adequately characterized the site in terms of seismic zone and expected ground response during the maximum credible and reasonably probable seismic events; and

(2) The facility can be designed, engineered, and constructed adequately to avoid potential dangers to human safety presented by seismic hazards affecting the site, as defined in ORS 455.447(1)(d) and including amplification, that are expected to result from all reasonably probable seismic events.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 & ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0060, 345-100-0040, 345-111-0035, 345-115-0040 & 345-125-0070; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0022

Soil Protection

To issue a Site Certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, is not likely to result in a significant adverse impact to soils.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0030

Land Use

(1) To issue a Site Certificate, the Council must find that the facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) A proposed facility shall be found in compliance with section (1) of this rule if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) Except as provided in subparagraph (C) of this paragraph, the Council determines:

(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted; and

(B) The facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3); or

(C) The proposed facility does not comply with one or more of the applicable substantive criteria described in paragraph (b)(A) of this subsection but the Council finds that the facility does otherwise comply with the statewide planning goals, or that an exception to any applicable statewide planning goal is justified under section (3) of this rule, or

(D) For a facility that the Council elects to evaluate against the statewide planning goals pursuant to section (5) of this rule, that the proposed facility complies with the applicable statewide

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planning goals or that an exception to any applicable statewide planning goal is justified under section (3) of this rule.

(3) The Council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

(4) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the Site Certificate, the Council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(5) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or a related or supporting facility that does not pass through more than one local government jurisdiction, or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(10)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making a determination, the Council shall consult with the special advisory group, and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistence of the applicable substantive criteria from the various zones and jurisdictions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.501 & ORS 469.503

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-080-0065, 345-100-0045, 345-111-0045, 345-115-0045, 345-125-0070 & 345-125-0080; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0040

Protected Areas

(1) The facility must not be located in the areas listed below. To issue a Site Certificate, the Council must find that, taking into

account mitigation, the design, construction and operation of a facility located outside the areas listed below is not likely to result in significant adverse impact to the areas listed below:

(a) National parks, including but not limited to Crater Lake National Park and Fort Clatsop National Memorial;

(b) National monuments, including but not limited to John Day Fossil Bed National Monument, Newberry National Volcanic Monument and Oregon Caves National Monument;

(c) Wilderness areas established pursuant to The Wilderness Act, **16 U.S.C. 1131 et seq.** and areas recommended for designation as wilderness areas pursuant to **43 U.S.C. 1782**;

(d) National and state wildlife refuges, including but not limited to Ankeny, Bandon Marsh, Baskett Slough, Bear Valley, Cape Meares, Cold Springs, Deer Flat, Hart Mountain, Julia Butler Hansen, Klamath Forest, Lewis and Clark, Lower Klamath, Malheur, McKay Creek, Oregon Islands, Sheldon, Three Arch Rocks, Umatilla, Upper Klamath, and William L. Finley;

(e) National coordination areas, including but not limited to Government Island, Ochoco and Summer Lake;

(f) National and state fish hatcheries, including but not limited to Eagle Creek and Warm Springs;

(g) National recreation and scenic areas, including but not limited to Oregon Dunes National Recreation Area, Hell's Canyon National Recreation Area, and the Oregon Cascades Recreation Area, and Columbia River Gorge National Scenic Area;

(h) State parks and waysides as listed by the Oregon Department of Parks and Recreation and the Willamette River Greenway;

(i) State natural heritage areas listed in the Oregon Register of Natural Heritage Areas pursuant to ORS 273.581;

(j) State estuarine sanctuaries, including but not limited to South Slough Estuarine Sanctuary, OAR Chapter 142;

(k) Scenic waterways designated pursuant to ORS 390.826, wild or scenic rivers designated pursuant to **16 U.S.C. 1271 et seq.**, and those waterways and rivers listed as potentials for designation;

(l) Experimental areas established by the Rangeland Resources Program, College of Agriculture, Oregon State University: the Prineville site, the Burns (Squaw Butte) site, the Starkey site and the Union site;

(m) Agricultural experimental stations established by the College of Agriculture, Oregon State University, including but not limited to:

(A) Coastal Oregon Marine Experiment Station, Astoria;

(B) Mid-Columbia Agriculture Research and Extension Center, Hood River;

(C) Agriculture Research and Extension Center, Hermiston;

(D) Columbia Basin Agriculture Research Center, Pendleton;

(E) Columbia Basin Agriculture Research Center, Moro;

(F) North Willamette Research and Extension Center, Aurora;

(G) East Oregon Agriculture Research Center, Union;

(H) Malheur Experiment Station, Ontario;

(I) Eastern Oregon Agriculture Research Center, Burns;

(J) Eastern Oregon Agriculture Research Center, Squaw Butte;

(K) Central Oregon Experiment Station, Madras;

(L) Central Oregon Experiment Station, Powell Butte;

(M) Central Oregon Experiment Station, Redmond;

(N) Central Station, Corvallis;

(O) Coastal Oregon Marine Experiment Station, Newport;

(P) Southern Oregon Experiment Station, Medford;

(Q) Klamath Experiment Station, Klamath Falls.

(n) Research forests established by the College of Forestry, Oregon State University, including but not limited to McDonald Forest, Paul M. Dunn Forest, the Blodgett Tract in Columbia County, the Spaulding Tract in the Mary's Peak area and the Marchel Tract;

(o) Bureau of Land Management areas of critical environmental concern, outstanding natural areas and research natural areas;

(p) State wildlife areas and management areas identified in

OAR Chapter 635, Division 8.

(2) Notwithstanding section (1) of this rule, the Council may issue a Site Certificate for a transmission line or a natural gas pipeline located in a protected area identified in section (1) of this rule, if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1) of this rule, the Council may issue a Site Certificate for surface facilities related to an underground gas storage reservoir whose pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps are located in a protected area, if other alternative routes or sites have been studied and determined by the Council to be unsuitable.

(3) The provisions of section (1) of this rule shall not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility corridor containing at least one transmission line with a voltage rating of 115 kilovolts or higher, or containing at least one natural gas pipeline of 8 inches or greater diameter which has operated at a pressure of 125 psig.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0030, 345-080-0060, 345-100-0040, 345-111-0035, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0050

Financial Assurance

To issue a Site Certificate, the Council must find that the applicant has a reasonable likelihood of obtaining a bond or comparable security, satisfactory to the Council, in an amount adequate to restore the site if the certificate holder:

(1) Begins but does not complete construction of the facility; or

(2) Permanently closes the facility before establishing a financial mechanism or instrument, satisfactory to the Council, that will assure funds will be available to adequately retire the facility and restore the site to a useful, non-hazardous condition.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 & ORS 469.501

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0130, 345-080-0085, 345-100-0054, 345-111-0065, 345-115-0054 & 345-125-0095; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0060

Fish and Wildlife Habitat

To issue a Site Certificate, the Council must find that the design, construction, operation and retirement of the facility, taking into account mitigation, is consistent with the fish and wildlife habitat mitigation goals and standards of OAR 635-415-0030.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 & ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-026-0045, 345-080-0060, 345-100-0040, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0070

Threatened and Endangered Species

To issue a Site Certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) The design, construction, operation and retirement of the proposed facility, taking into account mitigation, is consistent with any applicable conservation program adopted pursuant to ORS 496.172(3) or ORS 564.105(3); or

(2) If no conservation program applies, the design, construction, operation and retirement of the facility, taking mitigation into account, does not have the potential to significantly reduce the likelihood of the survival or recovery of any threatened or endangered species listed under ORS 496.172(2) or ORS 564.105(2).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 & ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1982, f. & ef. 5-3-82; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0075, 345-079-0085, 345-080-0060(6), 345-100-0040, 345-111-0035, 345-115-0040 & 345-125-0070; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-022-0080

Scenic and Aesthetic Values

To issue a Site Certificate, the Council must find that the design, construction, operation and retirement of the facility, taking into account mitigation, is not likely to result in significant adverse impact to scenic and aesthetic values identified as significant or important in applicable federal land management plans or in the local land use plan for the site or its vicinity.

Stat. Auth. ORS Ch. 469

Stats. Implemented: ORS 469.470 & 469.501

EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0065; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0090

Historic, Cultural and Archaeological Resources

To issue a Site Certificate, the Council must find that the construction, operation and retirement of the facility, taking into account mitigation, is not likely to result in significant adverse impacts to:

(1) Historic or cultural resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(2) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

(3) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-026-0135, 345-079-0095, 345-080-0060(7), 345-111-0050, 345-115-0051 & 345-125-0072; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0100

Recreation

To issue a Site Certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, is not likely to result in a significant adverse impact to important recreational opportunities in the impact area. Factors which will be considered in judging the importance of a recreational opportunity include:

- (1) Any special designation or management of the location;
- (2) The degree of demand;
- (3) Uniqueness;

- (4) Outstanding or unusual qualities;
- (5) Availability or rareness; and
- (6) Irreplaceability or irretrievability of the opportunity.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0110

Socio-Economic Impacts

To issue a Site Certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, is not likely to result in significant adverse impact to the ability of communities within the study area to provide the following governmental services: sewers and sewage treatment, water, stormwater drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 6-1980, f. & ef. 8-26-80; EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1981, f. & ef. 1-19-81; EFSC 2-1981, f. & ef. 1-19-81; EFSC 4-1986, f. & ef. 9-5-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0135, 345-080-0070, 345-100-0050, 345-111-0070, 345-115-0050 & 345-125-0085; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0120

Waste Minimization

(1) To the extent reasonably practicable, the applicant shall minimize generation of solid waste and wastewater in the construction, operation, and retirement of the facility, and when solid waste or wastewater is generated, recycle and reuse such wastes.

(2) To the extent reasonably practicable, the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility must have minimal adverse impact on surrounding and adjacent areas.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 2-1981, f. & ef. 1-19-81; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-111-0040; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-022-0130

Retirement

To issue a Site Certificate, the Council must find that the site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following facility retirement.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 & ORS 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 23

NEED FOR FACILITY STANDARDS

345-023-0005

Demonstrating Need for a Facility

This division prescribes several methods by which need may be demonstrated. The following list is intended only to describe the referenced rules, and shall not be considered in determining the meaning of any of the referenced rules. Applicants shall choose under which rule need will be demonstrated at the time the application is filed.

(1) Certain energy facilities are exempt from the need for facility determination. These energy facilities are described in OAR 345-023-0010.

(2) Need for non-exempt electric generation facilities may be demonstrated under:

(a) The least-cost plan rule, OAR 345-023-0020(1), if the least-cost plan has been acknowledged by a governmental body that makes or implements energy policy; or

(b) The qualifying public utility rule, OAR 345-023-0020(3), for Oregon municipal utilities, people's utility districts or electrical cooperatives, or

(c) The load-resource balance rule, OAR 345-023-0050, if a least-cost plan has been prepared but not acknowledged by a governmental body that makes or implements energy policy, or

(d) Any combination of subsections (a)(b) and (c) of this section that demonstrates need for 80 percent of the nominal electric generating capacity of the facility.

(3) Need for electric transmission lines can be demonstrated under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for transmission lines, OAR 345-023-0030.

(4) Need for natural gas pipelines can be demonstrated under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for natural gas pipelines, OAR 345-023-0040.

(5) Need for storage facilities for liquified natural gas with storage capacity of three million gallons or greater can be demonstrated under the least-cost plan rule, OAR 345-023-0020(1).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0010

Exemptions From Need For Facility Determination

(1) The following facility types and their related and supporting facilities shall be exempt from the requirement to demonstrate need:

(a) High efficiency cogeneration facilities;

(b) Facilities which produce electricity from biomass, if at least 50 percent of expected annual net electric output, under normal operating conditions, is provided by a fuel derived directly from organic matter, available on a renewable basis for conversion to energy, including but not limited to forest residues, agricultural crops and waste, wood and wood wastes, black liquor or other process organic wastes, animal wastes, and aquatic plants, and if the nominal electric generating capacity of the facility is not more than 100 megawatts and there is no more than 200 megawatts of nominal electric generating capacity from such biomass facilities with applications pending before the Council, including the proposed facility, and all biomass facilities for which Site Certificates are in effect at the time the application is filed;

(c) Facilities which produce electricity from geothermal resources as defined in ORS 522.005(11), if the nominal electric generating capacity of the facility is not more than 100 megawatts and there is no more than 250 megawatts of nominal electric generating capacity from such geothermal facilities with applications pending before the Council, including the proposed facility, and all geothermal facilities for which Site Certificates are in effect at the time the application is filed;

(d) Facilities which produce electricity from wind if the nominal electric generating capacity of the facility is not more than 300 megawatts and there is not more than 1000 megawatts of nominal electric generating capacity from such wind facilities with applications pending before the Council, including the proposed facility, and all wind facilities for which Site Certificates are in effect at the time the application is filed;

(e) Facilities which produce electricity from solar energy where at least 50 percent of the expected annual net electric output under normal operating conditions is provided by solar insolation and if the nominal electric generating capacity of the facility is not more than 100 megawatts and there is no more than 200 megawatts of nominal electric generating capacity from such solar facilities with applications pending before the Council, including the proposed facility, and all solar facilities for which Site Certificates are in effect at the time the application is filed.

cates are in effect at the time the application is filed;

(f) Facilities related to underground natural gas storage reservoirs;

(g) Storage facilities for liquified natural gas with storage capacity less than three million (3,000,000) gallons; and

(h) A thermal power plant which does not burn coal, at which under normal operating conditions, all but 25 megawatts of the generating capacity will be used by facilities located within one mile of the plant and either:

(A) All of the owners of the thermal power plant are also owners of the facilities contracting for power;

(B) The owners of the facility contracting for power are subsidiaries of the owners of the thermal power plant; or

(C) The owners of the thermal power plant are subsidiaries of the owners of the facility contracting for power.

(2) Up to 500 megawatts of natural gas fired facilities if the applications for such facilities are deemed complete on or before July 1, 1997. The exemption shall be awarded by the Council based on the record in a single-issue limited-duration contested case proceeding described in subsection (2)(a) of this rule. The exemption shall be awarded to the proposal with the least environmental impact as determined by the evaluation process and the criteria set out in subsection (2)(b) through (2)(e) of this rule. Least environmental impact will be based on a sequential consideration of the facility's emissions of carbon dioxide and other air pollutants, impacts of water use and wastewater discharge, and impacts resulting from related or supporting facilities. The exemption shall be awarded to the proposal with the lowest impact in the first category, unless the Council determines there is no significant difference between two or more proposals. If there is no significant difference between two or more proposals in the first category, the proposals will be considered for impacts in the second category and the exemption shall be awarded to the facility with the lowest impacts in the second category, unless the Council determines there is no significant difference between two or more proposals. If the Council determines there are no significant differences between two or more proposals in the second category, the proposals will be considered for impacts in the third category and the exemption shall be awarded to the facility with the lowest impacts in the third category, unless the Council determines there is no significant difference between two or more proposals. If the Council determines there are no significant differences between two or more proposals in all three categories, the exemption shall be awarded to the facility with the oldest application determined complete by the department.

(a)(A) The Council shall consider requests for this exemption from any applicant or site certificate holder that submits such a request on or before March 1, 1996, provided the request for the exemption from need is accompanied by a site certificate application, an amendment to a filed application for a site certificate, or a request to amend a site certificate and the nominal electric generating capacity of the facility is not greater than 500 megawatts. The cost of the review and contested case on the exemption shall be paid by the applicants in equal shares. Requests for this exemption shall include the applicant's estimates of facility emissions and environmental impacts set out in subsections (2)(b) through (2)(d) of this rule. If alternative size or configurations of the facility are to be considered, they shall be described in the application.

(B) The department shall notify the Council's general mailing list by February 15, 1996 that the deadline for submitting an exemption request and application is March 1, 1996 and that a contested case hearing will commence immediately after that;

(C) The contested case hearing shall be conducted in compliance with applicable contested case requirements set forth in ORS 183.413 through 183.497. The Council intends to make a decision on the award of the exemption on or near May 15, 1996. To that end it recommends the procedural steps and the schedule set out in this paragraph, for conduct of the contested case. For the purpose of the contested case, and with the exception of OAR 345-015-0023(2), the rules governing contested cases set forth in OAR 345-015-0001 through 345-015-0085 and OAR 137-003-0001 through 137-003-0092 and 137-001-0005 are advisory only, and

should be observed only to the extent they do not impede adherence to the schedule set out in this paragraph. The department shall be authorized to participate as an interested agency. The council recommends adherence to the following schedule:

ACTIVITY — DAY OF CONTESTED CASE

Date by which exemption request must be submitted,
applications made available to the public — Day 1
Requests for party status — Day 5
Ruling on parties, prehearing conference — Day 10
Interrogatories on applications — Day 15
Applicant responses — Day 20
Department and intervenors' direct testimony — Day 27
Interrogatories on Department, intervenor's direct
testimony — Day 32
Responses — Day 37
Live cross examination and rebuttal
(allow one week total) — Day 44
Date by which cross examination and rebuttal must be
concluded — Day 51
Briefing by all parties, including proposed order and
conditions — Day 58
Proposed Order — Day 65
Exceptions — Day 72
Council decision — Day 79

(D) If the facility awarded the exemption has a nominal electric generating capacity of less than 251 megawatts, the Council may award the remainder of the 500 megawatt exemption to the proposal with next lowest environmental impact, as described in subsections (2)(b) through (2)(d), provided that not more than 500 megawatts of nominal electric generating capacity of natural gas fired facilities is exempt under this rule in total. Notwithstanding OAR 345-023-0010(4), in the event this exemption becomes available due to denial or withdrawal of an application, the exemption shall be awarded to the facility or facilities with the next lowest environmental impact, as described in subsections (2)(b) through (2)(d), provided that not more than 500 megawatts of nominal electric generating capacity of natural gas fired facilities is exempt under this rule in total. Exemptions shall not become available to other facilities if a Site Certificate is revoked, lapsed, or otherwise terminated.

(b) The exemption shall be awarded to the proposal with the lowest value for monetized net air emissions per kWh of net electric output.

(A) Net air emissions shall be the facility's emissions of carbon dioxide (CO₂), oxides of nitrogen (NO_x) and PM₁₀ particulates (particles less than 10 microns) minus firm offsets of the same pollutants assured in the application. Net air emissions shall be monetized by applying the dollar values in Table 1 of OAR 345-001-0010(35), except that NO_x and PM₁₀ offsets outside Oregon shall be assigned a value of zero dollars per ton.

(B) CO₂ emissions from the facility shall be based on the annual fuel input to the facility times the carbon content of the fuel. Firm offsets from cogeneration shall be based on annual fuel displaced by firm cogeneration times the carbon content of the fuel displaced. The carbon content of fuels shall be based on the **State Workbook; Methodologies For Estimating Greenhouse Gas Emissions, Second Edition**, published by the United States Environmental Protection Agency, Revised January 1995, page 1-11, document number 230-B-95-001, except that renewable wood and biomass fuels shall have a value of zero pounds per Btu. To convert from pounds of carbon to pounds of carbon dioxide multiply pounds of carbon by 3.667.

(C) Firm offsets of air emissions shall be based on an estimate of emissions sequestered, avoided or displaced by the applicant's mitigation measures or cogeneration, provided such measures are guaranteed by an assurance bond or performance bond or can be made binding through other site certificate conditions. Firm offsets from cogeneration mean that the cogeneration is achieved by the applicant as part of the facility, demonstrated by a

contractual agreement between the applicant and the cogeneration host and made binding through site certificate conditions. In determining the amount of the firm offsets of air emissions, the Council shall consider the timing of the offset, the uncertainty, quantifiability and verifiability of the estimate of the amount of offset and the applicant's proposed measurement, monitoring and evaluation of the performance of the offset.

(D) Proposals that have values for monetized net air emissions per kWh net electric output that are not significantly greater than the proposal with the lowest value for monetized net air emissions shall be considered tied with that proposal.

(c) If two or more proposals are tied for lowest value of monetized net air emissions under subsection (2)(b) of this rule, the exemption shall be awarded to the tied proposal with the lowest impact, as evaluated by the Council, on water.

(A) Impacts on water include:

(i) Consumptive use of water considering the quantity, quality, source and alternative uses of that water; and

(ii) Net discharges of waste water considering the quantity, quality, source and disposition of wastewater. The Council shall consider reduction in discharges that result from the beneficial use of waste water produced by the facility and for waste water used by the facility that would otherwise be discharged by another industrial, commercial or municipal process.

(B) Proposals that have impacts on waste and waste water not significantly greater than the proposal with the lowest impacts, as evaluated by the Council, shall be considered tied with the proposal with the lowest impact on water and wastewater.

(d) If two or more proposals are tied in terms of water and waste water impacts under subsection (2)(c), the exemption shall be awarded to the tied proposal with the least detrimental impact from related or supporting facilities as evaluated by the Council. The Council shall consider impacts from related or supporting facilities on land use.

(A) Impacts on land use include:

(i) Farming and forestry land uses outside the urban growth boundaries,

(ii) Existing land uses within urban growth boundaries;

(iii) Wildlife; and

(iv) Scenic values.

(B) Proposals that have impacts from related or supporting facilities that are not significantly greater than the proposal with the least detrimental impact, shall be considered tied with the proposal with the lowest impact.

(e) If two or more proposals are tied in terms of least detrimental impact from related or supporting facilities under subsection (2)(d), the exemption shall be awarded to the proposal with the oldest application determined complete by the department.

(3) Electric generation facilities, except coal or nuclear, for which all the net electric output is contracted to the Bonneville Power Administration and which have a fuel chargeable to power heat rate of 8000 Btu per kWh or less, provided the Council finds that the Pacific Northwest Electric Power and Conservation Planning Council is authorized to review the acquisition of the output of the facility for consistency with the Plan under Section 6(c)(2) of the Pacific Northwest Electric Power 1991 Northwest Conservation and **Electric Power Planning and Conservation Act 16 USCA 839d.(c)(2) (1980)**, and for consistency with the criteria in:

(a) **The Pacific Northwest Electric Power and Conservation Planning Council Statement of Policy Implementing section 6(c) of the Northwest Electric Power Planning and Conservation Act**, November 12, 1986;

(b) **Document No. 92-25, Process and Criteria To Be Used in 6(c) Review, Statement of Policy**, August 17, 1992; and

(c) The letter from Stan Grace, Chair, Northwest Power Planning Council, to Randall W. Hardy, Administrator, Bonneville Power Administration, dated July 28, 1993, setting out issues that are likely to be of particular concern to the power Planning Council in future 6(c) reviews.

(4) Except as provided in OAR 345-023-0010(2)(a)(D), in the event an exemption becomes available due to a denial or withdrawal of an application, the exemption shall go to the facility

with the oldest application determined complete by the department and that would otherwise qualify for the exemption. Exemptions shall not become available to other facilities if a Site Certificate is revoked, lapsed, or otherwise terminated.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0020

Energy Facilities Demonstrating Need with a Least-cost Plan Adopted, Approved or Acknowledged by a Governmental Body That Makes or Implements Energy Policy

(1) The Council shall grant a conclusive presumption of need for the proposed facility, if the capacity of the proposed facility or a facility substantially similar to the proposed facility is identified for acquisition in the short-term plan of action of an energy resource plan or combination of plans adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative or other governmental body that makes or implements energy policy and if the energy resource plan or combination of plans:

(a) Includes a range of forecasts of firm energy and capacity demands and committed firm energy and capacity resources over the planning period using a reasonable method of forecasting;

(b) Considers and evaluates a reasonable range of practicable demand and supply resource alternatives over the planning period on a consistent and comparable basis. Practicable alternatives are those that are demonstrated to be technically and economically achievable within the time frame considered to meet potential energy or capacity needs;

(c) Uses financial assumptions, including discount rates and treatment of resource lifetimes and end effects that are consistent and comparable between resources;

(d) For electric transmission line facilities, considers alternatives that include but are not limited to:

(A) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(B) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(C) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and

(D) Adding standard sized smaller or larger transmission line capacity.

(e) For natural gas pipeline facilities, considers alternatives that include but are not limited to:

(A) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(B) Installation of propane storage systems, facilities to store liquified natural gas and underground reservoirs as a substitute for the proposed facility;

(C) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(D) Adding standard sized smaller or larger pipeline capacity.

(f) Includes the development and evaluation of alternative resource plans to meet forecast energy or capacity needs over the planning time period;

(g) Analyzes the uncertainties associated with alternative resource plans or strategies. The range of uncertainties about the future must be sufficient to test the performance of each alternative resource strategy. The criteria used to evaluate performance of alternative resource strategies must be broad enough to judge the merits of a strategy from a societal perspective;

(h) Aims to minimize long-run total resource costs while tak-

ing into account reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits. The value provided by reliability, compatibility with the power system, strategic flexibility and external environmental costs and benefits may justify actions that increase the total resource cost of the plan. The Council shall recognize that the goals of a least-cost plan are to minimize expected total resource costs for society and the variance in those costs due to uncertainty about future conditions;

(i) Includes a short-term plan of action;

(j) Is consistent with the energy policy of the state as set forth in ORS 469.010. An energy resource plan is consistent with the energy policy of the state if its short-term plan of action describes actions that must be taken within a two to three year time frame to provide a reasonable assurance that future energy and capacity demands can be met while aiming to minimize total resource cost; and

(k) Was adopted, approved or acknowledged after a full, fair and open public participation and comment process. Such a process is one in which the public has reasonable and timely access to the decision-maker and to information and records legally available to the public.

(2) The Council shall find that a least cost plan meets the criteria of an energy resource plan described in section (1) if the Public Utility Commission of Oregon has acknowledged the least cost plan.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1981, f. & ef. 1-19-81; EFSC 5-1981(Temp), f. & ef. 4-27-81; EFSC 7-1981, f. & ef. 6-29-81; EFSC 1-1983(Temp), f. & ef. 5-3-83; EFSC 1-1984, f. & ef. 8-7-84; EFSC 2-1986, f. & ef. 2-21-86; EFSC 7-1986, f. & ef. 9-18-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-079-0105 & 345-111-0025; EFSC 5-1993(Temp), f. & cert. ef. 8-16-93; EFSC 1-1994, f. & cert. ef. 1-28-94; EFSC 2-1994, f. & cert. ef. 5-6-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1998, f. & cert. ef. 6-2-98

345-023-0030

Electric Transmission Lines Demonstrating Need under the Economically Reasonable Rule

(1) The Council may find the applicant has demonstrated need for an electric transmission line as defined in ORS 469.300, if the Council finds that:

(a) The facility will be required, within five years of its proposed in-service date, to enable the transmission system of which it is to be a part to carry peak demands or firm annual energy demands which are reasonably expected to occur in the service area or areas to be served by the facility;

(b) The facility is consistent with the minimum operating reliability criteria contained in the Western System Coordinating Council Bulk Power Supply Program 1994-2004, dated April 1, 1995; and

(c) The construction and operation of the facility is an economically reasonable method of meeting energy or peak demands and reliability criteria compared to the alternatives identified in the Application for Site Certificate application or in the Project Order as originally issued pursuant to OAR 345-015-0160 or as amended by the Council.

(2) For the purposes of this rule, peak demand in the service area or areas to be served by the proposed facility shall be presumed, subject to rebuttal, to:

(a) Be twice the firm energy demand in the service area or areas to be served by the proposed facility; and

(b) Increase or decrease during the ten (10) year period following the date of application for a Site Certificate at the same rate that demand for energy in such service area or areas will increase or decrease.

(3) Alternatives to construction of the proposed facility identified in the Project Order pursuant to OAR 345-015-0160 shall include, but are not limited to:

(a) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(b) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(c) Direct use of natural gas solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and

(d) Adding standard sized smaller or larger transmission line capacity.

(4) This rule shall not apply to electric transmission lines which are related or supporting facilities.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-080-0043; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0040

Natural Gas Pipelines Demonstrating Need under the Economically Reasonable Rule

(1) The Council may find the applicant has demonstrated need for a natural gas pipeline as defined in ORS 469.300 or a facility that stores liquified natural gas, if the Council finds that:

(a) The facility will be required within five years following its proposed in-service date, to enable the natural gas supply system of which it is to be a part to satisfy peak demands which are reasonably expected to occur in the service area or areas to be served by the proposed facility; and

(b) Construction and operation of the facility will be an economically reasonable method of meeting peak demands in comparison with the alternative identified in the Application for Site Certificate, or in the Project Order as originally issued pursuant to OAR 345-015-0160 or as amended by the Council.

(2) For purposes of this rule, peak demand in the service area or areas to be served by the proposed facility shall be rebuttably presumed to be based on weather conditions which have a one in twenty chance of occurrence in any year.

(3) Alternatives to construction of the proposed facility identified in the Project Order pursuant to OAR 345-015-0160 shall include, but are not limited to:

(a) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(b) Installation of propane storage systems, facilities to store liquified natural gas and underground reservoirs as a substitute for the proposed facility;

(c) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and

(d) Adding standard sized smaller or larger pipeline capacity.

(4) This rule shall not apply to natural gas pipelines which are related or supporting facilities.:

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-125-0040; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-023-0050

Electric Generation Facilities Demonstrating Need under the Load-Resource Balance Rule with a Least-cost Plan Not Adopted, Approved or Acknowledged by a Governmental Body That Makes or Implements Energy Policy

(1) An applicant has demonstrated need for an energy facility as defined in ORS 469.300(10)(a)(A)(D) and its related and supporting facilities if:

(a) The net electric output of the facility will be used by an energy supplier or suppliers for which a least-cost plan, together with any supplemental information provided by the applicant:

(A) Uses a reasonable method to produce a forecast of firm deficits that are expected to occur within four years of the date of application and that are at least equal to the maximum share of the

proposed facility that will be used by such energy supplier or suppliers;

(B) Complies with subsections (b) through (g) of 345-023-0020(1); and

(C) Contains a short-term plan of action that calls for construction and operation of the proposed facility, or a facility that is substantially similar to the proposed facility, in the time period proposed by the applicant, to meet the firm deficits described in paragraph (1)(a)(A) of this rule that are expected to occur within four years of the date of application; and

(b) The record of the siting proceeding does not establish by a preponderance of the evidence that:

(A) The forecast firm deficit is overstated and that based on the revised firm deficit, the proposed facility is not required to meet forecast firm deficits within four years; or

(B) A practicable alternative that can meet firm deficits can be substituted for the proposed facility in the least cost plan and provide a superior mix of total resource cost, reliability, compatibility with the power system, strategic flexibility and environmental impacts not included in total resource cost.

(2) Practicable alternatives that the Council may consider under this rule must be demonstrated to be technically and economically achievable within the time frame required to meet projected need, and shall include but are not limited to:

(a) Implementation of conservation, peak load management, voluntary customer interruption, and generating, transmission and distribution system efficiency improvements;

(b) Direct use of natural gas, solar or geothermal resources at retail loads in the service area of the energy supplier as a substitute for use of electricity; and

(c) Wholesale purchases and construction and operation of renewable resource generation, cogeneration, thermal generation facilities, and smaller or larger sized additions of generation facility types similar to the proposed facility.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 24

SPECIFIC STANDARDS FOR SITING NON-NUCLEAR FACILITIES AND RELATED OR SUPPORTING FACILITIES

Specific Standards for Wind Facilities

345-024-0010

Design Standards for Wind Energy Facilities

(1) For the purposes of this rule, "Wind Energy Facility" means all wind turbines or other such devices and their related or supporting facilities which produce electric power from wind and are:

(a) Connected to a common switching station, or

(b) Constructed, maintained, or operated as a contiguous group of devices.

(2) A wind energy facility shall comply with the noise control rules in OAR 340, Division 35.

(3) A wind energy facility shall be designed to exclude members of the public from close proximity to the turbine blades and electrical equipment.

(4) A wind energy facility shall be designed to preclude structural failure of the tower or blades which could endanger the public safety and shall have adequate safety devices and testing procedures designed to warn of impending failure or to minimize the consequences of such failure.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 6-1980, f. & cert. ef. 8-26-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-115-0020 & 345-115-0030; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFCS 2-1994, f. & cert. ef. 5-6-94; EFSC 5-1994, f. & cert. ef. 11-30-94

Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs

345-024-0030

Public Health and Safety Standards for Surface Facilities Related to Underground Gas Storage Reservoirs

(1) The following surface facilities related to underground gas storage reservoirs shall be located at distances in accordance with the schedule below from any existing permanent habitable dwelling:

(a) Major facilities — 220 meters;

(b) Minor facilities, excluding compressors — 15 meters;

(c) Compressors rated less than 1,000 horsepower — 100 meters; and

(d) Roads and road maintenance equipment housing — 15 meters.

(2) The surface facilities related to an underground gas storage reservoir shall be constructed and maintained in accordance with the applicable requirements of the U.S. Department of Transportation as set forth in 49 CFR, Part 192, and OAR 860-024-0020 in effect as of the date of this rule.

(3) The surface facilities related to an underground gas storage reservoir shall be designed so that noise resulting from operation of the facilities shall not violate standards specified in OAR 340, Division 35, in effect as of the date of this rule.

(4) The surface facilities related to an underground gas storage reservoir shall be designed, constructed, operated and retired so as not to allow leakage of natural gas that endangers public health and safety.

(5) A program shall be developed using technology that is both practicable and reliable to monitor surface facilities related to underground gas storage reservoirs to ensure the public health and safety.

(6) The surface facilities related to an underground gas storage reservoir shall be designed, constructed and operated so as not to produce or contribute to seismic hazards that could endanger the public health and safety or result in damage to property.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.310, ORS 469.470 & ORS 469.501

Hist.: EFSC 1-1980, f. & cert. ef. 2-28-80; EFSC 1-1981, f. & cert. ef. 1-19-81; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-100-0036; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

Specific Standards for Gas Pipelines

345-024-0050

Alternative Sites For Pipelines

(1) This rule applies to energy facilities and to related or supporting facilities that meet the definition of pipeline set forth in ORS 469.300(10)(a)(E).

(2) In order to select a corridor for inclusion in the Application for Site Certificate, the Council shall evaluate the preferred and alternative corridors described in the Notice of Intent to file an Application for Site Certificate for a pipeline and must determine that the selected corridor will not result in more significant adverse impacts in comparison with the other corridor(s) described in the Notice of Intent.

(3) The Council shall waive the requirements of section (2) of this rule for those segments of the proposed pipeline which the applicant agrees to route:

(a) Within a corridor containing at least one natural gas pipeline 8 inches or greater in diameter and which has operated at a pressure of 125 psig; or

(b) Within the right-of-way of any public road.

(4) The Site Certificate for a pipeline shall specify a corridor as the approved site, and shall allow the Site Certificate holder to construct the pipeline anywhere within the corridor, subject to the conditions of the Site Certificate.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.310, ORS 469.470 & ORS 469.501

Hist.: EFSC 4-1986, f. & ef. 9-5-86; EFSC 2-1987(Temp), f. & ef. 10-21-87; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-125-0055; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-024-0060

Public Health And Safety Standards For Pipelines

(1) This rule applies to all pipelines under Council jurisdiction.

(2) Pipelines shall be constructed in accordance with the requirements of the U.S. Department of Transportation as set forth in **Title 49, Code of Federal Regulations, Part 192**, in effect as of the date of this rule.

(3) A pipeline shall be designed so that noise resulting from operation of compressor stations and other related or supporting facilities shall not violate standards specified in OAR 340, Division 35, in effect as of the date of this rule.

(4) A pipeline shall have mechanical structures that allow the pipeline to be sealed off, in the event of leakage, in a manner that will minimize the release of flammable materials. This is rebuttably presumed to be satisfied by the requirements of **Title 49, Code of Federal Regulations, Part 192**, in effect as of the date of this rule.

(5) A program shall be developed using the best available practicable technology to monitor a proposed pipeline to ensure protection of public health and safety.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.310, ORS 469.470 & ORS 469.501

Hist.: EFSC 4-1986, f. & ef. 9-5-86; EFSC 101883, f. & cert. ef. 1-15-93; Renumbered from 345-125-0065; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

Specific Standards for Transmission Lines

345-024-0080

Alternative Sites For Transmission Lines

(1) This rule applies to energy facilities and to related or supporting facilities that meet the definition of high voltage transmission line set forth in ORS 469.300(10)(a)(C).

(2) In order to select a corridor for inclusion in the Application for Site Certificate, the Council shall evaluate the preferred and alternative corridors described in the Notice of Intent to file an Application for Site Certificate for a transmission line and must determine that the selected corridor will not result in more significant adverse impacts in comparison with the other corridor(s) described in the Notice of Intent.

(3) The Council shall waive the requirements of section (2) of this rule for:

(a) Segments of a proposed transmission line which meet the exclusion criteria of ORS 469.300(10)(a)(C)(i) or (ii); or

(b) Transmission lines greater than 10 miles in length, portions of which do not meet the exclusion criteria of ORS 469.300(10)(a)(C)(i) or (ii), but only if the sum of the lengths of such portions does not exceed 10 miles.

(4) The Site Certificate for a transmission line shall specify a corridor as the approved site, and shall allow the Site Certificate holder to construct the transmission line anywhere within the corridor, subject to the conditions of the Site Certificate.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-080-0051; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-024-0090

Design Standards For Transmission Lines

(1) This rule applies to all high voltage transmission lines under Council jurisdiction.

(2) A transmission line shall be designed so that alternating current electric fields shall not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public.

(3) A transmission line shall be designed so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable. The applicant must develop and implement a program which shall provide reasonable assurance that all fences, gates, cattleguards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity shall be grounded through the life of the line.

(4) A transmission line shall be designed, constructed, and operated in a manner consistent with the **1993 edition of National Electrical Safety Code (American National Standards Institute, Section C2, 1993 Edition)**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.310, ORS 469.470 & ORS 469.501

Hist.: EFSC 9-1980, f. & ef. 12-22-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-080-0055; EFCS 5-1993(Temp), f. & cert. ef. 8-16-93; EFCS 1-1994, f. & cert. ef. 1-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

DIVISION 26

CONSTRUCTION AND OPERATION RULES FOR FACILITIES

345-026-0005

Purpose

The purpose of the rules in this division is to assure that the construction, operation and retirement of facilities are accomplished in a manner consistent with the protection of the public health, safety, and welfare and the protection of the environment.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.310, ORS 469.401 & ORS 469.470

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0010

Legislative Authority

The rules in this division are promulgated pursuant to ORS Chapter 469, 1995 edition.

(1) Pursuant to ORS 469.430, the Council has continuing authority over the site for which a Site Certificate is issued and may inspect, or direct the office to inspect, or request another state agency or local government to inspect, the site at any time in order to assure that the facility is being operated consistently with the terms and conditions of the Site Certificate.

(2) For facilities subject to ORS 469.410 as having been built prior to July 2, 1975, the Council has continuing authority over the site for which a Site Certificate is issued and may inspect, or direct the office to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the Site Certificate and any applicable health or safety standards.

(3) Pursuant to ORS 469.410, the Council shall establish programs for monitoring the environmental and ecological effects of the operation and decommissioning of energy facilities subject to Site Certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the Site Certificate and any applicable health or safety standards.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401, ORS 469.410 & ORS 469.430

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0015

Scope and Construction

(1) Notwithstanding any other rule to the contrary, the rules in this division apply to all facilities for which a Site Certificate is executed on or after November 30, 1994, as well as the Trojan energy facility. Except for the Trojan energy facility, these rules do not apply to facilities for which a Site Certificate was executed before November 30, 1994, unless the Site Certificate is amended to include the applicability of the rules in this division.

(2) To the extent that any of these rules conflict or are inconsistent with administrative rules lawfully adopted by other state agencies, these rules shall be deemed controlling, except as prohibited by law. The Council shall resolve such conflicts in consultation with the affected agencies, and in a manner consistent with the public interest.

(3) To the extent that any of these rules conflict or are inconsistent with a condition contained in a Site Certificate (or amendment thereto), the latter shall be deemed controlling.

(4) Site Certificate holders shall comply with all applicable lawful rules and requirements of federal agencies.

Stat. Auth.: ORS 183 & ORS 469

Stats. Implemented: ORS 469.470

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-026-0048

Compliance Plans

Following receipt of the Site Certificate or an amendment of the Site Certificate, the Site Certificate holder shall implement a plan which verifies compliance with all Site Certificate terms and conditions and applicable statutes and rules. This shall be documented and maintained for department or Council inspection.

Stat. Auth.: ORS 183 & ORS 469

Stats. Implemented: ORS 469.401 & ORS 469.470

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0050

Inspections

(1) General provisions:

(a) Each Site Certificate holder shall afford to properly identified representatives of the Council or department opportunity to inspect the facility, including all materials, activities, related or supporting facilities, premises, and records pertaining to design, construction, operation or retirement of the facility at any time;

(b) The Site Certificate holder's representative may accompany Council or department inspectors during an inspection;

(c) Council or department inspectors may refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection;

(d) Upon completion of each inspection, the inspector shall have a conference with the certificate holder's on-site manager or designee to discuss all pertinent findings. The inspector shall issue a written report of the inspection and this conference. Inspection reports shall be kept on file with the department;

(e) If any actual or potential violations of state, federal or local law, Council rules, or Site Certificate conditions or warranties are found, the inspector shall notify the Secretary, the Council and the certificate holder. All pertinent findings shall be reported to the Council at its next scheduled meeting.

(2) Requests for Inspections:

(a) Any person may request department inspection of a facility if the requestor believes:

(A) That a violation of state or local law, rules, Council order, or Site Certificate conditions or warranties has occurred or may imminently occur; or

(B) A situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions.

(b) The request for inspection must set forth the specific grounds for the request. The request shall be submitted to the department, or during an inspection to the department's representative. A requestor who is employed directly or indirectly by the certificate holder may ask that his or her name not be disclosed in

any manner except where disclosure is required by law;

(c) Department staff shall promptly notify the certificate holder of the request and nature of the alleged violation, or other basis for the inspection;

(d) If the request concerns matters of state, federal or local law or rule not administered by the Council, department staff shall forward the request to the appropriate agency;

(e) Department staff shall make a prompt evaluation of allegations related to matters under Council jurisdiction. If department staff concludes that there are reasonable grounds to believe that the alleged violation has occurred or is imminent, or that a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or to unsafe or dangerous conditions, the department shall cause an inspection to be made as soon as practicable;

(f) If department staff determines that an inspection is not warranted, it shall give written notice of that conclusion to the requestor, stating its reasons. The requestor may then submit a written request for review to the Council. The Council shall provide the Site Certificate holder with a copy of the request by certified mail. The Site Certificate holder may submit written statement of its position with the Council, which shall provide a copy to the requestor by certified mail. At its discretion, the Council may hold an informal conference to discuss the merits of the request. The Council shall affirm, modify, or reverse the determination made by the department and shall furnish the requestor and the Site Certificate holder a written notification of its decision and the reasons therefor;

(g) Inspections conducted pursuant to this section need not be limited to matters referred to in the request for inspection;

(h) No certificate holder shall discharge or in any manner discriminate against any employee because he or she submitted a request for inspection, provided information to a Council or department representative, or otherwise exercised options afforded to the worker under these rules.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & ORS 469.430

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0080

Annual Status Report for Non-nuclear Facilities

(1) General Reporting Obligation for non-nuclear facilities:

(a) Each certificate holder shall, within 120 days of the end of each calendar year, submit an annual report to the Council addressing the subjects listed in this rule. The reporting date may be changed by mutual agreement of the Council Secretary and the certificate holder;

(b) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, excerpts from such other reports may be submitted to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.

(2) Contents of Annual Report:

(a) Facility Status: An overview of site conditions, the status of facilities under construction, and a summary of the operating experience of facilities which are in operation. This section of the annual report shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents, or the like, which occurred during the year and which had a significant adverse impact on the facility;

(b) Reliability and Efficiency of Power Production: For electric power plants:

(A) The plant availability and capacity factors for the reporting year. If equipment failures or plant breakdowns had a significant impact on those factors, describe them and plans to minimize or eliminate their recurrence;

(B) The efficiency with which the power plant converts fuel into electric energy. If fuel chargeable to power heat rate was evaluated when the facility was sited, efficiency shall be calculated using the same formula and assumptions, but using actual data.

(c) Status of Surety Information: The annual report shall pro-

vide documentation demonstrating that the bond or other security provided under OAR 345-027-0020(5) is in full force and effect and will remain in full force and effect for the term of the next reporting period;

(d) Industry Trends: The annual report shall discuss any significant industry trends that may affect the operations of the facility;

(e) Monitoring Report: A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with Site Certificate terms and conditions, a summary of the results of those activities, and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes;

(f) Compliance Report: The certificate holder shall report all instances where it has not complied with a Site Certificate condition. For ease of review, this section of the report shall use numbered subparagraphs corresponding to the applicable sections of the Site Certificate;

(g) Facility Modification Report: The report shall summarize changes to the facility which the certificate holder has determined do not require a Site Certificate amendment in accordance with OAR 345-027-0050.

Stat. Auth.: ORS 183 & ORS 469

Stats. Implemented: ORS 469.470

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0100

Schedule Modification

The certificate holder shall promptly notify the department of any changes in major milestones for construction, decommissioning, operation, or retirement schedules. Major milestones shall be as identified by the certificate holder in its construction, retirement or decommissioning plan.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0105

Correspondence With Other State or Federal Agencies

The Site Certificate holder and the department shall exchange copies of all correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. Abstracts of reports may be submitted in place of full reports; however, full copies of abstracted reports must be provided at the request of the department.

Stat. Auth.: ORS 183 & ORS 469

Stats. Implemented: ORS 469.470

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0125

Construction Report

During construction of the energy facility and related or supporting facilities, the certificate holder shall submit semiannual Construction Progress Reports to the Council. Any significant changes to major milestones for construction shall be highlighted in the report. The report shall contain such information related to construction as specified in the Site Certificate.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0170

Notification of Incidents

(1) The Site Certificate holder shall notify the department within 72 hours of any occurrence involving the facility if:

(a) There is an attempt by anyone to interfere with its safe operation;

(b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-caused event such as a fire or explosion affects or threatens to affect the public health and safety or the environment;

(c) There is any fatal injury at the facility.

(2) Nuclear Power Plants:

(a) In the event of incidents or accidents requiring notification of the Nuclear Regulatory Commission by telephone, the department shall also be provided such notification on the same time schedule;

(b) The department shall also be notified of all incidents in accordance with the Trojan Emergency Response Plan, Security Plan, and other agreements as established.

Stat. Auth.: ORS 183 & ORS 469

Stats. Implemented: ORS 469.470

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 1-1985, f. & ef. 1-7-85; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0200

Exemption

The Council may, either upon written application or on its own motion, waive or delay compliance with any of these rules as applied to a specific site, if after opportunity for a public hearing, it concludes that such action will not result in significant adverse impact to the public health and safety or the environment.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0300

Regulations Applicable to Nuclear Installations

(1) The requirements of OAR 345-026-0300 through 345-026-0400 apply exclusively to nuclear installations in Oregon as defined in ORS 469.300.

(2) OAR 345-026-0300 through 345-026-0400 do not apply to research reactors as described in OAR 345-030-0005.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0310

Nuclear Fuel Prohibited in Trojan Reactor Vessel

Placement of nuclear fuel in the Trojan reactor vessel is prohibited.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0320

Environmental and Effluent Monitoring for Nuclear Installations

All environmental and effluent programs established pursuant to Oregon Department of Environmental Quality Rules or in consultation with the Department of Fish and Wildlife shall be provided to the department. The department, with concurrence of the appropriate state agency, may approve or modify these programs. Any modifications to programs delegated to the state by the federal government may not be in conflict with federal requirements.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0330

Radiological Environmental and Effluent Monitoring

(1) A radiological environmental and effluent monitoring program shall be established by the Site Certificate holder.

(2) The Site Certificate holder shall describe the quality assurance measures applicable to the radioactive environmental

and effluent monitoring programs in the program plan.

(3) Changes to the radiological environmental monitoring program that involve one of the following require department approval prior to implementation:

(a) A reduction in the number and type of environmental samples analyzed; or

(b) A change in the verification of the accuracy of the effluent monitoring program and modeling of exposure pathways.

(4) Modifications to the radiological environmental monitoring program that do not involve a change meeting the criteria listed in (3) above do not require prior department approval. These changes shall be submitted to the department within 60 days of implementation of the change. The Council shall be notified of any such changes at its next scheduled meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & ORS 469.507

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0340

Security Plans for Nuclear Installations

(1) The operator of a nuclear installation shall establish and maintain a security plan with capabilities for protection of special nuclear material.

(2) Upon assurance satisfactory to the Council and the Site Certificate holder that confidentiality can be maintained, a security plan for nuclear installations shall be made available to authorized Council representatives in accordance with U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(iii).

(3) Proposed modifications to the security plan that involve a reduction in the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into the Protected Area or otherwise lessen the effectiveness of the physical security plan require written department concurrence prior to implementation.

(4) Modifications to the plan which do not lessen the effectiveness of the plan may be implemented without prior department concurrence. Copies of the revised plan shall be submitted to the department within 60 days of the implementation date. The Council shall be informed of these changes at its next scheduled meeting.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & ORS 469.530

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0350

Emergency Planning for Nuclear Installations

(1) The operator of a nuclear installation shall prepare, comply with, and maintain in readiness an emergency response plan. The plan must ensure adequate measures will be taken in the event of a radiological emergency.

(2) Proposed modifications to the emergency plan that involve one of the following require Council approval prior to implementation.

(a) A change (other than editorial) in the Emergency Action Levels; or

(b) A decrease in the planned staff augmentation capabilities; or

(c) A reduction in the plan requirements for notification of off-site agencies.

(3) Modifications to the plan which do not meet one of the criteria listed in (2) above may be implemented without prior Council approval. Copies of the revised plan shall be submitted to the department within 30 days of the implementation date. The Council shall be notified at its next scheduled meeting of such changes.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410, ORS 469.533 & ORS 469.535

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-

94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0360

Fire Protection

(1) Any holder of a Site Certificate for a nuclear installation shall implement a fire protection program consistent with applicable codes and standards of the National Fire Protection Association. Exceptions to the codes and standards shall be documented and justified in the fire protection plan.

(2) Proposed plan revisions involving changes to the exceptions to the codes and standards may not be made without prior department concurrence.

(3) Plan revisions which do not involve changes to the exceptions to the codes and standards may be implemented without prior department concurrence. Such plan revisions shall be transmitted to the department within 60 days of implementation. The Council shall be notified of any such changes at its next regularly scheduled meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & ORS 469.410

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-026-0370

Standards for Council Approval of the Decommissioning Plan

(1) The operator of a nuclear installation shall submit 15 copies of a plan for decommissioning a facility to the department for Council approval. The plan shall be submitted to the Council on a schedule consistent with that required by the U.S. Nuclear Regulatory Commission. When the department receives a decommissioning plan, the department shall:

(a) Issue notice to the Council's mailing list that the decommissioning plan has been submitted. The notice shall include:

(A) The time and place of at least one informational hearing;

(B) The locations where copies of the proposed plan may be reviewed by the public; and

(C) A contact name for further information.

(b) Perform a technical review, and produce a staff report containing the department's technical conclusions, recommendations on specific issues raised in the proposed plan;

(c) To the extent practicable, coordinate its technical review with that of the U.S. Nuclear Regulatory Commission;

(d) Issue notice of availability of the department's staff report to the Council mailing list. The notice shall include:

(A) A summary of the department's recommendations;

(B) Time and place of a hearing on the staff report;

(C) Places where the department's staff report may be reviewed by the public;

(D) A contact for additional information and copies of the staff report;

(E) The date by which a petition for contested case review of the department's recommendation must be received by the department;

(F) A statement that, except as provided in OAR 345-015-0083(2), failure to raise an issue in a petition for contested case on the department's recommendation constitutes a waiver of that issue; and

(G) A statement that a petition for contested case hearing will be considered by the Council according to the criteria in parts (e)(A), (e)(B) and (e)(C) of this rule.

(e) Within 30 days of the notice required in (d) of this rule, any person may petition for contested case review of the department's recommendations. The petitioner must raise issues with sufficient specificity to afford the Council or hearing officer and the parties an adequate opportunity to respond to each issue. The Council may reject the petition or grant the contested case hearing on all or some of the issues raised in petition. The contested case hearing, if granted, shall be conducted in accordance with applicable requirements of division 15 of this Chapter. In considering the petition for a contested case hearing, the Council shall consider whether there exists:

(A) A significant safety issue that requires the procedural

controls of a contested case hearing to determine the appropriate action;

(B) A question about compliance with a Council standard or a rule in this chapter, which requires a contested case to determine the answer; or

(C) An alternative opportunity for a contested case hearing in a different proceeding.

(2) The Council shall review the proposed decommissioning plan to verify that the proposed activities will not adversely affect the health and safety of the public or the environment. The Council will ensure the following when evaluating acceptability of a proposed decommissioning plan:

(a) The plan contains criteria for the free release of materials and the area as specified in Table 1 [Table not included. See ED. NOTE.];

(b) After decommissioning, the exposure rate at one meter from all surfaces in the facility buildings and outdoor areas shall be 5 uR/hr or less above the background radiation level. Background radiation is as defined in OAR 345-001-0010;

(c) The plan must contain provisions that require removal from the site of all radioactive waste as defined in ORS 469.300 on a schedule acceptable to the Council. Spent nuclear fuel and other radioactive materials that must be disposed of in a federally approved facility may be stored on the site until such a federally approved facility will take the fuel and these radioactive materials;

(d) The plan must contain an acceptable program for monitoring and controlling effluents to ensure compliance with applicable state and federal limits. This program may be incorporated by reference, if it has previously been approved by the department;

(e) The plan must contain a program for radiological monitoring to ensure the environment is not being adversely affected. This program may be incorporated by reference if it has previously been approved by the department;

(f) The plan must contain provisions for removal or control of hazardous waste that are consistent with applicable federal and state regulations;

(g) An analysis of decommissioning alternatives shall be provided with the plan, satisfactory to the Council. This analysis will describe the bases for the decommissioning alternative selected, and shall include a comparison of SAFSTOR and DECON as those terms are defined by the U.S. Nuclear Regulatory Commission. The analysis must demonstrate that impacts to public health and safety for the option chosen are bounded by the alternatives analyzed above. The analysis must demonstrate that the alternative chosen protects the environment and the health and safety of the public consistent with state and federal statutes, rules and regulations;

(h) Notwithstanding the requirements of subsections (2)(a) and (2)(b) of this rule, the plan may contain alternate criteria for free release of the site area as set forth in Title 10 of the **Code of Federal Regulations, Part 20, Section 1402(10 CFR 20.1402)** in effect August 20, 1997.

(3) The plan must include an estimate of funding necessary for implementation. The Council shall determine if provisions for funding are adequate to implement the plan.

(4) Significant revisions to the decommissioning plan must be reviewed and approved by the Council prior to implementation by the Site Certificate holder. A revision shall be deemed significant if it involves one of the following items:

(a) The potential to prevent the release of the site for unrestricted use;

(b) A change in the criteria for free release of materials;

(c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;

(d) A change in the provisions made for hazardous or radioactive waste material removal;

(e) A significant change in the types or significant increase in the amounts of any effluents that may be released offsite; or

(f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including

exposure due to transport of radioactive or hazardous material.

(5) If a proposed change in the decommissioning plan other than the estimate of funding necessary for implementation involves an increase or decrease in costs greater than 10 percent of the previous estimation, the Council shall be notified prior to implementation. Revisions and changes to the estimate of funding shall be provided to the department within 30 days. The Council shall be notified of such revisions at its next regularly scheduled meeting. The Council will retain the right to determine the acceptability of the change prior to implementation.

(6) Revisions to the decommissioning plan shall be evaluated by the criteria listed in section (4) of this rule. Records of all changes and associated evaluations shall be maintained for audit by the Department. Revisions to the plan which are not significant shall be provided to the department within 30 days. The Council shall be notified of such revisions at its next regularly scheduled meeting.

(7) Changes to the decommissioning plan which are mandated by the federal government may be implemented without prior Council approval.

(8) Major Component Removal Prior to Approval of the Decommissioning Plan:

(a) No component removal which would entail opening of containment building or spent fuel building walls (referred to in this rule as a "major component removal") may be performed without prior Council approval of a detailed plan;

(b) On receipt of a plan for major component removal, the Council shall initiate rulemaking to determine if the plan is acceptable. Major component removal may not be performed prior to Council adoption of rules approving the plan;

(c) The Site Certificate holder's plan for major component removal must meet the following criteria:

(A) The proposed component removal will not result in a predicted offsite radiation release in excess of the Environmental Protection Agency Protective Action Guidelines (October 1991) for offsite protective actions;

(B) In the absence of any accident analyzed in the Site Certificate holder's safety evaluation, activities related to component removal will not result in radioactive effluents which cause the predicted dose to any member of the public in an unrestricted area to exceed 5 millirem Total Effective Dose Equivalent (as defined in **10 CFR 20.1003** in effect on March 1, 1994);

(C) The proposed component removal will not adversely impact the potential for unrestricted use of the site after decommissioning;

(D) The proposed component removal will not adversely affect the Site Certificate holder's ability to comply with any of the standards for the decommissioning plan in part (2) of this rule;

(E) The proposed component removal will not result in a net increase in the estimated net present value of the total decommissioning cost; and

(F) Projected individual radiation doses to workers will be as low as reasonably achievable for the proposed removal.

(9) The four Steam Generators and the Pressurizer may be removed from the Trojan containment building and shipped offsite for permanent disposal at an approved low level radioactive waste disposal facility prior to Council approval of the Decommissioning Plan, provided that:

(a) The removal is performed in accordance with the "Large Component Removal Plan" submitted by Portland General Electric on July 7, 1994;

(b) Components removed through the Containment Building as described in the plan are limited to those described in the "Large Component Removal Plan";

(c) Portland General Electric shall verify prior to removal of each component from the industrial area that the disposal facility is available to receive the component and that the river is available for transportation;

(d) Prior to shipment of the components planning shall be provided by Portland General Electric to provide management and coordination with the Oregon Department of Energy, the U.S. Coast Guard, Columbia County Emergency Services, the Oregon

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Health Division, and the Oregon Division of Emergency Management has been completed and approved by the Oregon Department of Energy;

(e) Activities related to handling, packaging, and preparation for transportation of radioactive components are performed in accordance with Portland General Electric's **10 CFR 50 Appendix B** (effective as of November 17, 1994) Quality Assurance Plan (PGE 8010);

(f) The Energy Facility Siting Council has reviewed and approved Portland General Electric measures to ensure security of the Spent Fuel during the component removal process;

(g) The Oregon Department of Energy has reviewed and approved the Radiological Environmental and Effluent Monitoring Plan submitted in accord with OAR 345-026-0330;

(h) Portland General Electric shall verify that the Containment Opening Door is closed and that the Containment Purge System is operated as assumed in the accident analysis submitted in support of the Large Component Removal Plan throughout any large component lift inside containment;

(i) Portland General Electric shall obtain U.S. Nuclear Regulatory Commission approval of the proposed component packaging in accord with Title 10 Part 71 of the **Code of Federal Regulations**. Portland General Electric shall provide evidence to the Department that the U.S. Nuclear Regulatory Commission has approved the Portland General Electric plans for packaging the components prior to transporting the first component out of the containment;

(j) Prior to commencement of dredging, Portland General Electric shall obtain a dredging permit from the Oregon Division of State Lands and U.S. Army Corps of Engineers;

(k) The perimeter of the industrial area near the component preparation area shall be periodically monitored to ensure that members of the public are not within these owner controlled areas while components described in the Large Component Removal Plan are stored in the industrial area;

(l) Portland General Electric may make changes to the Large Component Removal Plan or to procedures described in the plan without prior Council or Department approval unless the proposed change:

(A) May increase the probability or consequences of an accident previously evaluated in support of the Large Component Plan;

(B) May create the possibility of an accident different from any previously evaluated in support of the Large Component Removal Plan;

(C) May render invalid prior Council findings of compliance with any of the acceptance criteria in OAR 345-026-0370(8)(c); or

(D) Would reduce the commitments in the Plan previously accepted by the Council.

(m) Changes to the Large Component Removal Plan which meet any of the criteria of OAR 345-026-0370(9)(i) through(iii) shall be submitted to the Council for approval prior to implementation. Changes to the Large Component Removal Plan which meet the criterion of OAR 345-026-0370(9)(i)(iv) shall be submitted to the Department for approval prior to implementation. This notwithstanding, Portland General Electric may make without prior Council approval changes to the Large Component Removal Plan required for compliance with the regulations of the U.S. Nuclear Regulatory Commission.

(n) Portland General Electric shall maintain records of changes made to the Large Component Removal Plan or procedures and equipment described in the Plan without prior Council approval pursuant to this rule. These records shall include a written evaluation which provides the basis for the determination that the change does or does not meet the criteria in OAR 345-026-0370(9)(i) above;

(o) Portland General Electric shall notify the Department of any changes made pursuant to this rule within 30 days;

(p) Washington Department of Health and US Ecology Inc. shall inspect each shipment before it leaves the site, to ensure compliance with standards for transportation and disposal;

(q) Portland General Electric shall obtain all applicable per-

mits from the U.S. Department of Transportation and Washington State prior to component shipments;

(r) Portland General Electric shall submit to the Department a comprehensive transportation safety plan with prior coordination between State and Federal agencies with emergency responsibilities prior to component shipments;

(s) The Department shall report any changes in the Large Component Removal Plan to the Council at its next meeting.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

[ED. NOTE: The table referenced in this rule are not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 4-1994, f. & cert. ef. 11-22-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; Administrative Reformating 12-11-97; EFSC 4-1998, f. & cert. ef. 10-26-98

345-026-0380

Annual Decommissioning Report

(1) General Reporting Obligation:

(a) Annual reports covering the previous calendar year's activities shall be submitted to the department within 120 days of the end of the calendar year. The report shall include the items listed in this rule;

(b) To the extent that information required by this rule is contained in reports to other state, federal or local agencies, excerpts from such other reports may be submitted to satisfy this rule. The Council may request full copies of such excerpted reports.

(2) Contents of Annual Report:

(a) The report shall include summaries, interpretations, and analyses of trends of the results of the Environmental Monitoring Program and the Radiological Environmental Monitoring Program required by OAR 345-026-0320 and 345-026-0330. It shall also contain the results of analyses of all radiological environmental samples and of all environmental radiation measurements taken during the reporting period;

(b) The report shall include a financial report which demonstrates the financial qualifications of the owners to perform retirement and decommissioning activities. Changes in the financial plan or status of the financial plan shall be included;

(c) The report shall include a summary report on site conditions and the status of decommissioning activities.

Stat. Auth.: ORS Ch. 469

Stats. Implemented: ORS 469.470, 469.501 & 469.540

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0390

Spent Nuclear Fuel Storage

(1) Purpose:

(a) Storage of spent nuclear fuel and related radioactive material and waste at a nuclear power plant is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;

(b) The purpose of this rule is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

(2) Capacity and Safety Standards: Storage of spent nuclear fuel shall be limited to a maximum of 791 complete and partial fuel assemblies; and storage of containers with nuclear fuel materials. Storage of spent nuclear fuel and related radioactive material and waste not eligible for disposal as low-level radioactive waste at a land disposal site (as defined in **10 CFR 61** in effect on June 15, 1995, herein after referred to as "Greater than Class C waste") at the site of a nuclear power plant by a Site Certificate holder which has executed a contract with the United States of America

pursuant to the **Nuclear Waste Policy Act**, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:

(a) Storage facilities are designed to maintain discharges within the limits specified in applicable licenses authorized under the **Atomic Energy Act** of 1954, as amended, and permits under the National Pollutant Discharge Elimination System;

(b) Storage facilities are designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions;

(c) The facility may not be used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the facility.

(3) Approval of Alternative Spent Nuclear Fuel Storage: Spent Nuclear Fuel shall be stored only in the Trojan Spent Fuel Pool (SFP) or in an interim storage facility approved by the Council. Storage of spent nuclear fuel in any facility other than the Trojan Spent Fuel Pool shall require the prior adoption of rules by the Council allowing the specific type of proposed facility.

(4) The Council may approve by rule a plan by the owner for storage of spent nuclear fuel or other related radioactive materials and wastes in an interim storage facility other than the SFP, and in doing so the Council may impose criteria in addition to those set forth in this rule. After approval of any such proposal the nuclear installation operator may proceed with movement of spent nuclear fuel and related materials and waste from the Trojan Spent Fuel Pool to the approved interim storage facility. Any such plan must address the design and operation of storage casks and meet the criteria in section (2) of this rule and the criteria below:

(a) A proposal for an interim spent fuel storage installation (ISFSI) facility, including casks used for holding spent fuel and other radioactive materials and wastes, other than the Trojan Spent Fuel Pool shall include a safety analysis and report identifying the specific accidents considered in the design of the facility and demonstrating compliance with the criteria in section (2), subsections (a), (b) and (c) of this rule;

(b) The accident analysis shall include a Seismic Margin Event based on the "Seismic Margin Earthquake Study for the Trojan Site," submitted by PGE to the U.S. Nuclear Regulatory Commission and the Oregon Department of Energy on May 27, 1993. The facility shall be designed such that in the event of the Seismic Margin Earthquake, anticipated damage to spent nuclear fuel or containers will not preclude acceptance of spent nuclear fuel and related radioactive material at a Federally licensed disposal or storage facility, or release spent nuclear fuel, particulate matter or Greater Than Class C waste into the environment;

(c) The facility shall be designed such that in the event of the Seismic Margin Earthquake or any accident considered in the safety analysis required by subsection (a) of this section, projected radiation exposure rates due to effluents and direct radiation shall not exceed the Environmental Protection Agency Protective Action Guidelines (October 1991) for off-site protective actions outside the interim storage facility controlled area as defined in **10 CFR 72.106** (June 15, 1995). The plan for the interim spent fuel storage facility shall demonstrate the capability to restore post-accident radiation exposure rates outside the interim storage facility controlled area to the levels permitted during normal facility operations;

(d) The site of the interim spent fuel storage facility shall be selected such that the expected ground motion in a seismic margin event is bounded by the accident analysis required by subsection (b) of this section. The safety analysis report shall include a review of the seismic margin analysis referenced in subsection (b) of this section and shall demonstrate whether the Seismic Margin Event defined in subsection (b) of this section remains the appropriate design basis event for the proposed interim storage facility;

(e) Radiation and effluent monitoring programs, security plans, and emergency plans for an interim spent fuel storage facility shall be maintained in accordance with OAR 345-026-0330, OAR 345-026-0340, and OAR 345-026-0350;

(f) In the absence of any accident considered in the safety

analysis required by subsection (a) of this rule, activities related to transfer of spent fuel or other reactor components from the Spent Fuel Pool to an interim storage facility and subsequent storage and fuel handling activities will not result in anticipated annual radiation dose due to effluents to any member of the public in an unrestricted area to exceed 5 millirem Total Effective Dose Equivalent (TEDE) as defined in **10 CFR 20.1003** as of March 1, 1994. The plan shall provide an estimate of the quantity of the radionuclides expected to be released annually to the environment in liquid and gaseous effluents during normal operation of the ISFSI;

(g) Transfer of spent fuel or other reactor components to a temporary storage facility shall not adversely affect the owner's financial ability to decommission the Trojan site, including the interim storage facility site after the Federal government has accepted high level waste at a Federally licensed disposal facility;

(h) Activities related to transfer, storage and handling of fuel and other radioactive waste shall be performed in accordance with a radiation protection program which complies with **10 CFR 20** (effective March 1, 1994), including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in **10 CFR 20**;

(i) Any temporary storage facility shall not adversely impact the potential for unrestricted use of the site, including the storage facility site, after decommissioning, or the ability of the site certificate holder to comply with the standards of OAR 345-026-0370(2)(a) through (f), nor shall it excuse the site certificate holder from any rules of the Council in OAR Chapter 345;

(j) A spent fuel storage facility other than the Spent Fuel Pool shall have a minimum design life of 40 years. The plan for an interim spent fuel storage facility shall demonstrate that the interim storage facility will perform as designed for the required 40 year life and shall describe all testing of storage equipment and materials during design and fabrication. The plan shall discuss the options available if the expected lifetime is reached and no Federally licensed permanent disposal or storage facility is available;

(k) To the extent feasible, an interim spent fuel storage facility shall be designed to minimize spent nuclear fuel handling. The plan for an interim spent fuel storage facility shall include the ability to transfer spent nuclear fuel from the interim spent fuel storage facility to a shipping container. Except as required for accident mitigation as described in the Safety Analysis Report, transfer of spent fuel from an interim spent fuel storage installation to new casks or shipping containers must be approved by the council prior to their removal.

(5) Reporting Requirements: The operator of an interim spent fuel storage facility shall submit every ten years and, no later than 5 years before the expiration of the facility's design lifetime, a report containing the actual or expected date when the Federal government will accept the High Level Waste, and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent nuclear fuel from the facility will be accepted within the design life of the facility as stated in subsection (4)(h) of this rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.410 & ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.501, ORS 469.507 & ORS 469.594

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1995, f. & cert. ef. 11-3-95

DIVISION 27

SITE CERTIFICATE CONDITIONS, AMENDMENT, TRANSFER AND TERMINATION

345-027-0000

Certificate Expiration

A Site Certificate shall expire either on:

(1) The date established by the Council by which construction of the facility shall be completed unless:

(a) Construction has been completed; or

(b) The deadline for completion of construction has been extended in accordance with OAR 345-027-0030; or

(2) The date the facility has been retired pursuant to OAR 345-027-0020(10), OAR 345-027-0110 and condition(s) of the Site Certificate.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.401 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. cf. 1-15-93; EFSC 5-1994, f. & cert. f. 11-30-94

345-027-0011

Scope

The rules in this division apply to all facilities for which a Site Certificate is executed on or after November 30, 1994. These rules do not apply to facilities for which a Site Certificate was executed before November 30, 1994, unless the Site Certificate is amended to include the applicability of the rules in this division. These rules do not apply to facilities covered by ORS 469.410, including the Trojan energy facility.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 1-1995, f. & cert. f. 5-15-95

345-027-0020

Mandatory Conditions In Site Certificates

The Council shall impose conditions in the Site Certificate, which shall include at least the requirements in this rule. Additional conditions may be imposed as appropriate. The Site Certificate shall provide that the conditions of the Site Certificate may not be changed during the term of the certificate except as provided for in this division.

(1) The Site Certificate holder shall submit to the department a legal description of the site to be appended to the Site Certificate prior to construction.

(2) The facility shall be designed, constructed, operated and retired:

(a) Substantially as described in the Site Certificate;

(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the Site Certificate is issued; and

(c) In compliance with all applicable permit requirements of other state agencies.

(3) Construction of the facility must begin and be completed by dates specified in the Site Certificate.

(4) No construction, including clearing of a right of way, except for the initial survey, may commence on any part of the facility until the certificate holder has adequate control, or has the statutory authority to gain control, of the lands on which clearing or construction will occur.

(5) Prior to construction, the certificate holder shall submit to the State of Oregon, through the Council, a bond or comparable security, satisfactory to the Council, in an amount specified in the certificate adequate to restore the site to a useful condition if the certificate holder:

(a) Begins but does not complete construction of the facility; or

(b) Permanently closes the facility before establishing a financial mechanism or instrument, satisfactory to the Council, that will assure funds will be available to adequately retire the facility and restore the site.

(6) Except for the portion of capacity to be used by the applicant:

(a) For facilities that generate electricity and are not exempt from the determination of need under OAR 345-023-0010, the Council shall condition the Site Certificate to require, before construction, sales contracts with an energy supplier or combination of energy suppliers whose needs formed the basis of the Council's finding under OAR 345-023-0020(2) and 345-023-0050 for at least 50 percent of the capacity from the facility.

(b) For thermal facilities the Council shall condition the Site Certificate to require, before construction, sales contracts for 80 percent of the capacity or energy of the facility.

(c) For facilities exempt from demonstrating need under OAR 345-023-0010(3), facilities for which all of the net electric output is contracted to the Bonneville Power Administration, the Council shall condition the Site Certificate to require, before construction:

(A) A long-term power sales contract with the Bonneville Power Administration for all the net electric output of the facility; and

(B) A final, non-appealable determination by the Pacific Northwest Electric Power and Conservation Planning Council, under the criteria identified in OAR 345-023-0010(3), that the Bonneville Power Administrator's decision to acquire output from the proposed facility is consistent with the **1991 Northwest Conservation and Electric Power Plan** and is in accordance with the criteria identified in OAR 345-023-0010(3)(a), (b) and (c). If such a determination is not provided, the certificate holder shall not begin construction unless it demonstrates need in a process in conformance with OAR 345-027-0070, except that the Council shall hold a contested case if requested by any person as provided in 345-027-0070(3). The hearing shall be limited to consideration of whether the facility complies with division 23 of these rules.

(7) For a surface facility related to an underground gas storage reservoir exempt from showing need under OAR 345-023-0010(1)(g), the Council shall condition the Site Certificate to require, before construction of surface facilities, including related or supporting pipelines, sales contracts, letters of intent or other sales agreements for at least 80% of the facility's design daily throughput. If such agreements have not been made, the certificate holder must demonstrate to the Council a reasonable likelihood that such agreements will be executed.

(8) If mitigation is required after an affirmative finding by the Council under any standards of division 22 or division 24 of this chapter, the certificate holder, in consultation with affected state agencies and local governments designated by the Council, shall develop specific mitigation plans consistent with Council findings under the relevant standards. Such plans must be approved by the department prior to the beginning of construction or, as appropriate, operation.

(9) The certificate holder shall prevent any condition over which the certificate holder has control from developing on the site that would preclude restoration of the site to a useful condition.

(10) Conditions related to facility retirement and site restoration:

(a) The certificate holder shall establish a financial mechanism or instrument, satisfactory to the Council, that will assure funds will be available to adequately retire the facility and restore the site;

(b) At least five years prior to planned retirement of the facility, the certificate holder shall submit a retirement plan to the Council for approval. The plan shall describe how the site will be restored adequately to a useful condition, including options for post-retirement land use, information on how impacts to fish, wildlife and the environment will be minimized during the retirement process and measures to protect the public against risk or danger resulting from post-retirement site conditions; and

(c) The facility shall be retired after its useful life in accordance with the approved final retirement plan, pursuant to OAR 345-027-0110.

(11) The Site Certificate shall include as conditions all representations from the Application for Site Certificate and supporting record deemed by the Council to be binding commitments on the part of the applicant. Sections of the Application and supporting record may be incorporated directly or by reference.

(12) The certificate holder shall restore vegetation to the extent practicable and shall landscape portions of the site disturbed by construction in a manner compatible with its surroundings and/or proposed future use. Upon completion of construction,

the certificate holder shall dispose of all temporary structures not required for future use and all timber, brush, refuse and flammable or combustible material resulting from the clearing of land or from construction of the facility.

(13) The facility shall be designed, engineered and constructed to avoid potential dangers to human safety presented by seismic hazards affecting the site as defined in ORS 455.447(1)(d), and including amplification, that are expected to result from the reasonably probable seismic event.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 & ORS 469.401

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1985, f. & ef. 1-7-85; EFSC 4-1986, f. & ef. 9-5-86; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-026-0035, 345-026-0040, 345-026-0130, 345-026-0180; 345-079-0011, 345-100-0011, 345-111-0010, 345-115-0040, 345-125-0060 & 345-125-0065; EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-027-0023

Site Specific Conditions

The Council shall include the following conditions, as appropriate, in the Site Certificate:

(1) The certificate holder shall notify the department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the Application for Site Certificate. The Council may, at such time, require the certificate holder to propose additional mitigating actions in consultation with the Department of Geology and Mineral Industries and the Building Codes Division.

(2) The certificate holder shall notify the department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.

(3) If the facility uses coal, the certificate holder shall take all necessary steps to ensure that surface and groundwater are not contaminated by run-off or seepage associated with coal or ash storage, transport, or disposal. Coal and ash shall be handled in such a way as to minimize the likelihood of coal dust and ash being windblown and causing an environmental or public health problem. When ash is permanently disposed of on site, it shall be covered by a layer of topsoil which shall be revegetated.

(4) If the facility is a natural gas pipeline, the certificate holder shall submit to the department copies of all incident reports involving the certified pipeline required under **49 CFR §192.709**.

(5) If the facility is a transmission line, the certificate holder shall restore the reception of radio and television at residences and commercial establishments in the primary reception area to the level present prior to operations of the transmission line, at no cost to residents experiencing interference resulting from the proposed transmission line.

(6) If the facility is a surface facility related to an underground gas storage reservoir, the Site Certificate shall specify the site boundary and total permitted daily throughput of the facility.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.401 & ORS 469.470

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94

345-027-0028

Monitoring Conditions

(1) The certificate holder shall establish, in consultation with affected state agencies and local governments, monitoring programs as required by the Site Certificate for impact on resources protected by the standards of division 22 and 24 of this chapter, and to ensure compliance with the Site Certificate. The programs shall be subject to the review and approval of the Council.

(2) The certificate holder shall establish monitoring programs as required by permitting agencies and local governments, as required by the Site Certificate.

(3) For each monitoring program that it establishes, the certificate holder shall have quality assurance measures that are reviewed and approved by the department prior to commencement of construction or commencement of commercial operation, as specified in the Site Certificate.

(4) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall submit to the department as soon as possible a written report identifying the issue and assessing the impact on the facility and any affected Site Certificate conditions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.401 & ORS 469.507

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-027-0030

Extension of Construction Commencement and Completion Deadlines

(1) If a certificate holder cannot commence or complete construction by the deadlines established in the Site Certificate, the certificate holder may request an amendment to extend the deadline. A request shall conform to the requirements of OAR 345-027-0050 and 345-027-0060. The certificate holder shall submit the request no later than six months prior to the date of the applicable deadline, or, in the case of circumstances beyond the control of the certificate holder and described in the request, no later than the applicable deadline specified in the Site Certificate.

(2) If a certificate holder submits a timely request for an extension pursuant to section (1) of this rule, the provisions of the current Site Certificate shall remain in force until the Council renders a decision on the request.

(3) The Council shall evaluate the request for an amendment to extend the construction commencement or completion deadline pursuant to the applicable provisions of OAR 345-027-0050 through 345-027-0080.

(4) If the Council grants the amendment request, the Council shall specify a new deadline for commencement or completion of construction, which shall be no more than two years from the original specified date.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.401, ORS 469.405 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0050

Request By Certificate Holder To Amend Certificate

(1) A certificate holder must submit to the department a request to amend its Site Certificate if the certificate holder proposes to change the site boundary or otherwise to design, construct, operate or retire the facility in a manner different from the description in the Site Certificate, if the modification may:

(a) Invalidate the basis for any finding required by divisions 22, 23 or 24 of this chapter that was made by the Council in its final order granting a Site Certificate;

(b) Result in a significant adverse impact, that was not evaluated by the Council in its final order granting a Site Certificate, to any resource protected by applicable standards in divisions 22 and 24 of this chapter;

(c) Result in a significant adverse impact, that was not evaluated by the Council in its final order granting a Site Certificate, to geographic areas or human, animal or plant populations;

(d) Impair the certificate holder's ability to comply with a Site Certificate condition; or

(e) Change a condition in the Site Certificate.

(2) No Site Certificate amendment is required for:

(a) A change to an electrical generation facility that results only in an increase in the electrical generating capacity without increasing the number of electric generators at the site, changing fuel type, increasing fuel consumption by more than 10%, or

enlarging the facility site, and that does not violate any other conditions specified in the Site Certificate;

(b) A change in the number or location of pipelines for a surface facility related to an underground gas storage reservoir that does not result in the facility exceeding permitted daily throughput and does not enlarge the facility site;

(c) A change in the number, size or location of pipelines for a geothermal energy facility that does not enlarge the site boundary;

(d) A change to a related or supporting facility which is a pipeline or transmission line, by which the pipeline or transmission line is extended or modified, or the right-of-way is expanded, to serve customers other than the energy facility;

(e) Subject to the conditions in subsections (1)(a) through (1)(d) of this rule, any change to an aspect or feature of the facility, operating procedures, or management structures not specifically addressed in the Site Certificate, provided such change would not violate applicable statutes, rules or Site Certificate terms or conditions.

(3) The certificate holder shall perform an equivalent level of site investigation as was done in the initial Site Certificate proceedings before making any change to the facility which the certificate holder determines not to require Site Certificate amendment according to subsection (2) of this rule. A written evaluation describing these site investigations shall be kept by the certificate holder and may be inspected by the department at any time.

(4) In the Annual Report required by OAR 345-026-0080, the certificate holder shall describe all changes made to the design, construction, operation or retirement of the facility without amendment of the Site Certificate. The certificate holder shall keep a written record of the basis for the determination that an amendment of the Site Certificate was not required, based on the consideration of section (1) of this rule. Such changes, and the basis for the determination that an amendment of the Site Certificate was not required, may be inspected by the department at any time.

(5) A certificate holder may seek a determination from the department that a proposed change does not require a Site Certificate amendment by submitting a written description of the proposed change, the certificate holder's basis for that determination, and a request for a departmental review. The department shall respond in writing as promptly as possible. At the request of the certificate holder or a Council member, the department shall refer the determination to the Council for concurrence, modification, or rejection. Notwithstanding section (4) of this rule, a change that the department has determined not to require an amendment need not be described in the Annual Report required under OAR 345-026-0080.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320 & ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

345-027-0060

Contents of Request To Amend Certificate

(1) A request to amend a Site Certificate shall contain:

(a) The name and mailing address of the certificate holder;

(b) A description of the facility including its location and any other relevant information;

(c) A detailed description of the proposed modification and the expected impacts of the modification as described in OAR 345-027-0050(1);

(d) The specific language of the Site Certificate proposed to be changed, added or deleted;

(e) The applicable standard(s) affected by the change.

(2) The request to amend a Site Certificate described in section (1) of this rule shall provide information at a level of detail equivalent to that required in the Application for Site Certificate to describe any proposed change to a site, a facility or the Site Certificate. Material pertaining to a proposed amendment to a Site Certificate that was previously submitted to the department in an Application for Site Certificate or other part of the administrative record on the facility may be incorporated by reference.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.405 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0070

Review of Request By Certificate Holder For Amendment, Opportunity For Hearing

(1) Within 15 days of receipt of a request to amend a Site Certificate, the department shall circulate the request to affected state agencies and local governments, as provided in OAR 345-020-0040, asking that comments be made on the request within not more than 30 days. In addition, the department shall notify all persons on the Council's mailing list of the amendment request and specify a date by which comments on the request are due.

(2) Within 60 days of receipt of a request to amend a Site Certificate, the department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment.

(3) Any person may, by written request submitted to the department within 30 days of the issuance of the proposed order, ask that the Council hold a contested case hearing on the proposed order. A person requesting a contested case hearing shall provide a description of the issues to be contested, a statement of the facts believed to be at issue, and the person's mailing address.

(4) The Council shall determine whether any issue identified in a request for contested case hearing is significant as defined in OAR 345-001-0010 or otherwise justifies a hearing.

(a) If the Council finds any issue identified in the request to be significant or to justify a hearing, the Council shall conduct a contested case hearing governed by the applicable provisions of OAR 345-015-0002 to 345-015-0085. The scope of the contested case hearing shall be limited to the issues that the Council found significant or sufficient to justify the hearing;

(b) If the Council does not find any issue identified in the request to be significant or to justify a hearing, the Council shall deny the request for contested case hearing. This denial shall be in writing and shall state the basis for the denial. The Council may then adopt, modify or reject the proposed order.

(5) If no contested case hearing is requested, the Council shall decide, at its next meeting following expiration of the 30 day period following issuance of the department's proposed order, whether to adopt, modify or reject the proposed order.

(6) In evaluating a request for an amendment under this rule, the Council shall limit its consideration to the effects which may be produced by the proposed change or addition to the site or facility described in the request for amendment. In considering those effects, the Council shall apply state statutes, administrative rules, and local government ordinances in effect on the date the amended Site Certificate is executed.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.405 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0080

Review of Request By Certificate Holder For Expedited Amendment, Opportunity For Hearing After Amendment is Granted

(1) A certificate holder may request the Council Chair to grant expedited review of an amendment request. A request for expedited amendment shall include:

(a) Reasons why the certificate holder needs expedited review of its request;

(b) An analysis of the requested amendment with respect to the factors in OAR 345-027-0050(1); and

(c) An explanation why the need for expedited process arose and could not have reasonably been foreseen by the certificate holder.

(2) The Council Chair may grant a request for expedited

review if a delay would unduly harm the certificate holder and if the requested amendment would not likely result in a significant adverse impact to any Council standard. If the Council Chair decides that the request may not be reviewed on an expedited basis, the request shall be treated as an amendment request pursuant to OAR 345-027-0070. The Council Chair shall issue a written decision as soon as is reasonably practicable. If the request is denied, the Council Chair shall give an explanation of the reasons for the denial.

(3) Requests for expedited amendment which are granted by the Council Chair shall be processed as follows:

(a) Within seven (7) days of a decision by the Council Chair that expedited review is warranted, the department shall circulate the amendment request to affected state and local agencies, as provided in OAR 345-020-0040, asking that comments be made on the request within not more than 15 days. In addition, the department shall notify all persons on the Council's mailing list of the expedited review. This notice shall specify a date, not more than 15 days after the date of the notice, by which comments must be received.

(b) Within 30 days of receipt of a request for expedited review of a Site Certificate amendment, the department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If approval is recommended, the proposed order shall include any new or modified conditions recommended, and explain why expedited Council action was warranted. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment. This notice shall include information on the availability of the proposed order, the date of the Council meeting when the temporary amendment pursuant to subsection (3)(c) of this rule will be considered, and the deadline for any person to request a contested case review of the Council's order;

(c) After considering the proposed order, the Council may issue an order temporarily amending the Site Certificate prior to any opportunity for a contested case hearing;

(d) In evaluating a request for an amendment under this rule, the Council shall limit its consideration to the effects which may be produced by the proposed change or addition to the site or facility described in the request for amendment. In considering those effects, the Council shall apply state statutes, administrative rules, and local government ordinances in effect on the date the amended Site Certificate is executed.

(4) Any person may, by written request submitted to the department within 15 days of the date of the Council's order issued pursuant to subsection (3)(c) of this rule, ask that the Council hold a contested case hearing on the Council's order. A person requesting contested case review shall provide a description of the issues to be contested, a statement of the facts believed to be at issue, and the person's mailing address.

(5) The Council shall determine whether any issue identified in a request for contested case hearing is significant as defined in OAR 345-001-0010 or otherwise justifies a hearing.

(a) If the Council finds any issue identified in the request to be significant or to justify a hearing, the Council shall conduct a contested case hearing governed by the applicable provisions of OAR 345-015-0002 to 345-015-0085. The scope of the contested case hearing shall be limited to the issues that the Council found significant or sufficient to justify a hearing.

(b) If the Council does not find any issue identified in a request for contested case hearing to be significant or to otherwise justify a hearing, the Council shall deny the request for contested case hearing. This denial shall be in writing and shall state the basis for the denial. The Council may then adopt, modify or reject the proposed order.

(6) If no contested case hearing is requested, the Council shall decide, at its next meeting following expiration of the 15 day period following the date of the Council's order, whether to modify its temporary order or to allow it to stand as previously issued.

(7) The certificate holder shall not abuse this rule by failing to make timely application for an amendment, thus creating the

need for expedited review.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.405 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0090

Petition by Any Person to Apply Subsequent Laws or Rules

(1) Any person, other than the certificate holder, may petition the Council to amend a Site Certificate to make applicable to a facility for which a Site Certificate has been issued, a local government ordinance, statute or Council rule adopted after the date the Site Certificate was executed.

(2) A petition filed pursuant to this rule shall contain the following:

(a) The name and address of the petitioner;

(b) The name and address of the certificate holder;

(c) The facility for which the Site Certificate in question was granted and its location;

(d) Identification of the local government ordinance, statute or Council rule that petitioner seeks to have applied to the facility;

(e) The particular facts that demonstrate that failure to apply the ordinance, statute or rule identified in subsection (d) presents a significant threat to the public health or safety or to the environment; and

(f) The sections of the Site Certificate, including any terms or conditions, which the petitioner proposes should be changed, deleted or added.

(3) Upon receipt of a petition to amend pursuant to this rule, the department shall send a copy of the petition to the certificate holder along with a notice stating the date by which the certificate holder must file a response to the petition. The department also shall notify the persons on the Council's mailing list and affected state agencies and local governments.

(4) Within 60 days after receipt of the petition, the department shall issue a proposed order recommending approval, disapproval or modification of the petition. The proposed order shall include any new or modified conditions in the Site Certificate necessary if compliance with a later-adopted or amended statute, rule or local government ordinance is required. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment.

(5) Any person may, by written request submitted to the department within 30 days of the issuance of the proposed order, ask that the Council hold a contested case hearing on the issues raised in the proposed order. A person requesting a contested case hearing shall provide a description of the issues to be contested, a statement of facts believed to be at issue, and the person's mailing address.

(a) If the Council finds that any issue raised in the request for contested case hearing is significant, as defined in OAR 345-001-0010, or otherwise justifies a hearing, then the Council shall conduct a contested case hearing pursuant to applicable provisions OAR 345-015-0002 to 345-015-0085;

(b) If the Council determines that the request does not raise a significant issue or otherwise justify a hearing, the Council shall deny the request for contested case hearing and give the basis for its denial in writing and adopt, modify or reject the proposed order;

(c) Notwithstanding subsection (5)(b) of this rule, if the department's proposed order recommends approval of the petition to amend the Site Certificate based on a clear showing of a significant threat to the public health, safety or the environment, the Council shall grant a contested case hearing to the certificate holder upon request.

(6) If no contested case hearing is requested, the Council shall decide, at its next regular meeting following expiration of the deadline for requesting a contested case hearing, whether to adopt as presented, modify, or reject the proposed order.

(7) The Council may adopt a proposed order issued pursuant to section (4) of this rule, which imposes new requirements in the Site Certificate, only if the certificate holder agrees to the pro-

posed order, or if the proposed order makes a clear showing of a significant threat to public health, safety or the environment that will be alleviated by the adoption of the proposed order.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.401 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0095

Petition by Site Certificate Holder to Apply Subsequent Laws or Rules

The holder of a Site Certificate may petition the Council to make applicable to the facility, through an amendment to the Site Certificate, any statute, local government ordinance or Council rule adopted after the date the Site Certificate was executed.

(1) A petition filed pursuant to this section shall contain the following:

(a) The name and address of the certificate holder;

(b) The name and location of the site and the facility;

(c) Identification of the statute, local government ordinance or Council rule that the certificate holder desires to have applied to the facility, and any resulting amendments proposed to the terms and conditions of the Site Certificate;

(d) A description of the purpose of and reasons for having the statute, local government ordinance or Council rule apply to the facility; and

(e) The impact of applying the new statute, ordinance or Council rule on public health and safety, on the environment, and on the findings which form the basis for the Site Certificate.

(2) Upon receipt of a petition pursuant to this rule, the department shall send a summary of the petition to the persons on the Council's mailing list for the facility in question and to affected state agencies and local governments, along with a notice stating the date by which any person must file a response to the petition.

(3) Within 60 days after receipt of the petition, the department shall issue a proposed order recommending approval, disapproval or modification of the petition, including any new or modified conditions in the Site Certificate necessary if application of a new statute, rule or local government ordinance is granted by the Council. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment.

(4) Any person may, by written request submitted to the department within 30 days of the issuance of the proposed order, ask that the Council hold a contested case hearing on the issues raised in the proposed order. A person requesting a contested case hearing shall provide a description of the issues to be contested, a statement of facts believed to be at issue, and the person's mailing address.

(a) If the Council finds that any issue raised in the request for contested case hearing is significant, as defined in OAR 345-001-0010, or otherwise justifies a hearing, then the Council shall conduct a contested case hearing pursuant to applicable provisions of OAR 345-015-0002 to 345-015-0085;

(b) If the Council determines that the request does not raise a significant issue or otherwise justify a hearing, the Council shall deny the request for contested case hearing and give the basis for its denial in writing and adopt, modify or reject the proposed order.

(5) If no contested case hearing is requested, the Council shall decide, at its next regular meeting following expiration of the deadline for requesting a contested case hearing, whether to adopt as presented, modify, or reject the proposed order.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.401, ORS 469.405 & ORS 469.470

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0100

Transfer of Certificate

(1) No Site Certificate or any part of a facility included in a Site Certificate issued under this chapter shall be transferred or

assigned to any person, or in any manner disposed of, directly or indirectly, unless the Council gives its consent in writing.

(2) Involuntary transfer of ownership of a site or facility for which a Site Certificate has been issued, shall not include the right to construct or operate the facility. The right to construct or operate the facility may be transferred only under the provisions of this rule.

(3) The potential transferee shall submit an application for transfer of a Site Certificate to the department. The application shall include the same information as required by OAR 345-021-0010(1)(a), (d) and (k), unless otherwise allowed by the Council.

(4) The Council may require any person who submits an application for transfer of a Site Certificate under the provisions of this rule to submit a written consent from the current Certificate holder, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to the person's right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession of the facility involved.

(5) The department shall mail notice of receipt of the application for transfer to all persons on the Council's general mailing list, including the current certificate holder. The Council shall hold an informational hearing at its next regular meeting following the mailing of the notice. The informational hearing is not a contested case hearing. Following the hearing the Council shall approve an application for transfer of a Site Certificate if the Council determines that:

(a) The applicant satisfies the provisions of OAR 345-022-0010 and 345-022-0050; and

(b) The applicant is lawfully entitled to possession or control of the facility described in the Site Certificate at issue; and

(c) The applicant agrees to abide by all the terms and conditions of the Site Certificate to be transferred as determined by the Council; and

(d) The facility complies with any other statutes and rules, adopted after the Site Certificate was issued to the transferor, that the Council determines should be made applicable to the transferred facility.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.405 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0110

Application for Termination of Site Certificate

(1) Any Site Certificate holder may apply to the Council for permission to retire a facility and surrender a Site Certificate voluntarily. An application to terminate a Site Certificate shall be made within two years following permanent cessation of operations. An application for termination of a Site Certificate shall be accompanied, or preceded, by a proposed final retirement plan for the facility and site.

(2) The proposed final retirement plan shall include:

(a) A plan for retirement with a description of activities involved. A plan is acceptable if it provides for completion of retirement without significant delay, consistent with protection of the public health, safety and the environment;

(b) A description of actions to be taken to protect occupational and public health and safety and the environment; and

(c) An updated detailed cost estimate, comparison of that estimate with present funds set aside for retirement, and a plan for assuring the availability of adequate funds for completion of retirement.

(3) The department shall mail notice of the receipt of an application for termination of a Site Certificate to all persons on the Council's general mailing list and any special mailing list set up for the Site Certificate. In addition, the department shall notify and ask for comments from those tribes, officers and agencies listed in OAR 345-020-0040.

(4) The Council shall review the proposed final retirement plan, considering any comments received from the public, tribes, officers and agencies referred to in section (3) of this rule. If the Council determines that the proposed final retirement plan demon-

strates that the retirement will be performed in accordance with the rules of this chapter and applicable conditions in the Site Certificate and will not endanger the health and safety of the public or the environment, the Council may approve the final retirement plan, subject to such conditions and limitations as it deems appropriate and necessary, and may issue an order authorizing retirement. The Council's order may be appealed pursuant to ORS 183.480.

(5) The Council may terminate, by order, the Site Certificate for which an application for termination has been submitted under section (1) of this rule if it determines that the retirement has been performed in accordance with the approved final retirement plan and the Council's order authorizing retirement issued pursuant to section (4) of this rule.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.405 & ORS 469.470

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94

345-027-0200

Alternative Amendment Process for Carbon Standard Demonstrations in Lieu of Need

(1) Scope of rule: This rule is limited to amendments of existing site certificates in which the holder requests to demonstrate compliance with the applicable carbon dioxide emissions standard established by or pursuant to 1997 Or Laws Ch 428 and proceeds pursuant to ORS 469.503(2)(c)(A) or (C) or both, in lieu of demonstrating the need for the facility. The dispute resolution provisions of this rule shall apply to all amendments, pursuant to section 7 of HB 3283 decided after the effective date of the rules, even if the application for amendment was commenced before the effective date of this rule.

(2) Resolution of disputes: There will be no contested case with respect to an amendment under this section. Disputes concerning the certificate holder's demonstration of compliance with the carbon dioxide emissions standard shall be settled through binding arbitration.

(3) Contents of Request to Amend Certificate:

(a) A request to amend a Site Certificate shall contain:

(i) The name and mailing address of the certificate holder;

(ii) A description of the facility including its location and any other relevant information;

(iii) A detailed description of the proposed modification and the expected impacts of the modification as described in OAR 345-027-0050(1);

(iv) The specific language of the Site Certificate proposed to be changed, added or deleted;

(v) The applicable standard(s) affected by the change.

(b) The request to amend a Site Certificate described in section (3) of this rule shall provide information at a level of detail equivalent to that required in the Application for Site Certificate to describe any proposed change to a site, a facility or the Site Certificate. Material pertaining to a proposed amendment to a Site Certificate that was previously submitted to the department in an Application for Site Certificate or other part of the administrative record on the facility may be incorporated by reference.

(4) Review of Request For Amendment:

(a) Within 15 days of receipt of a request to amend a Site Certificate, the department shall circulate the request to affected state agencies and local governments, as provided in OAR 345-020-0040, asking that comments be made on the request within not more than 30 days. In addition, the department shall notify all persons on the Council's mailing list of the amendment request and specify a date by which comments on the request are due.

(b) Within 60 days of receipt of a request to amend a Site Certificate, the department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. The department shall send notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment. Any person, including the applicant, who disagrees with the Proposed Order shall file written comments with the Council within 30 days after the proposed

order is noticed.

(c) At its next meeting following the 30 day deadline, the Council may allow those who commented in writing the opportunity to make an oral presentation and shall decide whether to adopt, modify or reject the proposed order. The Council shall issue its final order as soon thereafter as practicable.

(d) Any person who filed written comments by the 30-day deadline on the department's proposed order on the amendment and appeared at the Council meeting at which the Council adopted its final order may request binding arbitration to resolve a dispute concerning the demonstration of compliance with the applicable carbon standard. Such request must be submitted to the department within 15 days of the issuance of the Council's final order. A person requesting a binding arbitration shall provide a description of the issues to be arbitrated, a statement of the facts to be at issue and the person's mailing address. Persons requesting arbitration or requesting to participate pursuant to subsection 5(c) shall be known as "parties." The Council and the Office of Energy shall be a single party and shall be represented in arbitration by the Office of Energy.

(5) Binding Arbitration:

(a) The secretary of the Council shall appoint an arbitration administrator within 10 days of receipt of the request for arbitration described in section 4(d).

(b) Matters subject to binding arbitration: The arbitration administrator shall prepare an arbitration statement stating the issues identified for arbitration by the parties. The arbitrator will consider any dispute about the site certificate holder's demonstration of compliance with the carbon dioxide standard.

(c) Notice of Arbitration: Upon request for arbitration pursuant to these rules, the Arbitration Administrator shall issue an arbitration notice to the applicant and all persons who filed written comments by the 30-day deadline and appeared at the Council meeting at which the Council adopted its final order. The notice shall specify a date by which such persons must request to participate in the arbitration as a party. The arbitration notice shall advise that a party may not advance an issue unless that party raised the issue in its written comments on the department's proposed order, unless the findings in the Council's final order differ materially from the findings recommended in the proposed order, in which case a party may request arbitration on new issues related to such differences.

(d) Appointment of Neutral Arbitrator: The arbitration administrator will compile a list of at least 10 candidate arbitrators who the arbitration administrator determines are neutral and are qualified by education, training and experience to arbitrate the matter, with preference to be given to those with experience in energy matters and administrative procedures. Parties may submit names of neutral and qualified persons to the arbitration administrator to be included in the list. If a party submits a candidate or candidates, the arbitration administrator shall include on the list at least one candidate that was submitted by the party and determined by the arbitration administrator to be neutral and qualified. The arbitration administrator shall submit the list of candidate arbitrators to the parties. If the parties are unable to agree upon one of the candidates within 10 days of receiving the list from the arbitration administrator, each party may return to the arbitration administrator within 15 days of receiving the list a preference sheet consisting of:

(A) A list of names to strike that includes not more than the total number of candidates divided by the number of parties to the arbitration, minus one, rounded down to a whole number.

(B) A rank-ordering of all the other names, giving each name a different but sequential number and using only whole positive numbers, with first choice being number 1. If a party fails to return the completed list on time, fails to rank all names on the list the party did not strike, or exceeds the number of allowed strikes, the arbitration administrator may disregard that party's preference sheet. The arbitration administrator shall choose the arbitrator from the candidates not stricken, considering the aggregate rank ordering of the parties, but giving primary consideration to selecting an arbitrator who is neutral and qualified

(e) Financial Conflict of Interest: No person shall serve as arbitrator in any arbitration in which that person or that person's employer has any direct or indirect financial interest in the result of the arbitration. Upon objection of a party to the continued service of an arbitrator, the arbitration administrator shall determine whether the arbitrator should be disqualified and so inform the parties. Such decision shall be final.

(f) Scheduling of Hearing: The date of the hearing shall be established by the arbitrator. The arbitration administrator will request all parties to supply information regarding available dates to assist the arbitrator in expeditious completion of scheduling upon appointment. Unless otherwise agreed by the parties, the hearing shall be held within 30 days of appointment of the arbitrator. The arbitrator may postpone or continue any hearing on good cause shown by a party, or upon the arbitrator's own initiative, or if stipulated by all of the parties.

(g) Time and Place of Arbitration Hearing: The arbitration shall be heard in Salem, Oregon unless the majority of parties agrees otherwise. The arbitrator shall fix the time for the arbitration hearing, notice of which must be given at least 10 days in advance, unless otherwise agreed to by the parties.

(h) Vacancy: The arbitration administrator is authorized to substitute another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly. The arbitration administrator shall offer the position to the remaining candidates in the order of their numerical ranking under section 5(d). If there are no names remaining on the list, the arbitration administrator shall use his or her discretion to fill the vacancy with a qualified arbitrator.

(i) Communications with the Arbitrator: No party or its representative may communicate in any way with the arbitrator about issues in dispute in the arbitration unless all parties are present or have given written permission to do so. Any communications for the arbitrator may be sent to the arbitration administrator. They will be relayed to the other parties to the dispute.

(j) Representation by Counsel: Any party may be represented at the hearings by counsel.

(k) Attendance at Hearings: Parties and their representatives may participate in the hearings. The arbitrator may require the exclusion of any witness during the testimony of other witnesses. Other persons may observe the proceedings, but may not participate in the hearings.

(l) Oaths: The arbitrator shall take the oath provided by ORS 36.325. This oath may be administered in writing.

(m) Record of Hearing: A written record of the proceedings shall be made. The record shall contain all correspondence and writing regarding the proceedings, evidence received or considered, and the arbitration decision.

(n) Proceedings: The hearing shall be conducted by the arbitrator in whatever manner will most expeditiously permit full presentation of the evidence and arguments of the parties. Normally, the hearing shall be completed within one day. In addition to the powers prescribed in these rules, the arbitrator shall have the powers provided by ORS 36.335. The oral hearing may be waived and held by briefs and documents if the parties so stipulate. The arbitrator shall determine whether to grant waiver of oral hearing and that determination shall be final.

(o) Arbitration in the Absence of a Party: The arbitration may proceed in the absence of any party who, after due notice, fails to be present. A decision shall not be made solely on the failure of a party to attend the hearing. The arbitrator shall require the attending party to submit such evidence as the arbitrator may require for the making of an decision.

(p) Evidence: Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Admissibility of evidence shall be determined pursuant to OAR 137-003-0050. The Arbitrator may subpoena witnesses or documents independently or upon the request of any party. The arbitrator shall be the sole judge of the admissibility of the evidence offered.

(q) Evidence by Affidavit and Filing of Documents: The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but shall give appropriate

weight to any objections made. All documents to be considered by the arbitrator shall be filed with the arbitrator prior to or at the hearing. The arbitrator's ruling on objections shall be final.

(r) Close of Hearing: The arbitrator shall ask whether parties have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare and note the hearing closed. The arbitrator may also set a final date for the receipt of evidence and shall declare the record closed as of that date. The time limit within which the arbitrator is required to render a decision shall commence upon the close of the hearing.

(s) Waiver of Rules: Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections prior to the close of the hearing shall be deemed to have waived the right to object.

(t) Serving of Notices: Any notice of hearing or arbitration decision shall be considered delivered or served on the parties when sent by certified mail to the addresses of record of the parties.

(u) Time of Decision: The decision shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than fifteen (15) days from the date of the closing of the arbitration hearing.

(v) Form of the Decision: The arbitrator's decision shall be in writing and shall be accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth. The decision shall also contain a calculation demonstrating compliance with the statute.

(w) Scope of Decision: The arbitrator shall interpret and apply the relevant statutory requirements to determine whether the applicant has complied with the carbon dioxide emission standard as found in ORS 469.503(2)(c)(A) or (C) or both.

(x) Settlement: If the parties voluntarily settle the dispute before the hearing, the settlement will end the dispute and the hearing will be canceled. If a voluntary settlement occurs during the hearing, the arbitrator should reflect the terms of the settlement in the decision, if the terms are in accordance with the law.

(y) Judicial Review: The decision of the arbitrator shall be final and binding. There is no judicial review of the Council's revised final order.

(z) Neither the Council nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

(aa) Expenses. Each party to the arbitration shall bear its own witness fees and other costs, except that the site certificate holder will pay all reasonable costs incurred by the Council and the Office of Energy.

Stat. Auth.: ORS 469.503 & ORS 469.409.

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1998, f. & cert. ef. 1-27-98; EFSC 3-1998, f. & cert. ef. 7-10-98

DIVISION 29

NOTICE OF VIOLATION, CIVIL PENALTIES, REVOCATION OR SUSPENSION

345-029-0000 Policy

(1) The purpose of the Council enforcement program is to protect the health and safety of the public and the environment by ensuring compliance with the terms of a Site Certificate, a Radioactive Material Transport Permit and applicable statutes, rules and orders of the Council and by obtaining prompt correction of violations. The department or the Council may impose a sanction for:

(a) A violation of any term or condition of a Site Certificate or Radioactive Material Transport Permit;

(b) A violation of any applicable provision of ORS Chapter

469, any rule promulgated or administered by the Council, or any order of the Council; or

(c) A history of non-compliance by the certificate holder with applicable rules or license requirements of more than one other state agency having enforcement jurisdiction.

(2) The Council Secretary has discretion to issue a Notice of Violation, except that the Council may instruct the Secretary to issue a Notice of Violation. Factors considered in deciding whether conditions or circumstances warrant issuing a Notice of Violation are:

(a) Did the responsible party report the conditions or circumstances?

(b) Are the conditions or circumstances limited to the possible violation of a reporting requirement?

(c) Are the conditions or circumstances the result of ambiguous language in the requirement in question?

(d) Are the conditions or circumstances the result of a change to the design, construction, operation or retirement of the facility which the certificate holder deemed, after reasonable analysis, not to require an amendment of the Site Certificate, as provided in OAR 345-027-0050(2)?

(e) Has the violation in question been cited by any other state agency having jurisdiction?

(f) Are the conditions or circumstances within the control of the responsible party?

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.603 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0005

Definitions

As used in this division the following definitions apply:

(1) "Responsible Party" means:

(a) A certificate holder;

(b) A radioactive material transport permit holder; or

(c) Any person otherwise subject to the requirements of this Chapter.

(2) "Council Secretary" means the Administrator of the Facility Regulation Division, Oregon Department of Energy.

(3) "Compliance Audit" means a program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, Site Certificate conditions or Radioactive Material Transport Permit requirements.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.992

Hist.: EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0010

Report by a Responsible Party

The responsible party shall make reports as specified in these rules and in the Site Certificate or Radioactive Material Transport Permit. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms of a Site Certificate, the requirements of OAR 345 Division 50, or a Radioactive Material Transport Permit, the responsible party shall:

(1) As soon as reasonably possible, notify the department of the conditions or circumstances that may constitute a violation, giving all pertinent facts including an estimate of how long the conditions or circumstances have existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit.

(2) As soon as reasonably possible, initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence.

(3) Submit to the department a written report within 30 days of discovery. The report shall contain:

(a) An assessment of the impact on the resources considered under the standards of Divisions 22 and 24 of this chapter as a result of the reported conditions or circumstances;

(b) A discussion of the cause of the reported conditions or

circumstances;

(c) The date of discovery of the conditions or circumstances by the responsible party.

(d) A description of immediate actions taken to correct the reported conditions or circumstances; and

(e) A description of actions taken or planned to minimize the possibility of recurrence.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0020

Notice of Violation

(1) If the department determines, either upon inspection as provided for in OAR 345-026-0050, 345-060-0007 or by other means or upon receipt of a report from the responsible party under OAR 345-029-0010, that there has been a violation for which sanctions may be imposed pursuant to OAR 345-029-0000, the department may serve a Notice of Violation upon the responsible party. Service of the Notice of Violation shall be by personal service or by first class, certified or registered mail.

(2) A Notice of Violation shall include:

(a) A reference to the statute, administrative rule, Council order, or term or condition of a Site Certificate, or Radioactive Material Transport Permit violated as determined by the department;

(b) A statement of the facts upon which the department based its determination that a violation occurred, including the date of discovery;

(c) A requirement for the responsible party to provide a written response to the Notice of Violation within 30 days or other specified time;

(d) A statement of the responsible party right to a hearing as provided for in OAR 345-029-0070 if a notice of civil penalty is later issued pursuant to OAR 345-029-0060; and

(e) The department's classification of the violation, including a statement of the consideration given to the following factors:

(A) The performance of the responsible party in taking necessary or appropriate action to correct or prevent the violation;

(B) Any similar or related violations by the responsible party in the previous 36 months; and

(C) Any adverse impact of the violation on public health and safety or on resources protected by Council standards.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0030

Classification of Violations

The department shall determine the classification of a violation based upon severity and considering the guidelines in this rule. The department may issue a Notice of Violation for Class I or Class II violations. The department may, if special circumstances warrant, determine a classification at variance from the guidelines listed below:

(1) In general, the following violations are classified as Class I violations:

(a) Violation of a term or condition of a Site Certificate or Radioactive Material Transport Permit.

(b) Violation of an order of the Council.

(c) Violation of any applicable rule in divisions 22 through 60 of this chapter.

(d) Violation of any applicable provision of ORS Chapter 469.

(2) In general, any Class I violation may be escalated to a Class II violation. Factors the department may consider in escalating a Class I violation to Class II include whether the responsible party reported the conditions or circumstances of the violation, the duration of the violation, whether prompt and effective corrective actions were implemented, the impact on public health and safety

or on resources protected by Council standards, and the past performance of the responsible party. To be escalated to Class II, the violation must meet one of the following criteria:

(a) It is a repeated violation. In deciding on escalation of the severity level based on repetitiveness, the Council and department will consider whether the successive violation could reasonably have been prevented by the responsible party by taking appropriate corrective actions for a prior violation;

(b) It resulted from the same underlying cause or problem as a prior violation;

(c) It is a willful violation; or

(d) The violation results in a significant adverse impact on the health and safety of the public or on the environment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.603 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 3-1995, f. & cert. ef. 11-16-95

345-029-0040

Response to Notice of Violation

The written response required by OAR 345-029-0020(2)(c) shall include, as a minimum:

(1) Admission or denial of the violation; and

(2) If the violation is admitted:

(a) The corrective action taken, and results achieved;

(b) Corrective action which will be taken to minimize the possibility of recurrence;

(c) The date when full compliance will be achieved; and

(d) If suitable corrective actions cannot be determined within the 30-day or other time period specified in the Notice of Violation, then the responsible party shall provide a preliminary response, which will provide a date by which a final response will be forthcoming.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0050

Enforcement Conference

(1) When, pursuant to OAR 345-029-0030(2), the department determines a Notice of Violation involving a Class II violation may be warranted, the department shall provide the responsible party an opportunity for an enforcement conference to discuss the cause and consequences of the violation and to describe the corrective actions taken. The department may use information discussed at the conference in determining the appropriate enforcement action.

(2) Following any enforcement conference, the department will confirm or amend the classification of the violation.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0060

Civil Penalties

(1) Following the responsible party's response to the Notice of Violation under OAR 345-029-0040 and any enforcement conference, a civil penalty may be assessed for any Class II violation. The amount of the civil penalty, if any, shall be determined as follows:

(a) Base amount:

(A) \$1000 per day from the date of discovery for a violation of a Site Certificate condition, or \$2000 per day from the date of discovery for such violation if the department determines that substantially the same violation occurred within the preceding 36 months; or

(B) \$100 per day from the date of discovery of a violation of a condition of a Radioactive Material Transport Permit or of the rules of Divisions 50 and 60 of this Chapter; or

(C) \$2000 per day from the date of discovery for a violation

of an enforcement order of the Council, or \$5000 per day from the date of discovery for such violation if the department determines that substantially the same violation occurred within the preceding 36 months.

(b) The base amount may be multiplied by a factor of:

(A) 3.0 if the department determines the violation was intentional or reckless; or

(B) 5.0 if the department determines the violation was intentional or reckless and the violation involved a requirement relating to public health, safety or the environment.

(c) The base amount may be multiplied by either or both of the following factors:

(A) 0.75 if the violation was corrected within the time required to respond to the Notice of Violation and if the certificate holder has produced a plan adequate to minimize the possibility of recurrence; and

(B) 0.8 if the certificate holder reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program.

(d) The base amount shall not be reduced under subsection (c) of this section if the department determines an increase in the base amount is warranted under subsection (b) of this section.

(2) A notice of assessment of civil penalty shall include:

(a) The department's analysis of the violation(s) in light of the criteria above;

(b) The amount of the assessment;

(c) A proposed order assessing the civil penalty; and

(d) A statement of the responsible party's right to a hearing as provided for in OAR 345-029-0070.

(3) Service of a notice of assessment of civil penalty shall be by personal service or by certified or registered mail.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0070

Hearing

(1) Within 20 days from the date of mailing of a notice of assessment of civil penalty, a responsible party may submit to the department a written request for a hearing. The request for hearing shall be considered made on the date that the request is post-marked.

(2) If a hearing is requested within the time prescribed in section (1) of this rule, the hearing shall be conducted under the provisions of OAR 345-015-0002 to 345-015-0085 applicable to contested cases.

(3) If the responsible party does not request a hearing within the time prescribed in section (1) of this rule, the department's proposed order assessing a civil penalty issued under OAR 345-029-0060(2), shall become final.

(4) If a responsible party requests a hearing but fails to appear, the department's proposed order assessing a civil penalty issued under OAR 345-029-0060(2) shall become final upon a prima facie case made on the record of the department.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0080

Payment of Penalty

A civil penalty imposed under this division becomes due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. If the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0090

Council Consideration of Mitigating Factors

Notwithstanding OAR 345-029-0080, the Council in its order upon a hearing pursuant to OAR 345-029-0070 may rescind or reduce a civil penalty imposed under this division upon a showing by the responsible party incurring the penalty that imposition of the penalty would be an unreasonable economic and financial hardship, that the responsible party has taken prompt and effective action to correct the violation and ensure that it will not be repeated, or that the certificate holder reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0100

Revocation or Suspension of Certificate

Any Site Certificate granted by the Council pursuant to this chapter may be revoked or suspended. Revocation or suspension of a Site Certificate requires a contested case hearing pursuant to OAR 345-015-0012 through 085. The initiation of a contested case hearing to suspend or revoke a Site Certificate requires a majority vote of the Council or a request from the department and shall be based on any one of the following grounds:

(1) Any material false statement in an application for a Site Certificate or in the supplemental or additional statements of fact or studies required of an applicant when a true answer would have warranted the Council's refusal to certify in the first instance;

(2) Any failure to comply with the terms or conditions of the Site Certificate; or

(3) Any violation of any of the provisions of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, any administrative rules adopted pursuant to the foregoing provisions including but not limited to OAR Chapter 345, or any order of the Council.

(4) If the Site Certificate is subject to ORS 469.410, having been executed prior to July 2, 1995, for violations of the provisions of ORS 469.300 to 469.520 or for the failure to comply with applicable health or safety standards.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.440

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95

DIVISION 30

RESEARCH REACTORS

Reporting of Operating Information from Research and Other Reactors Which Produce Less Than 200,000 Thermal Kilowatts

345-030-0005

General

(1) This rule applies to each research or other reactor in the State of Oregon which is designed to produce less than 200,000 thermal kilowatts. The intent of the rule is to assure that the Energy Facility Siting Council is continually advised, by means of the reports required below, of the operation of such reactors.

(2) For some occurrences, telephone notification of the Council is required. A call list for such notification will be provided by the Council.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.300 & ORS 469.470

Hist.: NTEC 4, f. 10-4-72, ef. 10-15-72; NTEC 5, f. 1-19-73, ef. 2-1-73

345-030-0010

Reports Required

(1) Annual Reports of Environmental Effects. By August 1 of each calendar year, a report shall be provided to the Council which contains the following information relative to reactor operation during the previous calendar year:

(a) The total amounts (measured or calculated) of radioactivity released to the environment in gaseous, liquid, or solid effluents;

(b) The radionuclides present in these effluents, and the quantities of principal radionuclides;

(c) The location and magnitude of the maximum measured or calculated direct radiation level in unrestricted areas from:

(A) Direct radiation from the facility;

(B) Direct radiation from facility effluents.

(d) A description of the general methods and the results of environmental monitoring.

(2) Notification of Incidents:

(a) The Council shall be promptly notified by telephone of any incident or condition relating to the operation of the reactor which could have prevented a nuclear system from performing its safety function as described in the Technical Specifications or in the safety analysis report. A report shall be submitted in writing within ten days of the occurrence;

(b) The Council shall be notified in writing within 30 days of its occurrence of any substantial variance from performance specification contained in the safety analysis report or in the Technical Specifications.

(3) Reports of Overexposures (from the reactor and its effluents) and Excessive Levels or Concentrations:

(a) The Council shall be promptly notified by telephone in the event of the following:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 25 rems or more of radiation; exposure of the skin of the whole body of any individual of 150 rems or more; or exposure of the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation; or

(B) The release of radioactive material in concentrations which, if averaged over a period of 24 hours, would exceed 5,000 times the applicable limits specified for such material in appropriate sections of U.S. Nuclear Regulatory Commission regulations.

(b) The Council shall be notified by telephone within 24 hours in the event of the following:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 5 rems or more of radiation; exposure of the skin of the whole body of any individual to 30 rems or more of radiation; or exposure of the feet, ankles, hand, or forearms to 75 rems or more of radiation; or

(B) The release of radioactive material in concentrations which, if averaged over a period of 24 hours, would exceed 500 times the applicable limits specified for such materials in appropriate sections of U.S. Nuclear Regulatory Commission regulations.

(c) The Council shall be notified in writing within 30 days of each:

(A) Exposure (from the reactor or its effluents) of an individual to radiation or concentrations of radioactive material in excess of any applicable limits specified in U.S. Nuclear Regulatory Commission regulations or in the operating license for the reactor;

(B) Levels of radiation or concentrations of radioactive material (not involving excessive exposure of any individual) in an unrestricted area in excess of ten times any applicable limit specified in U.S. Nuclear Regulatory Commission regulations or in the operating license for the reactor;

(C) Each report required by paragraphs (A) and (B) of this subsection shall describe the extent of exposure of persons to radiation or to radioactive material, including estimates of each individual's exposure; levels of radiation and concentrations of radioactive material involved; the cause of the exposure, levels or concentrations; and corrective steps taken or planned to assure against a recurrence.

(4) Correspondence with Other State or Federal Agencies. A copy shall be provided to the Council of each report related to reactor operations which is submitted to a state or federal agency, except for material withheld from public disclosure under 10 CFR,

Part 2, Section 790.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]
 Stat. Auth.: ORS 469
 Stats. Implemented: ORS 469.470
 Hist.: NTEC 4, f. 10-4-72, ef. 10-15-72; NTEC 5, f. 1-19-73, ef. 2-1-73; EFSC 1-1995, f. & cert. ef. 5-15-95

DIVISION 50

RADIOACTIVE WASTE MATERIALS

345-050-0006

Disposal Prohibited

Except as provided in ORS 469.525 and OAR Chapter 345, Division 50, no discarded or unwanted radioactive material may be held or placed for more than seven days at any geographical site in Oregon except the site at which the radioactive material was used or generated pursuant to a license under ORS 453.635 or a site of a thermal power plant used for the temporary storage of radioactive material from that plant for which a site certificate has been issued by the Energy Facility Siting Council.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 469.525
 Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 1-1979(Temp), f. & ef. 3-5-79; EFSC 9-1981, f. & ef. 12-28-81

345-050-0010

Purpose and Applicability

(1) Since virtually all materials contain some measure of radioactivity, it is the purpose of these rules to identify those materials which present such small health hazards that they are exempt from the provisions of ORS 469.525 (1981 Replacement Part) as incorporated in OAR 345-050-0006 and may be disposed of within the state.

(2) It is also the purpose of these rules to establish standards for the siting of those waste disposal facilities which would only include wastes generated before June 1, 1981 through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes. It is the purpose of these rules to implement the requirements of ORS 469.375, 469.470 and 469.501 to 469.507 for such waste disposal facilities. These rules do not apply to uranium mine overburden or uranium mill tailings, mill wastes or mill by-product material which are subject to OAR Chapter 345, Divisions 92 and 95.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 469.470 & ORS 469.525
 Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1995, f. & cert. ef. 5-15-95

345-050-0020

Exempt Quantities

(1) Materials are exempt from provisions of ORS 469.525 provided that such materials contain radioactive material in individual quantities none of which exceeds that applicable quantity set forth in **Table 2** and provided that the number of individual quantities does not exceed 10.

(2) Burial of a human body containing radioactive materials used for diagnostic or therapeutic purposes is exempt from the provisions of ORS 469.525 provided the burial is otherwise done in accordance with applicable Oregon law.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]
 Stat. Auth.: ORS 469.470
 Stats. Implemented: ORS 469.300 & ORS 469.525
 Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 3-1995, f. & cert. ef. 11-16-95

345-050-0025

Exempt Concentrations

Materials are exempt from the provisions of ORS 469.525

provided that such materials contain radioactive materials in concentrations not in excess of those of **Table 1**.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]
 Stat. Auth.: ORS 469
 Stats. Implemented: ORS 469.300, ORS 469.470 & ORS 469.525
 Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 5-1980, f. & ef. 4-25-80

345-050-0030

Specific Exemptions

In addition to the exemptions under OAR 345-050-0020 and 345-050-0025, the following materials are exempt from the provisions of OAR 345-050-0006 (or ORS 469.525):

(1) Radioactive material which has been incorporated into a consumer product manufacture under a license issued by the Nuclear Regulatory Commission, or an Agreement State and for which the agency licensing such manufacturer has determined that the possession, use, transfer, and disposal of such consumer product by all persons is exempt from regulatory requirements.

(2) Radium-bearing materials containing less than 5 picocuries of radium-226 per gram of solid, regardless of quantity.

(3) Radium-bearing material containing a total radium-226 activity of less than ten microcuries, regardless of concentration.

(4) Thorium-bearing materials containing less than 20 picocuries of radium-228 per gram of solid, providing that the radium-228 is present with the parent thorium-232, regardless of quantity.

(5) Thorium-bearing materials containing a total radium-228 activity of less than 100 microcuries, providing that the radium-228 is present with the parent thorium-232, regardless of concentration in the solid.

(6) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses which are disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality.

(7) Wastes generated before June 1, 1981 through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes and for which a site certificate has been issued by the council in accordance with ORS 469.375 and OAR 345-050-0040 through 345-050-0130.

(8) Maintenance of radioactive coal ash at the site of a thermal power plant for which a site certificate has been issued.

Stat. Auth.: ORS 469
 Stats. Implemented: ORS 469.300, ORS 469.470 & ORS 469.525
 Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 9-1981, f. & ef. 12-28-81

345-050-0035

Pathway Exemption

Naturally occurring radioactive materials shall be exempt from the provisions of OAR 345-050-0006 (or ORS 469.525) if it can be demonstrated that accumulation of material will not result in exposures exceeding 500 millirem of external gamma radiation per year, nor in the release of effluents to air and water in annual average concentrations exceeding the values in **Table 3**. An evaluation of potential radiation exposures and effluent releases shall be performed using the following premises:

(1) The material shall be considered in the form it exists when it is removed from the users' equipment, systems, or settling ponds prior to any dilution or remedial action designed to reduce radiation levels.

(2) No consideration shall be given to the ameliorating effects of land use restrictions, maintenance operations, or overburden at the disposal site.

(3) Accumulations of material over the reasonably projected period of waste generation shall be evaluated.

(4) External gamma radiation exposures shall be based on actual measurement and allowance may be made for the degree of equilibrium and for self-shielding.

(5) In computing radon concentrations in the air above a dis-

posal site containing radium-226, the following additional premises shall be used:

(a) Any house built on ground contaminated with radium-226 is assumed to have an 8-foot high ceiling on the first floor, to have one complete air change per hour, and to have a foundation constructed so as to meet the **Structural Specialty Code** (State of Oregon Uniform Building Code) effective at the time of adoption of these rules. No consideration will be allowed for any special construction or treatments designed to reduce radon diffusion into the structure;

(b) The relation between radon-emanation rate and radium concentration will be based upon experimental measurements on material intended for disposal.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.300, ORS 469.470 & ORS 469.525

Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79

345-050-0036

Gamma Pathway Exemption Interpretive Rule

This rule shall be the basis for determining compliance with OAR 345-050-0035 when considering external gamma radiation exposure. Disposal in Oregon of waste materials containing naturally-occurring radioactive materials (NORM) must not result in doses to individuals greater than 500 millirem (mrem) per year. If doses exceed this limit, waste material is considered radioactive and must be disposed of in a licensed radioactive waste disposal site. The waste materials also must meet air and water (including radon and leaching) pathway exemptions in OAR 345-050-0035. To determine compliance with the gamma pathway exemption in OAR 345-050-0035, the following conditions apply:

(1) As used in this rule, "waste material" means the annual solid waste stream leaving a site for landfill disposal.

(2) Actual field gamma radiation exposures shall be measured. These exposure readings shall be compared with the levels given in section (4) of this rule to determine compliance. These levels correspond to a potential 500 mrem dose per year. They are based on the dose a person might receive being 90 percent of the time in a house built on a homogeneous, semi-infinite plane (slab) of NORM. This house has a two-inch wooden floor over a two-foot crawl space. Exposure is measured at three feet above the floor. Computer modeling was used to correlate the radiation levels measured in the house to radiation from NORM in two container geometries — A standard 55-gallon steel drum and a box measuring 1.5 x 1 x 2 feet (H x W x L).

(3) Readings shall be in microRoentgen per hour (uR/hr) using a detection system which is sensitive enough to determine compliance with the gamma radiation levels in section (4) of this rule. Systems shall be calibrated according to National Institute of Standards and Technology (NIST) procedures with an NIST-traceable source. Measurements shall be made at a distance of one foot from the waste container. The contents of the container shall be proportional in composition to the average waste material. The highest reading measured around the container shall be used.

(4) The following readings correspond to a potential dose of 500 millirem per year for the respective container geometries. Long-lived radionuclides are assumed to be in secular equilibrium. If measurements as described in section (3) of this rule produce readings below the following levels, the waste material shall be exempt based on the gamma pathway only:

(a) Standard 55-gallon steel drum: 18 uR/hr (above background) at one foot;

(b) Box (1.5H x 1W x 2L feet): 18 uR/hr (above background) at one foot.

(5) The Oregon Department of Energy may approve the use of exemption levels corresponding to container types other than those in section (4) of this rule to determine compliance provided that:

(a) The exemption levels for other container types are

derived by the same computer model and assumptions used to calculate the exemption levels for the drum and the box in section (4) of this rule;

(b) Measurements are made in compliance with sections (2) and (3) of this rule;

(c) The contents of containers larger than a box or drum are uniformly mixed before readings are taken to determine compliance.

Stat. Auth.: ORS 469.300(19)(a), ORS 469.490 & ORS 469.500

Stats. Implemented: ORS 469.470 & ORS 469.525

Hist.: EFSC 2-1993, f. & cert. ef. 3-19-93, EFSC 3-1993, f. & cert. ef. 3-22-93

345-050-0040

Standards for Waste Disposal Facilities

OAR 345-050-0040 through 345-050-0130 establish standards that applicants for site certificates for waste disposal facilities must meet. The Council will apply these standards in reaching a decision for or against issuance of a site certificate for the construction and operation of a waste disposal facility and "its related or supporting facilities" as defined in ORS 469.300. When the Council deems appropriate, it will adopt additional standards. Any additional standards will be adopted sufficiently in advance of the close of testimony at a hearing on a site certificate to allow parties to address the standard or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the standard. These standards as well as other statutory and regulatory requirements of the EFSC and federal, state and local agencies may also be utilized in formulating site certificate conditions required by ORS 469.400(3).

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375 & ORS 469.525

Hist.: EFSC 9-1981, f. & ef. 12-28-81

345-050-0050

Definitions

The definitions set out in ORS 469.300 are hereby incorporated as definitions to be used in interpreting these standards, unless the context requires otherwise or unless a term is specifically defined in this rule. Additional definitions are:

(1) "Area" means all locations adjacent to a facility determined by the Council to be directly affected by a force of nature to the eventual detriment of site integrity.

(2) "500-year flood plain" means the most current estimate of the extent of a 500-year flood as determined and mapped by the **U.S. Army Corps of Engineers**, if such estimate is readily available. In the event the Corps has not produced such a map, the Council may rely on other analysis based upon reliable scientific evidence. Such reliance by the Council will consider criteria and methodologies used by the **U.S. Army Corps of Engineers**.

(3) "Active fault" means a fracture along which rocks or soil on one side have been displaced with respect to rocks or soil on the other side in Holocene time (i.e., the most recent epoch of the Quaternary period, extending from the end of Pleistocene to the present). "Active fault zone" means an area of one or more active faults.

(4) "Mass movement" means ground surface instabilities that result in land sliding, flow, creep or any other instabilities found by the Council to threaten the integrity of the facility.

(5) "The Director" means the Director of the Oregon Department of Energy.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.300, ORS 469.320, ORS 469.375, ORS 469.525 & ORS 469.559

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 4-1995, f. & cert. ef. 11-28-95

345-050-0055

Mandatory Site Certificate Conditions

In addition to any other site certificate conditions which may be imposed by the Council pursuant to ORS 469.400(3), the Council shall impose site certificate conditions which shall require

an applicant to commit to design, build and operate a waste disposal facility in accordance with the design standards contained in OAR 345-050-0060, 345-050-0100, and in accordance with any representations made in satisfaction of OAR 345-050-0090, 345-050-0110, and 345-050-0130.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375 & ORS 469.525

Hist.: EFSC 9-1981, f. & ef. 12-28-81

345-050-0060

Site Suitability

In order to issue a site certificate for a waste disposal facility, or to carry out an arrangement with an agency of the federal government to clean up waste and contaminated material pursuant to ORS 469.559(2), the Council must find that the site is suitable for disposal of such wastes, and the amount thereof, intended for disposal at the site. A site is not suitable if it is located in:

(1) An area determine by the Council to be subject to surface water erosion over the projected life of the facility. In reaching this determination, the Council shall consider geological evidence of historical erosion, ancient shorelines, stream beds and cutting due to floods.

(2) The 500-year flood plain of a river, stream creek or lake, taking into consideration the area determined to be potentially subject to erosion within the lifetime of the facility.

(3) An active fault zone.

(4) An area of ancient, recent or active mass movement.

(5) An area subject to volcanic damage over the past two-million years, or found by the Council to be subject to such damage which is caused by natural forces of volcanic origin and which is sufficient to cause meaningful degradation of facility integrity.

Stat. Auth.: ORS 469.470

Stat. Implemented: ORS 469.300, ORS 469.320, ORS 469.375, ORS 469.525 & ORS 469.559

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 4-1995, f. & cert. ef. 11-28-95

345-050-0070

Alternate Site

In order to issue a site certificate for a waste disposal facility, the Council must find that there is no available alternative site for disposal of such wastes:

(1) A site outside of Oregon is not available unless appropriate local, state and federal regulatory agencies have issued the necessary permits to allow present commercial use of the site for disposal of wastes of the nature produced by the applicant.

(2) A site is not available unless it is found by the Council to be the best site reasonably available for the disposal of such wastes. In making this finding the Council may rely on a report of possible sites provided by the applicant. If the Director or EFSC finds the list to be deficient, additional sites may be identified for consideration. The applicant may either perform the additional site evaluations itself, or may elect to have the Director perform it. The applicant shall reimburse the Director for all costs of site evaluations done by the Director.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375, ORS 469.470 & ORS 469.525

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89

345-050-0075

Alternate Technology

In order to issue a site certificate for a waste disposal facility, the Council must find that there is not available alternative disposal technology that would better protect the health, safety, and welfare of the public and the environment. In making this finding, the Council will consider proven, demonstrated technology, including but not limited to existing hazardous waste and radioactive waste disposal site technologies.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.525

Hist.: EFSC 1-1989, f. & cert. ef. 8-8-89

345-050-0080

Federal Compatibility

In order to issue a site certificate for a waste disposal facility, the Council must find that the disposal of such wastes, and the amount thereof, at the site will be compatible with the regulatory programs of the federal government for disposal of such wastes. Regulatory programs of the federal government refers to those programs which are formally adopted as federal regulations and not to statements of policy or future intent.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81

345-050-0090

Adjacent State Compatibility

In order to issue a site certificate for a waste disposal facility, the Council must find that the disposal of such wastes, and the amount thereof, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes. Coordination with the regulatory programs of adjacent states means that radioactive emissions from waste disposal facilities on or near Oregon boundaries will not violate regulatory limits of the adjacent states.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81

345-050-0100

Release of Radioactivity

(1) In order to issue a site certificate for a waste disposal facility, the Council must find that the facility can be designed to contain radioactive releases. Following actions proposed by the applicant to construct the site, including but not limited to construction of dikes, liners and covers, the site will result in no release of radioactive materials from the facility.

(2) In order to find that the design of the radioactive waste disposal facility will not allow release of radioactive materials, the Council shall consider measurements of natural background concentrations of radioactive materials near the facility. The upper statistical limit of background measurements shall be considered the limit of release. The limits of background levels shall be measured before any waste is implaced. Statistical limits shall be at the 99 percent confidence level.

(3) Samples taken to determine background shall be taken from a minimum of four samples evenly spaced over a period of a year, from each monitoring location of air, soil, groundwater and surface water. Measurements from each seasonal period and for each sample type will be averaged to determine the background concentration. From year to year, values may be averaged to increase the statistical base of measurements, but only within the same seasonal period. Monitoring locations shall be in sufficient number to accurately characterize the area.

(4) After construction of the facility, compliance with release limits will be determined by statistically comparing the average of sample measurements to the upper limit of the range of background values. Measurements will be made comparing results from individual locations to the established background levels. Multiple samples from the same location may be averaged to determine compliance with release limits, but only within the same seasonal period.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89

345-050-0110

Compatibility with Federal Programs

(1) In order to issue a site certificate for a waste disposal facility, the Council must find that the disposal of such wastes, and the amount thereof, at the site, will be compatible with regulatory programs of the federal government for disposal of such wastes. Regulatory programs of the federal government refers to those programs which are formally adopted as federal laws or reg-

ulations and not to statements of policy or future intent.

(2) Commercial Disposal. The disposal facility must be designed to meet all applicable federal and state standards for disposal of the type of material involved.

(3) Federal Facility Disposal. If the project is a federally funded disposal of hazardous substances as that term is defined in **42 U.S.C. 9601**, the disposal facility shall be constructed to be consistent with those portions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) **42 U.S.C. 9601 et seq.** which govern federal facility cleanup:

(a) If the federally funded disposal will occur off-site the facility shall attain any legally applicable or relevant and appropriate state standards, requirement, criteria or limitation. The waste shall be transferred to a facility which is in compliance with any legally applicable federal and state requirements, including but not limited to, those required by sections 3004 and 3005 of the Solid Waste Disposal Act, **42 U.S.C. 6924** and **6925**, and with the Toxic Waste Disposal Act, **15 U.S.C. 260**;

(b) If the federally funded disposal facility is constructed in connection with an on-site cleanup of hazardous waste substances, the project must be consistent with those portions of OAR 345 Division 50 which are legally applicable or relevant and appropriate under the circumstances of the release or threatened release except as provided in **42 U.S.C. Section 9621(d)(f)**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89

345-050-0120

Bonding and Financial Ability

(1) In order to issue a site certificate for a waste disposal facility, the Council must find that, where federal funding for remedial actions is not available, a surety bond in the name of the state has been provided in an amount determined by the Oregon Department of Energy to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate condition.

(2) Estimates of the cost of closing the site shall include the cost of the effort to comply with the site suitability requirements of OAR 345-050-0060 and the radioactive release limits of OAR 345-050-0100. The cost of monitoring the site, providing for its security after closure and ensuring performance of site certificate conditions shall be based on the amount of investment principal the proceeds of which would be sufficient to provide for the cost of quarterly visits to the plant site by state regulatory agencies for inspections and environmental sampling.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.375, ORS 469.470 & ORS 469.525

Hist.: EFSC 9-1981, f. & ef. 12-28-81

345-050-0130

Ability to Construct and Operate

In order to issue a site certificate for a waste disposal facility, the Council must find that the applicant has or can acquire the organization, managerial, and technical expertise to construct, operate and retire the facility.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 9-1981, f. & ef. 12-28-81

DIVISION 60

TRANSPORTATION OF RADIOACTIVE MATERIAL

345-060-0001

Definitions

(1) The definitions set out in ORS 469.300 are hereby incorporated as the definitions to be used in interpreting these rules, unless the context requires otherwise or unless a term is specifically

defined in this section. Terms not otherwise defined shall be defined as found in **10 CFR 71 and 73 and 49 CFR 171 through 178**.

(2) For the purpose of these rules radioactive material shall be defined as defined in **49 CFR 173.403**.

(3) "Radioactive Material Shipments" include but are not limited to any number of truck trailers, automobiles, vans or barges, moved by one or interconnected power sources.

(4) "Radiopharmaceuticals" are radioactive materials used in the medical testing or treatment of animals or humans.

(5) "Radiographic Materials" include any sealed radioactive source fastened or contained in any instrument used for the examination of the macroscopic structure of materials by nondestructive methods using the source.

(6) "Well-Logging Radioactive Materials" are radioactive sources used in measuring devices or tools used to obtain information about wells or the adjacent soil or geologic formations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.300

Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 1-1995, f. & cert. ef. 5-15-95

345-060-0003

Applicability and Scope

(1) These rules apply to the transportation of radioactive material by means other than railcars in the State of Oregon. The rules contained in OAR 345-060-0001 to 345-060-0055 are auxiliary to and supplemental to the rules of OAR 860-066-0073 to 860-066-0075 for highway transport.

(2) Transport by or under the direction of an agency of the federal government in federal vehicles is exempt. This section does not exempt shipments:

(a) Because federal physical security requirements are applicable;

(b) Because they originate from or are destined for a federal facility; or

(c) Because the material is owned by the federal government.

(3) In accordance with ORS 469.603 and 469.607, it is the intent of these rules to be consistent with the United States Department of Transportation and Nuclear Regulatory Commission rules.

Stat. Auth.: ORS 469.605 & ORS 469.507

Stats. Implemented: ORS 469.603

Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91

345-060-0004

Permits

(1) Persons shall obtain an "Oregon Radioactive Material Transport" permit from the Oregon Public Utility Commission (after 1/1/96, Oregon Department of Transportation), prior to transport in the State of Oregon of radioactive material which requires a placard on the vehicle according to **49 CFR 172(f)**.

(2) An application for a permit shall be submitted annually to the Oregon Public Utility Commission (after 1/1/96, Oregon Department of Transportation), 550 Capitol Street NE, Salem, Oregon 97310-1380. A carrier applying for the first time shall submit the application at least thirty (30) days prior to transporting any materials specified in section (1) of this rule.

(3) A permit may be issued on an emergency basis by telephone when, as a result of conditions not subject to the control of the carrier, compliance within the thirty (30) day requirements of section (2) of this rule is not possible. A carrier acquiring a permit under this section shall provide information contained in subsection (4)(a) through (d), and (f) of this rule, and the name of its insurance company, policy number, minimum levels of coverage and date of policy expiration, or provide verification of self insurance.

(4) An application shall include:

(a) Name and address of the carrier;

(b) Telephone numbers of the carrier that will be answered at any time for emergencies and a statement that the carrier has a 24 hour telephone number for all shippers;

(c) A description of the material to be transported, number of shipments and estimated radioactivity per shipment. Precise information is not necessary if unavailable;

(d) A description of the route or routes to be taken and approximate schedule. Precise information is not necessary if unavailable;

(e) A description of any violations by the applicant of any local, state or federal regulations within the past year related to radioactive material transportation. Copies of the most recent Federal and/or state motor carrier safety and/or Hazardous Material audit and inspection reports are sufficient to satisfy this requirement;

(f) Oregon PUC (after 1/1/96, Oregon Department of Transportation) Operating Authority Identification Number, U.S. Department of Transportation Number, and U.S. Environmental Protection Agency Identification Number, when appropriate;

(g) Proof of insurance including minimum levels of coverage and policy expiration date, or provide verification of self-insurance.

(5) A regular permit will be issued if the applicant's record of violations of federal and state motor carrier safety and hazardous material requirements indicate that its practices have not and will not create an undue risk to public health, safety, or the environment.

(6) A conditional permit which requires pre-trip notification to arrange for inspection will be issued for one or both of, but not limited to, the following reasons:

(a) The carrier's Federal Highway Administration safety rating is "unsatisfactory" or "conditional" pursuant to the authority of Title 49 CFR 385.1;

(b) The carrier's safety profile with the Oregon Public Utility Commission (after 1/1/96, Oregon Department of Transportation) is unsatisfactory as based on accident rates, inspection reports, and/or safety audits.

(7) Copies of the Oregon Radioactive Material Transport Permit shall accompany all shipments for which a permit is required.

(8) Any person who has been denied a permit under this section shall upon request be granted a hearing before the Council. After hearing, the Council shall grant or deny the permit.

(9) Once issued, permits may remain valid for one year from date of issuance.

(10) Permits may be revoked or suspended for failure to comply with the conditions named on the permit and/or violations of the motor carrier safety, hazardous and/or radioactive materials requirements.

(11) Reinstatement of a permit revoked or suspended under section (10) of this rule will require submission of a new application and a demonstration that remedial actions have been taken to prevent recurrence of the violation(s).

(12) Temporary permits are available at Oregon Ports of Entry and Public Utility Commission (after 1/1/96, Oregon Department of Transportation) field offices. (Ports of Entry are open all hours except from 4:00 p.m. December 24th to 12:01 a.m. December 26th and from 4:00 p.m. December 31st to 12:01 a.m. January 2nd.) Ports of entry are located on 1-84 westbound at Farewell Bend; US 97 northbound at Klamath Falls; 1-84 eastbound at Cascade Locks; 1-5 northbound at Ashland and 1-5 southbound at Woodburn. Public Utility Commission (after 1/1/96, Oregon Department of Transportation) field offices are located on US 730 eastbound at Umatilla (24 hours a day, 7 days a week) and 1-5 southbound at Portland (6:00 a.m. to 6:00 p.m., Monday through Friday).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.603, ORS 469.605, ORS 469.607 & ORS 469.615

Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 3-1983, f. & ef. 11-4-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; Prior sections (5)-(10) renumbered to 345-060-0006(1)-(5); EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 3-1995, f. & cert. ef. 11-16-95

345-060-0005

Notification for Inspection

(1) Notification pursuant to **Nuclear Regulatory Commission** rules found in **10 CFR 71.97** and **10 CFR 73.37(f)** for irradiated reactor fuel and other materials shall be to: Secretary, Energy Facility Siting Council, 625 Marion St., NE., Salem, Oregon 97310, Telephone: (503)378-4040.

(2) Notice and arrangements for inspection shall be made by the carrier for all spent nuclear reactor fuel, Highway Route Controlled Quantity Shipments, and when required as a condition to an Oregon Radioactive Material Transport Permit. Notice for inspection shall be by the carrier as follows:

(a) As soon as practicable but no later than forty-eight (48) hours before time of shipment in Oregon;

(b) When, as a result of conditions not subject to the control of the carrier, it is not possible to comply with the 48-hour minimum notification, then notice shall be made immediately by telephone, or in any event not later than on the next working day, and shall explain why the carrier could not comply with the 48-hour requirement;

(c) When an inspection has been scheduled, additional notice is required if the shipment is canceled, or if the carrier's arrival at the inspection location will miss the designated inspection time by two or more hours (early or late);

(d) All notice for inspection and schedule changes shall be in writing or by telephone between 8 am and 5 pm Pacific Time to: Oregon Public Utility Commission (after 1/1/96, Oregon Department of Transportation), 550 Capitol Street NE Salem, Oregon 97310-0335, Telephone: (503)378-5916, (503)378-4601;

(e) Notice for inspection shall include the following information:

(A) Carriers name, address, telephone number and Oregon PUC (after 1/1/96, Oregon Department of Transportation) Operating Authority Identification Number;

(B) Shipper's and receiver's name, address, and telephone number;

(C) A description of the material, which shall include proper shipping name, hazard class, hazardous material identification number, and total quantity by weight or volume, and number of cures;

(D) A description of the route and approximate schedule;

(E) A description of the transport vehicle(s) and name of driver(s).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.603, ORS 469.605 & ORS 469.607

Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 3-1995, f. & cert. ef. 11-16-95

345-060-0006

Fees

(1) Except as provided in section (2) through (5) of this rule, a \$70 fee shall be submitted by the carrier to the Oregon Department of Energy, 625 Marion St., N.E. Salem, Oregon 97310 for each placarded shipment. The Oregon Department of Energy will invoice motor carriers each three months for shipments recorded at Oregon truck Ports of Entry in the last quarter. The Oregon Department of Energy may establish with carriers special invoice procedures for shipments that do not regularly pass through an Oregon Port of Entry.

(2) Placard shipments of well-logging material, radiographic material, and radiopharmaceuticals shall submit an annual fee of

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\$500 or \$70 per shipment, whichever is less.

(3) No additional fee will be charged for shipments which:

(a) The cargo is transferred from a previous vehicle for which a fee has been assessed; or

(b) The vehicle has a number of stops before unloading the radioactive cargo for which a fee has been assessed.

(4) Radioactive material carriers may petition for an alternative fee schedule. The Secretary of the Council, may grant such a request based on evaluation of whether:

(a) The carrier demonstrates that the applicable fee schedule severely impacts the cost of the product; or

(b) Other payments to the Oregon Department of Energy support applicable safety programs of the state of Oregon; or

(c) The shipment of the material involves one source and frequent movement between sites where the source is used; or

(d) The carrier is a public university or research organization using the material for public benefit.

(5) There will be a \$100 fee applied to each shipment traveling under a temporary permit described under OAR 345-060-0004(12), unless the carrier applies for a permit from the Oregon Public Utility Commission (after 1/1/96, Oregon Department of Transportation) within two weeks notice of the need for a permit.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.603, ORS 469.605, ORS 469.607 & ORS 469.611

Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 3-1983, f. & ef. 11-4-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; Renumbered from 345-060-0004(5)-(10); EFSC 3-1995, f. & cert. ef. 11-16-95

345-060-0007

Inspections

Shipments under these rules may be inspected by the State of Oregon, or its agents, for compliance with applicable rules and regulations. The State will inspect all spent nuclear reactor fuel (defined in **10 CFR 73.37**) and highway route controlled quantity shipments (defined in **49 CFR 173.403(1)**). The state may inspect samplings of other shipments. The State may inspect highway shipments made under conditional permits, as stipulated in OAR 345-060-0004(6). The arrangements for inspection will be made when notice for inspection is given, as described in OAR 345-060-0005.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.603 & ORS 469.613

Hist.: NTEC 7, f. 2-20-74, ef. 3-11-74; EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91

345-060-0015

Vehicles, Operator, Equipment

All aspects of vehicles, operators and equipment shall be in accordance with Oregon Administrative Rules Chapter 860, Division 65. (These Public Utility Commission (after 1/1/96, Oregon Department of Transportation) rules reference the requirements of **49 CFR 390** through **397**.)

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.603, ORS 469.605 & ORS 469.607

Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 3-1995, f. & cert. ef. 11-16-95

345-060-0025

Packaging, Placarding, Labeling and Documentation

Packaging, placarding, labeling, shipment documentation and all other aspects of transporting any radioactive materials shall be in accordance with **10 CFR 71** and **73**, and **49 CFR 171** through **179**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.603, ORS 469.605 & ORS 469.607

Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91

345-060-0030

Reporting and Emergency Response

The carrier of any radioactive material shall immediately notify local emergency response authorities and the Oregon Emergency Response System (within Oregon call 1-800-452-0311, outside Oregon call 1-503-378-6377) of:

(1) Any vehicle accidents regardless of whether radioactive material has been damaged or dispersed;

(2) Loss of any radioactive material; and

(3) Tampering with or obstruction of any shipments.

Stat. Auth.: ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.611

Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 1-1995, f. & cert. ef. 5-15-95

345-060-0040

Highway Routes

In Oregon, spent nuclear reactor fuel shall be routed in accordance with **10 CFR 73.37** and highway shipments shall be routed in accordance with **49 CFR 177.825**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.606

Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91

345-060-0045

Financial Assurances

(1) Spent nuclear reactor fuel shall be insured as required by the Price-Anderson Act.

(2) Carriers of radioactive materials shall comply with applicable federal and Oregon insurance requirements (see Oregon Administrative Rules, Chapter 860, Division 63 Public Utility Commission (after 1/1/96, Oregon Department of Transportation) rules and **Title 49 Code of Federal Regulations, Part 387**).

(3) Carriers of radioactive material shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during transportation and pay for the cost of response to an accident.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.603, ORS 469.605, ORS 469.607 & ORS 469.615

Hist.: EFSC 3-1982, f. & ef. 3-8-82; EFSC 2-1983(Temp), f. 6-22-83, ef. 7-1-83; EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 3-1995, f. & cert. ef. 11-16-95

345-060-0050

Weather and Road Conditions

Motor vehicles shall avoid movement during a road condition advisory of the Oregon State Highway Division unless vehicles have the required traction tires or devices specified in OAR Chapter 734, Division 17.

Stat. Auth.: ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.603

Hist.: EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91

345-060-0055

Enforcement

(1) The Director of the Oregon Department of Energy may halt the transport of radioactive material if he or she believes there is a clear and immediate danger to public health or safety. Such a halt shall be by an order which may be served without prior hearing or notice.

(2) The Secretary of the Council may impose a Notice of Violation or a civil penalty for violations of the rules of this division or applicable provisions of ORS Chapter 469. Such action shall be in accordance with Division 29 of this Chapter.

Stat. Auth.: ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.550

Hist.: EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 1-1995, f. & cert. ef. 5-15-95

DIVISION 70

CONFIDENTIAL TREATMENT OF SECURITY PROGRAM INFORMATION

345-070-0005

Purpose

The purpose of these rules is to protect the confidentiality of information submitted to the Energy Facility Siting Council and the Secretary regarding security programs for nuclear-fueled power plants, nuclear installations, and the transportation of radioactive materials to and from such facilities, and, to the extent possible, maximize information available to the public regarding the nuclear fuel cycle.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.530

Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 3-1995, f. & cert. ef. 11-16-95

345-070-0010

Legislative Authority

These rules are promulgated concurrently by the Council and the Director pursuant to their respective rulemaking authorities contained in ORS Chapter 183, ORS 469.470, 469.501 to 469.507, 469.530, 469.560 and ORS 192.500, in order to implement their joint responsibility under ORS 469.530.

Stat. Auth: ORS Ch. 469

Stats. Implemented: ORS 469.530

Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-1995, f. & cert. ef. 5-15-95

345-070-0015

Definitions

(1) "Nuclear Installation" shall have the meaning set forth in ORS 469.300.

(2) "Security Program" means any plan or procedure the primary function of which is to protect nuclear power plants, nuclear installations, transportation and storage of new or irradiated nuclear fuel elements, or transportation and storage of fissile material against any deliberate act which could directly endanger the public health and safety including exposure to radiation, including, but not limited to, the means for:

(a) Controlling entry to the site or portions of the site of fixed installations;

(b) Deterring or discouraging penetrations of sites or carriers by unauthorized persons;

(c) Detecting such penetrations in the event they occur;

(d) Apprehending in a timely manner unauthorized persons or authorized persons acting in a manner constituting a threat of sabotage or theft;

(e) Providing for appropriate authorities to take custody of violators.

(3) "Fissile Material" means fissile plutonium, uranium-233, and uranium-235 in any combination sufficient to cause (gm Pu/200 gm) + (gm U-233/200 gm) + (gm U-235 (contained in uranium enriched to more than 20% in U-235)/350gm) to be greater than unity.

(4) "Safeguards Information (SI)" means information which specifically identifies detailed:

(a) Security measures for the protection of special nuclear material; or

(b) Security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities such as nuclear power plants.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.530

Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 3-1995, f. & cert. ef. 11-16-95

345-070-0020

Confidential Treatment Required

Information submitted by any person pursuant to ORS 469.530 for review and approval by the Council and Director shall, to the extent it falls within the definition of "security program" in OR 345-070-0015(5), or Safeguards Information in OR 345-070-0015(7), be received and maintained in strict confidentiality. The Council and Director shall take all reasonable precautions to:

(1) Limit the number of persons within the Department of Energy having access to such information; and

(2) Physically safeguard such information.

Stat. Auth: ORS Ch. 469

Stats. Implemented: ORS 469.530

Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81; EFSC 1-1985, f. & ef. 1-7-85; EFSC 1-1995, f. & cert. ef. 5-15-95

345-070-0025

Releases of Non-Confidential Information

In reviewing information submitted to them under ORS 469.530, the Council and Director shall jointly determine whether specific portions of such information are not within the definition of "security program" combined in rule 345-070-0015(5), and promptly arrange for the physical segregation and public availability of all information not entitled to confidential treatment.

Stat. Auth: ORS Ch. 469

Stats. Implemented: ORS 469.530

Hist.: EFSC 10, f. & ef. 12-23-75; EFSC 4-1981, f. & ef. 3-25-81

345-070-0030

Public Statement Vs. Security Program

(1) Upon completing their review and approval of a security program and modifications to the program, the Council and Director shall promptly issue a joint statement which describes, without directly or indirectly breaching the confidentiality of the security program:

(a) The nature and scope of the review conducted;

(b) The adequacy of the security program; and

(c) A general description of the security measures.

(2) In the event of discovery of noncompliance with approved security programs, the Council and Director will issue a joint statement describing the general nature of the non-compliance. However, this statement shall not directly or indirectly breach the confidentiality of the security program.

Stat. Auth: ORS Ch. 469

Stats. Implemented: ORS 469.530

Hist.: EFSC 10, f. & ef. 12-23-75

DIVISION 75

GENERAL STANDARDS FOR ISSUANCE OF SITE CERTIFICATES FOR NUCLEAR-FUELED THERMAL POWER PLANTS

345-075-0010

Purpose

The purpose of these rules is to establish general standards that applicants for site certificates must meet. The Council will apply the general standards in reaching a decision for or against issuance of a site certificate for the construction and operation of an "energy facility" consisting of a nuclear-fueled thermal power plant and its "related or supporting facilities", as those terms are defined in ORS 469.300(10) and (13), respectively. The same general standards will be applied by the Council in deciding whether an existing site certificate should be amended to the extent and in the manner amendment is authorized by the site certificate. When the Council deems necessary and appropriate, it will adopt additional or more specific standards. Rules will be

adopted sufficiently in advance of the close of testimony at a hearing to allow the parties to address the rule, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the new rule.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501 & ORS 469.595

Hist.: EFSC 18, f. & ef. 9-2-77; EFSC 4-1981, f. & ef. 3-25-81

345-075-0015

Interpretation and Definitions

(1) Interpretation:

(a) These rules shall be interpreted so as to effectuate the purposes of ORS 469.300 through 469.570, 469.990, and 469.992 governing energy facility siting in Oregon. The fundamental policy of the law is set out in ORS 469.310;

(b) For the purposes of OAR 345-075-0025(2), (3), and (4), in determining what is "reasonably practicable", the Council will reach a conclusion in most cases by finding whether a proposed facility complies with the requirement of other agencies, such as the Federal Nuclear Regulatory Commission of the Oregon Department of Environmental Quality. See ORS 469.400.

(2) Definitions:

(a) The definitions set out in ORS 469.300 are hereby incorporated as the definitions to be used in interpreting these rules, unless a particular term is otherwise specifically defined within the terms of these rules;

(b) The term "facility" means an energy facility consisting of a nuclear-fueled thermal power plant and its related or supporting facilities;

(c) The term "operation" of a facility includes the accumulation, storage, transportation and disposal of waste and by-products from such facility.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.300 & ORS 469.590

Hist.: EFSC 18, f. & ef. 9-2-77; EFSC 4-1981, f. & ef. 3-25-81

345-075-0020

Affirmative Recommendation — Criteria

The Council will make a determination as to whether each of its applicable standards, including any additional or more specific standards than those contained herein, has been met by an applicant for a site certificate. If such standards are met, the Council will approve the application for a site certificate.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 18, f. & ef. 9-2-77; EFSC 6-1978, f. & ef. 5-22-78

345-075-0025

Mandatory Findings

In order to carry out the policy directive of ORS 469.310, the Council shall approve the application for the site certificate only if it finds that:

(1) There will be a need for the proposed energy facility based, upon evidence that:

(a) There will be a demand for the energy to be supplied by the proposed energy facility, demonstrated by demand forecasting evidence which;

(A) Identifies the contribution of major customer classes to total demand; and

(B) Explains how total demand results from assumptions made regarding various factors which influence energy demand including, but not limited to, population levels, personal income levels, employment levels, energy prices and the effects of conservation and alternative energy programs likely to be in effect during the demand forecasting period.

(b) The proposed facility is a prudent method of meeting all or a part of the demand from an economic cost standpoint taking into account the energy supply system of which it will be a part and other alternatives reasonably available to the applicant. For the purposes of this rule, alternatives include but are not limited to conservation and energy production and generation methods or

facilities not regulated by the Council.

(2) Risk of injury to the public health and safety in Oregon, or in adjacent areas that might be directly impacted, from the construction, operation, or retirement of the facility will be reduced to that extent which is reasonably practicable. For the purposes of this section, "operation" of the facility includes:

(a) Those items specified in OAR 345-075-0015(2)(c);

(b) Abnormal operation or malfunction of the facility's systems or equipment;

(c) Adverse impacts upon the facility resulting from reasonably foreseeable natural events;

(d) Acts of theft from or sabotage at the facility;

(e) Interaction of the facility with existing activities carried on in its vicinity.

(3)(a) Reasonably foreseeable disruption to and adverse impacts upon the environment in Oregon, or in adjacent areas that might be directly impacted, including, but not limited to, those caused by discharges of chemicals, waste, heat, moisture, sanitary wastes, and radioactivity from the construction, operation, and retirement of the facility will be reduced to that extent which is reasonably practicable;

(b) With respect to site certificate applications filed prior to July 1, 1975, the proposed plant is not the location of an endangered plant or species, as defined in **50 CFR Part 17** as of January 20, 1978, whose continued existence would be significantly threatened by construction on the site;

(c) With respect to site certification applications filed after July 1, 1975, construction and operation of the proposed facility will not jeopardize the continued existence of any of the following species, or destroy habitat critical to continued existence of these species:

(A) Wildlife:

(i) Deer, Columbian white-tailed (*Odocoileus virginianus leucurus*);

(ii) Wolf, Gray (*Canis lupus*);

(iii) Eagle, Bald (*Haliaeetus leucocephalus*);

(iv) Falcon, American peregrine (*Falco peregrinus anatum*);

(v) Falcon, Arctic peregrine (*Falco peregrinus tundrius*);

(vi) Goose, Aleutian Canada (*Branta canadensis leucopareia*);

(vii) Pelican, brown (*Pelecanus occidentalis*);

(viii) Butterfly, Oregon silverspot (*Speyeria zerene hippolyta*).

(B) Plants;

(C) Any of the 51 species proposed by the Fish and Wildlife Service as endangered in Oregon by publication in the **Federal Register (41 FR 24524; June 16, 1976)**.

NOTE: The species identified in subsection (c) consist of endangered and threatened wildlife and plants listed as of October 1, 1978, in 50 CFR

Part 17 with a range which includes Oregon, and species in Oregon proposed by the Fish and Wildlife Service for addition to the list in 50 CFR

Part 17 as published in the **Federal Register**.

(4) The applicant will make beneficial use of wastes and by-products produced by construction and operation of the proposed facility, including, but not limited to, heat, to the extent that such beneficial use is reasonably practicable.

(5)(a) With respect to site certificate applications filed after July 1, 1975, siting, construction, and operation of the proposed facility will be carried out in conformance with state-wide planning goals and in conformance with comprehensive land use plans and zoning ordinances of political subdivisions in which the facility is to be located in effect on the date of filing of the notice of intent or the application for the facility, whichever is earlier;

(b) With reference to any site certificate application filed prior to July 1, 1975, siting, construction, and operation of the proposed facility will be carried out in conformance with state-wide planning goals and in conformance with comprehensive land use plans and zoning ordinances of political subdivisions in which the facility is to be located in effect on the effective date of this rule.

(6) Construction and operation of the proposed facility will be conducted in a manner to avoid adverse impacts upon historic or archaeological sites, to the extent that relocation of the facility on

the site can be accomplished consistent with the Council's other standards.

(7) The requirements for water used in construction and operation of the facility can be met without infringing upon the existing water rights of other persons.

(8) The applicant has the organizational, managerial, and technical expertise to construct, operate, and retire the proposed facility. To this end, the applicant shall present evidence relating to:

(a) The applicant's previous experience, if any, in constructing, operating, and retiring similar facilities;

(b) The qualifications of the applicant's personnel who will be responsible for constructing, operating, and retiring the facility; and

(c) The qualifications of any architect-engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing, operating, and retiring the facility.

(9) The applicant, together with all co-owners, possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs, operating costs for the design lifetime of the facility, including, but not limited to, related fuel cycle costs, and the estimated costs of retiring the facility.

(10)(a) The applicant has identified the major and reasonably foreseeable socio-economic impacts on individuals and communities located in the vicinity of the proposed facility resulting from construction and operation, including, but not limited to, anticipated need for increased governmental services or capital expenditures;

(b) The affected area can absorb the projected industrial and population growth resulting from construction and operation of the facility.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501 & ORS 469.601

Hist.: EFSC 18, f. & ef. 9-2-77; EFSC 19, f. & ef. 12-30-77; EFSC 6-1978, f. & ef. 5-22-78; EFSC 7-1978, f. & ef. 7-21-78; EFSC 2-1979, f. & ef. 8-1-79

DIVISION 76

SPECIFIC STANDARDS FOR THE SITING OF NUCLEAR-FUELED THERMAL POWER PLANTS IN OREGON

345-076-0010

Purpose

These rules supplement general standards previously adopted by the Council for the siting of energy facilities, consisting of nuclear-fueled thermal power plants and their related and supporting facilities, OAR 345-075-0010 through 345-075-0025.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 4-1981, f. & ef. 3-25-81

345-076-0012

Applicability

(1) These rules are applicable to site certificate applications for nuclear-fueled thermal power plants and their related and supporting facilities.

(2) These rules will be applied by the Council, in conjunction with the general standards previously adopted, in reaching a decision whether to grant or deny issuance of a site certificate for nuclear-fueled power plants and their related and supporting facilities or whether an existing site certificate should be amended, to the extent and in the manner amendment is authorized by the terms of the site certificate.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.300 & ORS 469.470

Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 4-1981, f. & ef. 3-25-81

345-076-0015

Interpretation

(1) These rules shall be interpreted so as to carry out the pur-

poses of ORS 469.300 through 469.570, 469.990, and 469.992 governing energy facility siting in Oregon. The fundamental policy of that law is set out in ORS 469.310.

(2) In the event of a conflict between these rules and the General Standards set out in OAR 345-075-0010 through 345-075-0025, the requirement of these rules shall prevail.

(3) An applicant who satisfies the standards set forth herein on the subjects of public health and safety, ability to construct and operate, and financial ability shall be deemed to have satisfied the General Standards of such subjects.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 20, f. & ef. 12-30-77

345-076-0020

Definitions

(1) The definitions set out in ORS 469.300 are hereby incorporated as definitions for these rules, unless a particular term is otherwise specifically defined in these rules.

(2) The term "operation" of a facility includes its normal operation and the accumulation and storage of wastes generated thereby.

(3) The term "facility" means a nuclear-fueled thermal power plant and its related or supporting facilities.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.300

Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 1-1978(Temp), f. & ef. 1-5-78; EFSC 3-1978, f. & ef. 2-21-78; EFSC 4-1981, f. & ef. 3-25-81

345-076-0025

Economic Prudence — Cost Analysis

In determining whether a proposed nuclear-fueled thermal power plant and its related and supporting facilities meets the requirements of OAR 345-075-0025(1)(b), the Council will require a cost analysis demonstrating the economic prudence of the proposed facility or its alternative. The cost analysis must:

(1) Include an analysis of the load characteristics of the applicant and its co-owners' customers using a monthly load duration curve or weekly load duration curves characteristic of a month and of the impact upon load characteristics of the customers of the applicant and co-owners expected to result from the following factors during the demand forecast period:

- (a) Changing end uses of energy;
- (b) Load management practices;
- (c) Conservation;
- (d) Economic and demographic trends; and
- (e) Impacts of composite West Group load profiles.

(2) Include a demonstration that the resources of the applicant and co-owners including the proposed facility or an alternative are designed to:

(a) Meet the applicant and co-owners' energy requirements during the critical water periods, as defined in Section 2, Part I., of the Agreement for Coordination and Operations Among Power Systems of the Pacific Northwest, Contract No. 14-02-4822; and

(b) Maintain sufficient peak load capacity so that the planned annual loss of load probability for the system on which the applicant and the co-owners contractually rely shall not be greater than the equivalent of one day in 20 years. The demonstration must address the following variables:

(A) Load characteristics including the impact of factors listed in (1) of this rule;

(B) Characteristics of existing and proposed generating units, including unit sizes, maintenance schedules, forced outage rates and other operating constraints;

(C) The availability of purchases or exchanges or power;

(D) Possible delays in the proposed facility and other planned generation.

(3) Include incremental production and investment costs attributable to the proposed facility, or alternative, including:

(a) Incremental fuel, operations and maintenance costs over at least the first ten years of the lifetime of the proposed facility with the following items individually addressed:

- (A) fixed and variable fuel and operating and maintenance costs of individual generating units;
- (B) purchase and sale of power;
- (C) availability of hydrogeneration using an historic range of water flow conditions;
- (D) standard operating constraints;
- (E) estimated transmission losses;
- (F) mitigation costs for identifiable social, health, safety, and environmental impacts.

(b) Incremental capital costs as borne by the applicant and co-owners' ratepayers over at least the first ten years of the facility's lifetime, with the following items individually addressed:

(A) The initial capital cost of the facility or alternative, including mitigation costs for identifiable social, health, safety, and environmental impacts;

(B) Costs of retirement or decommissioning;

(C) Capital costs for transmission facilities.

(c) Mitigation costs discussed in (3)(a)(F) and (3)(b)(A) of this rule shall be considered for the applicants and co-owners' system.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501

Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 1-1978(Temp), f. & ef. 1-5-78; EFSC 3-1978, f. & ef. 2-21-78; EFSC 4-1981, f. & ef. 3-25-81

345-076-0026

Economic Prudence — Calculational Techniques

In determining and assigning economic costs as required in preparing the cost analysis required under OAR 345-076-0025, the method shall contain:

(1) A calculation of the present worth of costs determined under OAR 345-076-0025 using the standard method of present worthing;

(2) A weighting of costs determined under OAR 345-076-0025(3)(a) by the probability of occurrence of historical stream flow conditions; and

(3) A summation of the annual production and capital costs over at least the first ten years of operation.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 469.501

Hist.: EFSC 20, f. & ef. 12-30-77; EFSC 1-1978(Temp), f. & ef. 1-5-78; EFSC 3-1978, f. & ef. 2-21-78

345-076-0027

Economic Prudence — Available Alternative

(1) An alternative will be considered reasonably available within the terms of General Standards OAR 345-075-0025(1)(b) if suppliers exist who can provide the necessary materials and equipment to enable construction of the alternative facility to be completed, and for the alternative to become operational within that time period allotted for construction and commencement of operation of the applicant's and co-owners' proposed facility, and the alternative can meet all or part of the requirements of the applicant's and co-owners' demand forecast. If the alternative does not involve construction, it will be considered reasonably available if it can be implemented within the time allotted for construction and commencement of operations of the applicant's and co-owners' proposed facility.

(2) The applicant and co-owners shall discuss in detail in the site certificate application the reason for its determination that an alternative is not reasonably available.

(3) If a party to a site certification proceeding believes that alternatives other than those set forth in the site certificate application are reasonably available to the applicant and co-owners, it has the burden of going forward with evidence to establish that such alternatives are in fact reasonably available to the applicant and co-owners, and, by using the method of analysis specified in OAR 345-076-0025 and 345-076-0026, that such alternatives are economically prudent.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 469.501

Hist.: EFSC 20, f. & ef. 12-30-77

345-076-0029

Specific Standards Relating to OAR 345-075-0025(2), Public Health and Safety — Assumptions and Methods for Nuclear-Fueled Thermal Power Plants

In determining whether a proposed nuclear-fueled thermal power plant satisfies the requirements of the standards set forth herein on the subject of risk to public health and safety, the Council will accept, where applicable, the assumptions and methods used or approved by the NRC in evaluating compliance with NRC regulations in the absence of clear and convincing evidence that the use of such assumptions and methods will not adequately protect the health and safety of the citizens of Oregon.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1978, f. & ef. 1-20-78

345-076-0030

Specific Standards Relating to OAR 345-075-0025(2), Public Health and Safety — Nuclear Safety Requirements

In order to find that a proposed nuclear-fueled thermal power plant satisfies the requirements of OAR 345-075-0025(2) the Council must find that:

(1) During normal operations of the facility the radiation dose to any individual in an unrestricted area from all pathways will not exceed three millirem per year, total body dose, from liquid effluents; five millirem per year, total body dose, from gaseous effluents; or 15 millirem per year to any organ from radioactive iodine or particulate releases in gaseous effluents.

(2) Security measures at the facility will be capable of providing protection against industrial sabotage, which could result in uncontrolled release of radioactivity, by a determined violent extended assault, attack by stealth, or deception of several persons with the following attributes, assistance, and equipment:

(a) Well-trained and dedicated individuals;

(b) Inside assistance;

(c) Automatic weapons;

(d) Hand-held equipment, including incapacitating agents and explosives.

(3) The facility will be provided with an emergency core-cooling system which will be designed so that its calculated cooling performance, following a postulated loss of coolant accident, will ensure the maximum fuel element cladding temperature does not exceed 2,200° F. A loss-of-coolant accident is defined as a break in coolant pipes up to and including a break equivalent to the double-ended rupture of the largest pipe in the reactor coolant system.

(4) In the event of an abnormal occurrence resulting in the release of radioactive material from the facility, an individual continuously located at any point on the outer boundary of the low-population zone will not receive a whole body radiation dose in excess of 25 rem or a dose to the thyroid in excess of 300 rem, due to iodine exposure, assuming that 25 percent of the radioactive iodine and 100 percent of the radioactive noble gas developed from maximum power operation are released into the nuclear containment.

(5) The applicant will possess an emergency plan for coping with emergencies within the boundaries of the facility site and in the environs of the site. The emergency plan will assign responsibility for emergency action inside the site boundary to the applicant. The emergency plan will assign responsibility for emergency action outside the facility site boundary to appropriate local, state, and federal agencies in cooperation with the applicant.

(6) Spent fuel storage systems will be designed to:

(a) Prevent loss of water from the fuel pool that would uncover fuel;

(b) Protect fuel from mechanical damage;

(c) Provide the capability for limiting the potential off-site exposure so that an individual continuously located at any point on the outer boundary of the low-population zone will not receive

a whole-body dose in excess of 25 rem or a dose to the thyroid in excess of 300 rem, due to iodine exposure, assuming all the activity in the fuel rod gaps has been released from one fuel assembly.

(7) Spent fuel will be shipped in a container such that, if the following hypothetical accident occurs, radiation levels three feet from the external surface of the container will not exceed one rem per hour, no more than 0.1 percent of the total radioactivity of the container will be released, no more than 1,000 curies of inert gases will be released, and the contents of the container will remain subcritical:

(a) A free drop of 30 feet onto a flat unyielding surface, striking the surface in a position for which maximum damage is expected;

(b) A free drop of 40 inches onto a vertical six-inch diameter rod which is at least eight inches long;

(c) Exposed to a heat equivalent of an oil fire (defined to be 1,475° F. for at least 30 minutes), then;

(d) All portions immersed under at least 3 feet of water for at least eight hours.

(8) The facility can be dismantled and removed from the site in a manner consistent with OAR 345-075-0025(2) and (3).

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501 & ORS 469.603

Hist.: EFSC 20, f. & ef. 12-30-77

345-076-0032

Specific Standards Relating to OAR 345-075-0025(2), Public Health and Safety — Residual Risks of Nuclear-Fueled Thermal Power Plants

Residual risk to the public arising from operation of the facility after compliance with OAR 345-076-0030(1) through (7) will not be undue. Risks to the public will be considered to the extent that individuals residing in adjacent areas might be directly impacted. To demonstrate this, a residual risk analysis must be provided, including a generic review of pressurized water or boiling water reactor, as appropriate, safety which must:

(1) Treat various sources of risk including those arising from operation of the facility as defined in OAR 345-075-0025(2)(b) through (e), and from personnel error and inadequate quality control;

(2) Assess probabilities of an adverse occurrence based on historical experience; and

(3) Assess consequences of a representative kind of adverse occurrence, taking into account meteorological conditions, population densities and distribution, and pathways for radiological exposure to man; and

(4) Relate the degree of residual risk occasioned by operation of the facility to the degree of risk posed by coal-fired thermal facilities, tornadoes, hurricanes, meteor impacts, earthquakes, airline crashes, dam failures, and accidental release of chlorine.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1978, f. & ef. 1-20-78

345-076-0035

Specific Standards Relating to OAR 345-075-0025(2), Public Health and Safety

In order for the Council to conclude that a proposed facility meets the requirements of OAR 345-075-0025(2), the Council must find that:

(1) Techniques and installations will be available to assure that fuel waste or by-product material from operation of the facility can be treated and disposed of in a manner that will permit unrestricted use of the site after the useful life to the facility; and

(2) Any earthfilled dams to be built in association with an energy facility are:

(a) Capable of withstanding, without failure, reasonably expected loads; and

(b) Capable of being dewatered and refilled to permit any needed repairs to it or related cooling water systems in a manner consistent with the safety of persons and property interests downstream.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1978, f. & ef. 1-20-78

345-076-0040

Specific Standards Relating to OAR 345-075-0025(8), Ability to Construct, Operate, and Retire

In order for the Council to conclude that an applicant has the organizational, managerial, and technical expertise to construct, operate, and retire the proposed facility, the applicant must:

(1) In those instances where the applicant has not previously designed and constructed a nuclear facility, demonstrate to the Council that it will employ an architect-engineer that has design and construction experience with a similar facility to design and construct the proposed facility.

(2) Demonstrate that it will establish and implement a formal procedure that will document deviations from normal written operating procedure and classify those deviations as procedural, design, or personnel related, and that will require corrective action to be identified and reviewed by appropriate off-site engineering and management personnel.

(3) Demonstrate that it will establish and implement on-site radiological and quality control organizations which report directly to the plant superintendent and an off-site organization, independent of personnel responsible for power production, with authority to compel any changes at the facility it determines necessary for its operational safety, including shutdown of the facility.

(4) Demonstrate that it will establish and implement a training program for all company personnel who possess authority to override recommendations by the plant superintendent relating to safety of a nuclear facility, which consists of in-plant training or its equivalent, and relates to specific subject matter areas such as system design operation and maintenance and safety related requirements and their bases.

(5) Demonstrate it will establish and implement a training program for facility operators and their supervisory personnel, which will include in-plant training in the subjects of system design, operation and maintenance, effluent control and safety related requirements and their bases. Operators partaking in initial facility startup and testing shall have operating experience in a similar facility.

(6) Demonstrate that it possesses or will execute a binding written agreement, in those instances where the applicant will share ownership of the facility, which commits each owner to:

(a) Comply with ORS Chapter 469, all applicable rules of the Council and all conditions and warranties in the site certificate authorizing siting of the particular facility;

(b) Assign responsibility for facility operation to a designated organization or group;

(c) Abide by a designated procedure for arbitrating disagreements among the co-owners that concern facility operation and management; and

(d) Notify the Council when arbitration is required for disputes relating to facility safety.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1978, f. & ef. 1-20-78

345-076-0045

Specific Standards Relating to OAR 345-075-0025(9), Financial Ability

The Council will find that the requirements of OAR 345-075-0025(9) have been met if:

(1) Applicants and co-owners of the facility will be capable of providing funds as needed to construct, operate, and retire the facility without violating their respective bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

(2) Investor-owned co-owners of the facility will have a capitalization containing no less than thirty percent equity; and

(3)(a) A co-owner which is a cooperative has loan commit-

ments, Rural Electrification loan guarantees or other sources of funds sufficient to pay the cooperative's share of the estimated costs of construction of the proposed facility, and has contracts for sale of output from the proposed facility or has rate adjustment provisions in its members' contracts to provide revenue sufficient to retire debt incurred in construction and to operate and retire the facility;

(b) A co-owner which is a public body has legal authority to expend funds, or issue bonds, notes, or other evidences of indebtedness in an amount sufficient to pay its share of the estimated cost of construction, and that it has sales contracts for sale of the power output from the proposed facility or has rate covenants sufficient to retire debt incurred in construction and to operate and retire the proposed facility.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1978, f. & ef. 1-20-78

DIVISION 92

STANDARDS FOR THE SITING OF URANIUM MILLS IN OREGON

345-092-0010

Purpose

The purpose of these rules is to establish standards that applicants for site certificates for uranium mills and related and supporting facilities must meet. The Council will apply these standards in reaching a decision for or against issuance of a site certificate for the construction and operation of a uranium mill and its "related or supporting facilities", as defined in OAR 345-092-0025. When the Council deems appropriate, it will adopt additional standards. Any additional standards will be adopted sufficiently in advance of the close of testimony at a hearing on a site certificate to allow parties to address the standard, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the standard. These standards as well as other statutory and regulatory requirements of the EFSC and federal, state and local agencies may also be utilized in formulating site certificate conditions required by ORS 469.400(3).

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0012

Applicability and Statutory Authority

(1) These standards are applicable to a site certificate application for a "uranium mill" and its "related or supporting facilities" as those terms are defined in OAR 345-092-0025.

(2) These standards are authorized under ORS 469.553, 469.556 and ORS 183 and should be interpreted so as to carry out the fundamental policy of 469.310.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0014

Mandatory Site Certificate Conditions

In addition to any other site certificate conditions which may be imposed by the Council pursuant to ORS 469.400(3), the Council shall impose site certificate conditions which shall require an applicant to commit to design, build, operate, and retire a facility in accordance with the design standards contained in OAR 345-092-0031(1), (5) and (6), 345-092-0040(1), (2), (4) and (6)(c), 345-092-0050, 345-092-0071, 345-092-0080, 345-092-0090, 345-092-0100(2), and in accordance with any representations made in satisfaction of OAR 345-092-0031(6) and (7), 345-092-0040(3), (5), (6)(a) and (d) and 345-092-0070.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 3-1981, f. & ef. 3-20-81

345-092-0025

Definitions

(1) The definitions set out in ORS 469.300 are hereby incorporated as the definitions to be used in interpreting these standards, unless the context requires otherwise or unless a term is specifically defined in this rule.

(2) "Uranium mill" means a site at which ore is milled primarily for the recovery of uranium by conventional methods which involve the crushing, grinding and leaching (acid or alkaline) of the ore, followed by chemical separation and concentration of uranium. As used in this section, "uranium mill" does not include facilities for the extraction of uranium by in situ mining or heap leaching, which also fall under the Council's jurisdiction.

(3) "Mill tailings" means the residues remaining after extraction of uranium from its ore at a uranium mill.

(4) "Related or supporting facilities" means, in addition to any of those facilities set forth in ORS 469.300(14), structures adjacent to and associated with a "uranium mill" including areas from which ore is mined to produce feed material for the mill, ponds designed for the storage of mill tailings or other materials, and any sites for the permanent disposal of mill tailings and mine overburden.

(5) The term "facility" means a "uranium mill" and its "related or supporting facilities".

(6) "Facility boundary" means the boundary within which the applicant or site certificate holder has the legal right to control the access of individuals.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0031

Standards Relating to Public Health and Safety of Uranium Mill Operation, Decommissioning and Waste Disposal

In order to issue a site certificate for a uranium mill and related and supporting facilities, the Council must find that:

(1) The facility can be designed, constructed, and operated such that there is reasonable assurance that:

(a) During normal operations of the facility, the annual radiation dose equivalent to any member of the public will not exceed the limits specified in OAR 345-095-0090(1).

(b) The release of airborne effluents will not result in ambient levels exceeding the limits in OAR 345-095-0090(2).

(c) The facility shall be located at a remote site. To be considered remote, the calculated population doses within a 50-mile radius of the mill resulting from all exposure pathways will not exceed:

(A) Whole Body — 50 person rem/year;

(B) Lung — 500 person rem/year;

(C) Bone — 1250 person rem/year.

(2)(a) The site selected for final disposal is suitable for disposal of uranium mill tailings and wastes from decommissioning the uranium mill, and the proposed amount thereof intended for disposal at the site. In order for the site to be suitable, the Council must find that the applicant has evaluated reasonable disposal methods for the site including, but not limited to, below ground disposal, fixation of tailings with asphalt or cement, single tailings dam, and multiple dams or dikes.

(b) The evaluation shall provide the data needed to determine the effect of the alternate disposal method on the economic viability of the facility. The applicant shall demonstrate that reasonably expected wind and water erosion will not uncover uranium mill tailings and wastes from decommissioning the uranium mill, and that surface and ground waters will not become contaminated with chemicals or radioactivity in excess of those levels specified in OAR 345-092-0040(4). The applicant will demonstrate that water contamination will not occur by use of a transport model which uses the existing aquifer boundaries, hydrogeologic flow rates, soil absorption phenomena (e.g., filtration, ion exchange,

precipitation, etc.) and the leachability of materials from the uranium mill tailings under reasonably expected natural conditions at the site. This will also include perturbations caused by reasonably expected hydrogeologic changes at the site.

(3) It is necessary to dispose of uranium mill tailings and waste from decommissioning the uranium mill, and the amount thereof, at the site in Oregon, rather than permitting their uncontrolled abandonment, to protect the environment, and the health, safety and welfare of the people of the state from such wastes;

(4) There is no available, economically feasible alternative to the applicant's proposal for disposal of uranium mill tailings and wastes from decommissioning the uranium mill, and the proposed amounts thereof, inside or outside of the state. Alternatives examined by the applicant must include, but need not be limited to, return of tailings to the mine, creation of a regional disposal facility, disposal in an out-of-state commercial disposal site and at least 2 alternative sites within 20 miles. The Council will not consider an alternative to be available, unless such alternative provides superior protection to the public health and safety than the proposed site;

(5) The disposal of uranium mill tailings and wastes from decommissioning the uranium mill, and the proposed amounts thereof, at the site can be compatible with the regulatory programs of the federal government in existence on the date of adoption of these standards for disposal of such wastes; and

(6) The disposal of uranium mill tailings and wastes from decommissioning the uranium mill, and the proposed amounts thereof, at the site can be coordinated with the regulatory programs of adjacent states in existence on the date of adoption of these standards for disposal of such wastes. In order to be coordinated with regulatory programs of adjacent states the applicant must demonstrate that radiological impacts, in adjacent states from disposal of uranium mill tailings and wastes from decommissioning the uranium mill are not likely to exceed the applicable standards for disposal of these wastes which are in effect in the adjacent state on the effective date of this standard.

(7) After disposal of uranium mill tailings and wastes from decommissioning the uranium mill, the calculated radon emanation rates at the site are likely to be no greater than 2 picocuries per square meter per second above natural background levels which existed at the site prior to disposal of any wastes. Calculated gamma radiation levels are not likely to be statistically different from background levels which existed at the site prior to disposal of any wastes.

(8) The applicant has identified all reasonably expected loads; including but not limited to seismic events and liquification, hydrostatic, flood, wind and ice loads, expected to be placed on any dike or dams associated with the facility and has demonstrated that such dikes and dams can withstand these loads without failure.

NOTE: In determining whether a proposed facility satisfies the requirements of OAR 345-092-0031, the Council will accept, where applicable, the assumptions and methods used or approved by the federal Nuclear Regulatory Commission (NRC) or the Environment Protection Agency (EPA) in evaluating compliance with their respective regulations, in the absence of clear and convincing evidence that the use of such assumptions and methods will not adequately protect the health and safety of the public.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0040

Standards Relating to Environmental Impacts of Uranium Mill Operation

In order to issue a site certificate for a uranium mill, the Council must find that:

(1) Release of airborne particulates from the facility can be controlled, through the use of baghouses or equivalent methods, to the maximum extent consistent with existing milling technology and without increasing occupational health and safety risks.

(2) All mill ponds used for the collection and storage of mill

tailings and chemical agents can be designed or sited in such a manner as to preclude seepage into any groundwater aquifers to the maximum extent consistent with existing impoundment technology.

(3) Construction and operation of the proposed facility is not likely to jeopardize the continued existence of any of the following species, or destroy habitat critical to continued existence of these species:

(a) Wildlife:

(A) Deer, Columbian white-tailed (*Odocoileus Firginianus leucurus*);

(B) Wolf, Gray (*Canis lupus*);

(C) Eagle, Bald (*Hafideetus leucocephalus*);

(D) Falcon, American peregrine (*Falco peregrinus analum*);

(E) Falcon, Arctic peregrine (*Falco peregrinus tundrius*);

(F) Goose, Aleutian Canada (*Branta canadensis leucopareia*);

(G) Pelican, brown (*Pelecanus occidentallis*); and

(H) Butterfly, Oregon silverspot (*Speyeria zernene hippolyta*).

(b) Plants: Any of the fifty-one species proposed by the Fish and Wildlife Service as endangered in Oregon by publication in the **Federal Register** (41 FR 24524; June 16, 1976).

NOTE: The species identified in section (3) consist of endangered and threatened wildlife and plants listed as of October 1, 1978, in **50 CFR**

Part 17 with a range which includes Oregon, and species in Oregon proposed by the Fish and Wildlife Service for addition to the list in **50 CFR**

Part 17 as published in the **Federal Register**.

(4) The facility can be designed so that water quality will be maintained as follows:

(a) For ground water which is potable, as defined by the Environmental Protection Agency in **Federal Registers Vol. 40, No. 248**, December 24, 1975 and **Vol. 41, No. 133**, July 9, 1976, paragraphs 141.11, 141.12, 141.15a and 141.16, contaminants from the facility will not make the water non-potable. Paragraph 141.15a shall be interpreted to refer only to radium-226.

(b) For surface waters which meet the requirements of Oregon river basins given in sections (2) of OAR 340-041-0205, 041-0245, 041-0285, 041-0325, 041-0365, 041-0445, 041-0485, 041-0525, 041-0565, 041-0605, 041-0645, 041-0685, 041-0725, 041-0765, 041-0805, 041-0845, 041-0885, 041-0925, and 041-0965 contaminants will not cause surface waters to exceed these levels outside of a mixing zone. References to maximum permissible concentrations of radioactivity shall refer to paragraphs 141.15a and 141.16 in the **Federal Register Vol. 41, No. 133**, July 9, 1976.

(c) For ground or surface waters which currently do not meet the requirements of subsections (a) or (b) of this rule contaminants in water discharged from the facility, measured at the point of entrance to these waters, will not further degrade the existing quality of those ground or surface waters.

(5) The facility will not be located in one of the designated natural resource areas listed below and the proposed facility is not likely to produce significant adverse impacts in any such area including:

(a) National Parks, National Monuments and National Wildlife Refuges;

(b) State of Oregon Parks, Waysides, Wildlife Refuges and Natural Area Preserves;

(c) Wilderness areas as established under the Federal Wilderness Act (16 USC 1131 et. seq.) and areas recommended for designation as wilderness areas pursuant to Section 603 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579);

(d) Scenic Waterways designated pursuant to ORS 390.825;

(e) Federally-designated Wild and Scenic Rivers established pursuant to Public Law 90-452;

(f) Experimental areas established by the Rangeland Resources Program, School of Agriculture, Oregon State University;

(g) Areas having unique or significant wildlife geologic, historic, botanical, research or recreational values as lawfully desig-

nated by the state agency having jurisdiction over such values.

(6) Studies have been performed characterizing the relative abundance and diversity of the plant and animal species at the proposed site of the facility (Shannon-Weaver index H' shall be a satisfactory measure of diversity):

(a) The proposed facility is not likely to jeopardize the continued use of deer, elk and antelope wintering ranges, or migration routes of migratory wildlife.

(b) The above ground portions of the proposed facility shall not be located on antelope fawning areas, sage grouse strutting and nesting areas or water fowl nesting and rearing areas which are necessary to sustain the existing local or migratory populations of such species.

(c) Areas within the boundary of the facility site with unstable or fragile soils have been satisfactorily identified and available construction techniques can be employed to reduce adverse impacts such as erosion and compaction.

(d) The bird species within the area affected by the proposed facility have been identified and the facility is not likely to jeopardize the continued existence of local or migratory populations of such bird species.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0050

Standards Relating to Beneficial Use of Wastes

In order to issue a site certificate for a uranium mill and related and supporting facilities, the Council must find that liquids from the facility can be recycled consistent with existing and economic technology and process requirements.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0060

Standards Relating to Land Use

In order to issue a site certificate for a uranium mill and related and supporting facilities, the Council must find that:

(1) The Land Conservation and Development Commission has acknowledged pursuant to ORS 197.251 (1979 replacement part) the comprehensive land use plan and implementing measures of the local government(s) having land use planning jurisdiction over the site of the uranium mill and its related and supporting facilities, and that the mill and related and supporting facilities have been determined by the local government(s) to be consistent with the plan(s) and measures; or

(2) If the plan and implementing measures have not been acknowledged by the Land Conservation and Development Commission, the applicant has demonstrated that after providing notice and opportunity for public and other government agency review and comment, the statewide planning goals (OAR 660, Division 15) have been considered and applied by the local government(s) during a land use review of the mill and related and supporting facilities, and that the mill and related and supporting facilities have been determined by the local government(s) to be consistent with applicable statewide planning goals and local land use plans and measures; or

(3) If the local government(s) having land use planning jurisdiction over the site of the uranium mill and its related and supporting facilities have not completed a land use review of the uranium mill and its related and supporting facilities prior to approval of a site certificate as required by sections (1) and (2) of this rule, or if such local government has denied that the facility is consistent with applicable statewide planning goals and land use plans and measures, the Council has determined that the application is consistent with the statewide planning goals and applicable local government comprehensive plans and land use measures.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0070

Historic and Archeological Preservation Sites

In order to issue a site certificate for a uranium mill or related and supporting facilities, the Council must find that the proposed facility is not likely to cause significant adverse impacts within historic sites or upon archaeological resources.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 3-1981, f. & ef. 3-20-81

345-092-0071

Standards Relating to Water Rights

In order for the Council to issue a site certificate for a uranium mill and related and supporting facilities, the Council must find that the requirements for water used in construction and operation of the facility can be met without infringing upon the existing water rights of other persons.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 3-1981, f. & ef. 3-20-81

345-092-0080

Standard Relating to Ability to Construct, Operate and Retire

In order to issue a site certificate for a uranium mill and its related and supporting facilities, the Council must find that the applicant has or can acquire the organizational, managerial and technical expertise to construct, operate and retire the proposed facility.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0090

Standard Relating to Financial Ability

In order to issue a site certificate for a uranium mill and its related and supporting facilities, the Council must find that the applicant can provide financial assurance adequate to cover the total costs of decommissioning and reclamation of the facility in accordance with OAR 345-095-0117, 345-095-0118, 345-095-0120; and long-term monitoring and maintenance.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0100

Standard Relating to Socioeconomic Impacts

In order to issue a site certificate for a uranium mill for related and supporting facilities, the Council must find that:

(1) The applicant has identified the major and reasonably foreseeable socioeconomic impacts on individuals and communities located in the vicinity of the proposed facility resulting from construction, operation and retirement, including but not limited to anticipated need for increased governmental services or capital expenditures; and

(2) The applicant or the affected local government can provide adequate resources to mitigate the impacts identified pursuant to section (1); and

(3) The applicant has a process for periodically updating, during construction and operation, its assessment of anticipated impacts of the facility.

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

345-092-0110

Applications and Site Certificate Conditions

(1) The applicant shall submit an application which includes, but is not limited to:

(a) Description of the facility;

(b) Description of the site and its existing environment;

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(c) Description of the mine construction and operation with attendant impacts;

(d) Description of the uranium mill construction and operation with impacts;

(e) Description of decommissioning and waste disposal techniques;

(f) Evaluation of alternatives;

(g) Approval required from governmental agencies; and

(h) A proposed site certificate with suggested conditions.

(2) In the course of an application proceeding, the need for site certificate conditions which provide a waiver or are more stringent than existing Council rules may become evident.

(3) Any party to the hearing on a uranium mill application may, at the time and in the manner provided in OAR 345-015-0053 propose site certificate conditions.

(4) The Council will decide whether to adopt site certificate conditions imposing requirements more stringent than those in OAR Chapter 345, Division 95 taking into consideration the economic impact thereof in relationship to the benefits to be obtained thereby.

(5) The Council will waive or delay the applicability of a rule in OAR Chapter 345, Division 95 only if such action will not result in impacts to the public health and safety or the environment in excess of these standards (OAR Chapter 345, Division 92).

Stat. Auth.: ORS 469

Stats. Implemented:

Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81

DIVISION 95

CONSTRUCTION, OPERATION, AND DECOMMISSIONING RULES FOR URANIUM MILLS

345-095-0005

Purpose

It is the purpose of these rules to assure that the construction, operation, and decommissioning of uranium mills and related and supporting facilities are accomplished in a manner consistent with ORS 469.310.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.310, ORS 469.501 & ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0010

Legislative Authority

These rules are promulgated pursuant to ORS Chapter 469 as amended by Senate Bill 394 (Oregon Laws 1979, Chapter 283), which requires the Energy Facility Siting Council ("Council") to adopt rules governing the construction, operation, and decommissioning of uranium mills, and of disposal facilities for mill tailings and uranium mine overburden.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0015

Scope and Construction

(1) These rules apply to all "uranium mills", using conventional alkaline or acid leach technologies together with their related and supporting facilities, operated pursuant to a site certificate agreement.

(2) To the extent that any of these rules conflict or are inconsistent with administrative rules lawfully adopted by other state agencies, these rules shall be deemed to be controlling.

(3) To the extent that any of these rules conflict or are inconsistent with a condition contained in a site certification agreement, the latter shall be deemed controlling.

(4) Site certificate holder shall comply with all lawful rules, regulations, and requirements of federal agencies in effect on the date the site certificate is executed.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0017

Exemptions

(1) If an applicant believes that a waiver or delay in implementation of any of these rules is appropriate, such waiver or delay shall be requested in the application pursuant to OAR 345-092-0110; or

(2) If the necessity for a waiver or a delay in the implementation of any of these rules is identified after the issuance of a site certificate, the Council may so waive or delay the implementation of such rule if it finds, following a public hearing, that such action will not result in impacts to the public health, safety, or the environment in excess of the specific standards (Division 92).

(3) Request for an exemption pursuant to sections (1) and (2) of this rule shall be made in writing. Such request shall set forth the facts and basis for a waiver or delay and an evaluation of the impacts, if any, on the public health, safety, and the environment.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0020

Definitions

All definitions in OAR 345-092-0025 are applicable to these rules.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0025

Inspections

The site certificate holder shall comply with the requirements of OAR 345-026-0050 relating to inspections of the site by the Council or its representatives.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0040

Rules Relating Only to Construction

The following rules relate to the construction of the facility:

(1) Native topsoil shall be removed prior to excavation of the mine, mill buildings, ponds, and tailings disposal sites, and shall be stockpiled for subsequent use in site reclamation. Topsoil storage areas shall be contoured to prevent erosion and protected to retain nutrients required for subsequent use as a growth medium.

(2) Diversion or rechanneling of any perennial streams shall not be permitted.

(3) The site certificate holder shall keep the Council informed of drilling or trenching projects conducted to define hydrologic or geologic parameters related to building foundation designs, tailings retention system design, reclamation planning, or environmental monitoring. Notification shall be on a timely basis so that representatives of the Council and other state agencies may inspect the projects. The Council will notify the Department of Geology and Mineral Industries and the Department of Water Resources. Prompt notification shall be given if site investigations, drillings, trenchings or construction projects including mine development reveal geologic conditions different from those reported in the application.

(4) During the disturbance of any previously undisturbed soils, the site certificate holder shall inspect the site for historic, archeological, or paleontological specimens. The Council shall be notified of the discovery of any such items, other than incidental specimens of a type described in the application, and activities shall be halted in the immediate vicinity until the applicant has determined the significance of the discovery and the Council has concurred in the determination.

(5) Site preparation and facility construction shall be sched-

uled to minimize impacts on fish and wildlife.

(6) Unpaved roads and mill yards shall be treated to reduce nuisance dusting per Department of Environmental Quality's OAR 340-021-0060.

(7) All tailings dams shall be designed, constructed, and inspected in accordance with procedures specified in the **USNRC Regulatory Guide 3.11**. No radioactive tailings shall be used in the construction of tailings dams. Construction of waste water evaporation ponds, and chemical storage ponds shall be designed, constructed, and inspected in accordance with procedures specified in the site certificate.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0045

Construction Reports

(1) Prior to the initial production of yellowcake, the site certificate holder shall submit copies of monthly construction progress reports to the Council. Such reports shall describe the status of mining activities, building construction, and tailings dam and pond construction in sufficient detail to allow the Council or its representatives to observe significant construction progress.

(2) The Council shall be notified of any major changes in construction schedules and of any significant changes in process equipment, pollution control equipment or facilities, or equipment or facilities designed for the protection of workers.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0060

Standards Relating to Operation

The following rules shall apply to the operation of the facility:

(1) Operations shall be conducted such that waste waters are recycled or disposed of through evaporation.

(2) Operational inspection and surveillance of tailings dams shall be conducted according to the procedures of **USNRC Regulatory Guide 3.11.1**, April 1979.

(3) Tailings material shall be maintained to minimize movement of material by wind per Department of Environmental Quality's OAR 340-021-0060.

(4) The site certificate holder shall comply with all applicable requirements of the **State of Oregon Regulations for the Control of Radiation** (Health Division's OAR 333-022-0150) except Part I unless those requirements conflict with other construction and operation rules of the Council.

(5) The site certificate holder shall initiate prior to operation and shall maintain a safety and health program covering both occupational and radiological hazards. This program shall be submitted to the Council for approval. This program shall include, but need not be limited to:

(a) An onsite occupational safety officer trained and experienced in the recognition and control of the occupational hazards of milling operations including physical and chemical hazards and the use of respiratory protection;

(b) An onsite radiological safety officer trained and experienced in the recognition and control of the radiological hazards associated with uranium milling operations. (Note: The occupational safety officer and the radiological safety officer may be the same individual.);

(c) The safety officer(s) shall have the authority, and be notified that he or she has such authority, to order immediate cessation of safety or health hazards including process modification or cessation if, in the judgment of this individual, such action is required to protect workers or the public. The safety officer(s) shall report directly to the most senior on-site manager;

(d) An occupational radiological dose assessment program;

(e) Personal protective equipment including respirators shall

not be used routinely in lieu of process modification in order to meet personnel exposure limits;

(f) An employee training program including the safety and health hazards of facility operation and the use of personnel protection equipment and procedures. Such program shall be designed to instruct workers both on their assigned jobs and any other areas of facility operation where they may encounter hazards. The program shall include training in a manner understandable to the employees and an examination to verify employee understanding.

(6) The site certificate holder shall maintain records of all yellowcake shipments including amounts, routes to be followed, description of packaging, description of labeling, and a copy of the information supplied to the shipper including instructions to be followed in case of an accident. These records shall be available for review by the Council or its representatives. The emergency plan for transportation accidents shall be submitted to the Council for approval prior to start of operation. Any subsequent changes will be submitted to the Council 45 days before they are effective; except that any temporary changes deemed by the site certificate holder to be required immediately for the protection of the public health and safety or the health and safety of personnel may be instituted immediately.

(7) The site certificate holder shall have established written procedures for dealing with off-normal and emergency situations including, but not limited to:

(a) Failure of yellowcake drying and packaging dust control systems;

(b) Fire;

(c) Dam or dike failure;

(d) Slurry pipeline rupture;

(e) Hazardous process chemical spills.

(8) Underground injection of solutions for the extraction of minerals including uranium (in situ solution mining) shall not be permitted.

(9) No uranium mill tailings may be removed from the facility for any purpose other than samples for research or analytical purposes. The site certificate holder shall maintain a permanent record of any tailings transfer for such purposes.

(10) Noise levels will be in conformance with the requirements of Department of Environmental Quality's OAR 340-035-0035.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0070

Effluent Release Limits

Operation — During routine operation of the facility, effluent releases to uncontrolled areas shall not exceed the following limits:

(1)(a) Average annual airborne radiological effluent releases as measured at the point of maximum projected average ground level concentration, or if that point is on-site, at the facility boundary in the direction of the calculated maximum ground level concentrations, shall not exceed the concentration limits for uncontrolled areas specified in Part C, **Oregon Regulations for the Control of Radiation** (Health Division's OAR 333-022-0150).

(b) Daily average releases of yellowcake from drying and packaging operations shall not exceed 0.15 gm per kilogram of product produced.

(2)(a) Particulate emissions from grinding and crushing equipment shall not exceed the quantities specified in Department of Environmental Quality's OAR 340-021-0035, 340-021-0040, 340-021-0045, as in effect on the date of adoption of these rules;

(b) Emissions of particulates from stacks and baghouses discharging material other than that resulting from grinding and crushing equipment shall not exceed 0.1 grain per standard cubic foot as specified in Department of Environmental Quality's OAR 340-021-0030.

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(3) Visible air contaminants resulting from facility sources shall meet the requirements of Department of Environmental Quality's OAR 340-021-0015(2).

(4) Underground injection of waste fluids or sludges is prohibited.

(5) Notwithstanding other requirements of this rule:

(a) Unpaved roads and mill yards shall be treated to reduce nuisance dusting per Department of Environmental Quality's OAR 340-021-0060;

(b) Dust from materials stockpile areas shall be reduced per Department of Environmental Quality's OAR 340-021-0060;

(c) Baghouses, wet scrubbers or equivalent or superior pollution control devices shall be used for process areas;

(d) Wet grinding and crushing shall be used.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470, ORS 469.525 & ORS 469.556

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0080

Effluent Monitoring

(1) The site certificate holder shall initiate prior to construction and shall maintain an effluent monitoring program including as a minimum, those items specified in section (3). The purpose of this program shall be to evaluate facility effluents as they relate to effluent releases projected in the application, to regulatory limits of these rules, and to environmental impacts. Such program shall include provisions for monitoring during both construction and operation of the facility.

(2) This monitoring program shall be submitted to the Council for approval with copies to appropriate affected state agencies for their use. The Council will obtain concurrence from affected state agencies for portions of the program.

(3) For each point of routine or potential effluent release the effluent monitoring program shall describe the methods for ensuring the adequacy of control procedures. The program shall be capable of determining average release rates, maximum release rates, and total releases as well as the physical, chemical and radiological characteristics of the release. Releases from non-point sources, such as ore storage piles, may be estimated based on area monitors.

(4) Annual reports shall be filed with the Council within 90 days of the end of each reporting year and shall include data on all effluent releases, comparison of these releases to those projected in the application and to regulatory limits, review of the adequacy of the monitoring program, and recommendations and justification for any improvements in the program. The reporting years will start upon the initiation of construction at the site.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.507

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0090

Public Health Impacts

Operation — Public health impacts of facility operations shall not exceed the following limits:

(1) The annual dose equivalent shall not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as the result of exposures to planned discharges of radioactive materials, radon and its daughters excepted.

(2) Concentrations of total suspended particulates resulting from facility operation at any location which is routinely inhabited or visited by members of the public shall not exceed 19 ug/m³ annual geometric means. The 24-hour concentration at these locations shall not exceed 37 ug/m³ more frequently than once per year. In any case where measurable impacts on wilderness areas designated by federal or state agencies, or designated national or state parks may be impacted, the site certificate holder shall determine the concentration of total suspended particulates at the wilderness or park boundary nearest the facility. The concen-

tration limit at this point shall not exceed 5 ug/m³ annual geometric mean nor 10 ug/m³ on a 24-hour average more frequently than once per year.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0100

Environmental Monitoring — Construction and Operation

(1) The site certificate holder shall initiate and maintain an environmental monitoring program including, as a minimum, those parameters specified in section (3) of this rule. The purpose of this program shall be to evaluate all aspects of the environment and to analyze the environment of the site relative to the baseline environmental data presented in the site certificate application and to the projected environmental impacts of facility operation. Such program shall be initiated at the conclusion of the pre-operational program, provided however, that an applicant shall continue data collection based on the pre-operational program for meteorological, hydrological, ecological, radiological and chemical parameters pending Council approval of the operation program.

(2) The environmental monitoring program shall be submitted to the Council for approval and to appropriate state agencies for their use. The Council will obtain concurrence for portions of the program from appropriate state agencies.

(3) The environmental monitoring program shall cover each item discussed in the environmental assessment, including but not limited to the following:

(a) Geography — The site certificate holder shall determine, evaluate, and summarize any changes in land ownership and land use within 5 miles of the mill;

(b) Demography, Sociology, and Economics — The site certificate holder shall evaluate any changes in population and nearest residences, and the effects, attributable to facility operation on public services, demographic characteristics and economic status of the affected communities;

(c) Historic and Cultural Resources — The site certificate holder shall determine any changes, attributable to facility operation, in the status of any resources described in the application;

(d) Meteorology — The site certificate holder shall monitor those parameters necessary to evaluate environmental impacts of mill operation including, but not limited to wind speed (or run) and direction;

(e) Hydrology — The site certificate holder shall monitor ground water and surface water sources to determine impacts of the facility on water sources;

(f) Geology — The site certificate holder shall identify any significant geological discoveries and their potential impacts on operation of the facility;

(g) Seismology — The site certificate holder shall identify nearby earthquakes by location and intensity;

(h) Ecology — The site certificate holder shall maintain a program to identify changes in the ecological baseline and determine the extent to which mill operation is responsible for those changes;

(i) Radiological — The site certificate holder shall conduct an operational monitoring program which is designed to identify impacts on the environment and to allow dose assessments of any affected populations. This program should be based on the **Draft Generic Environmental Impact Statement on Uranium Milling** (NUREG 0511, April 1979);

(j) Chemical — The site certificate holder shall maintain a monitoring program to assess project related impacts of non-radiological materials on the environment including bioaccumulation or biological effects.

(4) The site certificate holder shall prepare an annual environmental report including data on all monitoring programs required in section (3) above, except that subsections (a), (b), (c), (f), (g) shall be included in the annual report at intervals not to exceed 5 years. Such reports shall be filed with the Council within 90 days after the end of each reporting year and shall include data on each parameter; analysis of that data relative to baseline monitoring,

effluent releases and projected impacts; calculated radiological impacts upon the maximum exposed member of the public and the population; review of the adequacy of the program based on experience gained; and recommendations and justification for any improvements to the monitoring program. The reporting year will be based upon the initiation of construction at the site.

(5)(a) The site certificate holder shall obtain and maintain control (through ownership, long term lease or other legal means) over all environmental monitoring and sampling sites. Such control shall be sufficient to preclude the direct impact on such site of any non-facility related activities (such as logging, plowing, grazing, etc.) which could destroy the usefulness of the monitoring program. Such control shall be continuous from the initiation of construction through decommissioning;

(b) In any case where loss of control or destruction of a sampling site occurs through no fault of the site certificate holder, an alternate site or sites shall be selected and subjected to thorough evaluation to determine the then existing status of all parameters monitored for or sampled in the original site. Subsequent use of the site shall be approved by the Council following consultation with appropriate state agencies.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.507

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0105

Correspondence With Other State or Federal Agencies

Copies shall be exchanged between the site certificate holder and the Council of all correspondence related to facility construction or operation which are submitted to a state or federal agency. Abstracts of reports may be submitted in place of full reports; however, full copies of abstracted reports must be provided at the request of the Council staff.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0110

Quality Assurance

The site certificate holder shall establish and maintain a quality assurance program to insure compliance with all regulatory requirements including conditions of the site certificate. Such program shall be designed according to the requirements of Appendix I of Division 26.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0115

Violations

In the event that air or water pollution control mechanisms malfunction or other factors result in emissions or discharges in violation of applicable standards, the site certificate holder shall take the following action:

(1) In the event of a violation of an emission standard or discharge limit administered by an agency other than the Council, the site certificate holder shall provide the Council all notifications required by the agency on the same time schedule.

(2) In the case of emission or discharge standard imposed by the Council over and above those of other agencies, the site certificate holder shall:

(a) Notify the Council through the Oregon Department of Energy, by telephone or in person, of such failure or breakdown within three hours of occurrence, or as soon as is reasonably possible, giving all pertinent facts including the estimated duration of the breakdown;

(b) With all practicable speed, initiate and complete appropriate action to correct the conditions, and to reduce the frequency of such occurrences;

(c) Cease or discontinue operations of those portions of facil-

ity operation contributing to the violation no later than 48 hours after the beginning of the violation of the emission or discharge standards if the violation is not corrected by that time;

(d) Submit to the Council an initial written report of a failure or breakdown within ten days. When the condition has been corrected, submit a final written report to the Council describing the causes and the actions taken to prevent similar upsets or breakdown conditions. The initial and final reports may be combined if it can be submitted within ten days of the failure and breakdown. If more than 45 days elapse between the initial and final reports, monthly status reports shall be submitted.

(3) Notwithstanding subsection (2)(c) of this rule:

(a) Yellowcake drying and packaging operations shall be discontinued upon the failure of affected emission control equipment unless alternative licensed emission control equipment, adequate to provide equivalent control of releases, is available and operational;

(b) The generation of tailings shall be discontinued as soon as possible following any dam failure or threatened failure without resulting in uncontrolled tailings release inside or outside of the facility. Tailings collection shall be shifted immediately to an unaffected impoundment of sufficient size to contain all tailings generation prior to cessation. Tailings generation shall not be reinitiated until approval is granted by the Council.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0117

Mill Decommissioning

Following the operational life of the facility, the site (except for the tailings disposal area) shall be decontaminated to permit unrestricted use of the site.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0118

Mine Reclamation

The mine site will be reclaimed by modifying overburden and waste dump slopes to grades favorable to reclamation, implementing surface water management measures to prevent water collection or erosion in the area and to aid in revegetating the site.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0120

Tailings Disposal

The following requirements shall apply to the final disposal site for uranium mill tailings:

(1) Above grade tailings disposal systems shall be constructed to include a secondary dam or dike capable of, and designed to, contain the maximum quantity of tailings which could be released in the case of primary containment failure. Where a multiple dam or dike system is used, secondary dams or dikes shall be provided to retain any tailings released in the failure of any section of the primary containment.

(2) Following abandonment and sufficient drying time to permit satisfactory reclamation, tailings shall be covered by sufficient capping material and/or overburden to insure that radon flux from the surface of the disposal area does not exceed two picocuries per square meter per second above background. In no case shall the cover thickness be less than three meters.

(3) External gamma radiation levels above background shall not be statistically significant.

(4) The site shall be covered with riprap and shall be reclaimed to support, and revegetated with, plant life compatible with projected site uses.

(5) Following complete reclamation, the site certificate holder shall develop and maintain an environmental surveillance program, approved by the Council, to verify the adequacy of reclama-

tion and revegetation methods in complying with requirements of this section. Such program shall be continued until acceptance by the state or federal government of title to the property and completion of the financial obligations required by rule 345-095-0150.

(6) All tailings disposal sites shall be lined with a liner made of natural materials selected for their impermeability.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0150

Financial Surety

Decommissioning and post decommissioning:

(1) The site certificate holder shall provide a surety mechanism sufficient to cover the total cost of decommissioning the uranium mill and its associated facilities in accordance with OAR 345-095-0117, 345-095-0118, and 345-095-0120 and to provide long term monitoring and maintenance in an amount specified in the site certificate. This surety shall be established prior to start of construction.

(2) When the site certificate holder completes the decommissioning required in OAR 345-095-0117, 345-095-0118, and 345-095-0120, the state or federal government accepts title to the site, and the site certificate holder provides to the state or federal government funds needed to perform post decommissioning monitoring the surety required by section (1) of this rule shall be cancelled.

(3) The adequacy of bonding or other funds shall be reviewed and adjusted by the Council annually following receipt of the site certificate holder's financial report.

(4) The financial surety required by this rule may be in conjunction with other bonding requirements of the state.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80

345-095-0160

Financial Report

The site certificate holder and any parties owning a controlling interest in the site certificate holder and the concomitant power to control the activities, financial and otherwise, of the site certificate holder or successors in ownership shall provide the Council with an annual financial report which demonstrates his financial qualifications to construct and operate the facility. The report shall include a discussion of the adequacy of and any changes in the financial surety arrangements required by OAR 345-095-0150.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.470 & ORS 469.501

Hist.: EFSC 2-1980, f. & ef. 2-28-80
