

Chapter 345 Office of Energy, Energy Facility Siting Council

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DIVISION 1

GENERAL PROVISIONS

345-001-0000

Permanent Rulemaking — Notice Required

(1) Before adopting, amending, or repealing any rule, the Council shall give notice of the proposed adoption, amendment, or repeal as required by ORS 183.335:

(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 of the rule;

(b) By mailing a copy of the notice to persons on the Council's mailing list established pursuant to ORS 183.335(7) and to the legislators specified in ORS 183.335(14) at least 28 days before the effective date of the rule; and

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

(2) The Council may give the notice required by section (1) by means of a photocopy of the Notice of Proposed Rulemaking or the Notice of Proposed Rulemaking Hearing form submitted to the Secretary of State and, to the extent not included in the form, the following:

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

(b) 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, the Council shall identify the location of a complete list;

(c) A statement of fiscal impact identifying state agencies, units of local government and the public that 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 including a cost of compliance effect on small businesses affected; and

(d) 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 shall adopt these

rules or regulations under the procedures prescribed in ORS 183.337.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.470 & 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 345-010-0031; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-001-0005

Uniform and Model Rules

Except as described in this rule, the Council adopts and incorporates by reference in this chapter the following rules from the Attorney General's Uniform and Model Rules (September 15, 1997): OAR 137-001-0005 through 137-001-0085, 137-002-0010 through 137-002-0060, 137-003-0001 through 137-003-0092 except 137-003-0007(5), and 137-005-0010 through 137-005-0070. Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of notice of a contested case, the Office of Energy shall enter into the record the substance of any significant contact between a Council member and any Office staff from that point forward, concerning facts in the record. In any conflict between the model rules and Council rules, the Council shall apply its own rules.

Stat. Auth.: ORS 469.470

Stats. 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; 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(2) "Analysis area" means the area or areas, specifically described in the project order issued under 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant shall describe the proposed facility's impacts in the application for a site certificate. A proposed facility may have different analysis areas for different types of resources. In the case of an expedited review granted under OAR 345-015-0300, the analysis areas are the study areas defined in this rule.

(3) "Applicant" means any person who submits an application for a site certificate as described in OAR Chapter 345, Division 21, or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.

(4) "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.

(5) "Background radiation" means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the 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.

(6) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The Council shall assume a 100-percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(7) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.

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

(9) "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.

(10) "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.

(11) "Corridor" means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline as defined in ORS 469.300(9).

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

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

(14) "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.

(15) "Energy facility" means an energy facility as defined in ORS 469.300(9), including a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210. 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.

(16) "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 dis-

tributing natural or synthetic gas from an energy facility for its own consumption.

(17) "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.

(18) "Facility" means an energy facility defined in ORS 469.300(9), including a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210, together with any related or supporting facilities as defined in this rule, unless otherwise stated or unless the context clearly indicates otherwise.

(19) "Facility 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) "Fossil fuel" means natural gas, petroleum, coal and any form of solid, liquid, or gaseous fuel derived from such materials that is used to produce useful energy.

(21) "Fossil-fueled power plant" means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

(22) "Fuel chargeable to power heat rate" means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated 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 using the formula, $FCP = (FI - FD)/P$, where:

(a) FCP = Fuel chargeable to power heat rate.

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

(c) 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).

(d) P = Annual net electric output of the cogeneration facility in kilowatt hours.

(23) "Generating facility" means those energy facilities that are defined in ORS 469.300(9)(a)(A), (B) and (D).

(24) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility. The Council shall measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis. For nongenerating energy facilities that emit carbon dioxide, the Council shall measure the gross carbon dioxide emissions as described in OAR 345-024-0620(1).

(25) "High efficiency cogeneration facility" means an energy facility, except coal and nuclear power plants, that 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) For an energy facility with a nominal electric generating capacity of 50 megawatts or more, a fuel chargeable to power heat rate of no greater than 5550 Btu per kilowatt hour;

(b) For an energy facility with a nominal electric generating capacity of less than 50 megawatts, a fuel chargeable to power heat rate of no greater than 6000 Btu per kilowatt hour.

(26) "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.

(27) "Local government" means a city or county.

(28) "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.

(29) "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.

(30) "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.

(31) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(32) "Net electric power output" means the electric energy produced or capacity made available for use excluding electricity used in the production of electrical energy.

(33) "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 demonstrated by the applicant. The total resource cost includes 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 in effect as of the date of this rule. The monetary values of net emissions are as follows:

(a) Nitrogen oxides — \$2000 per ton.

(b) PM-10 particulates — \$2000 per ton.

(c) Carbon dioxide — \$10 per ton.

(34) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder shall determine the new and clean basis:

(a) By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility;

(b) With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels;

(c) Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel; and

(d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant.

(35) "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.

(36) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. The Council shall assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(37) "Nongenerating facility" means those energy facilities that are defined in ORS 469.300(9)(a)(C) and (E) to (H).

(38) "Office of Energy" or "Office" means the Oregon Office of Energy of the Department of Consumer and Business Services.

(39) "Offset" means an action that will be implemented by the applicant, a third party or through a qualified organization to avoid, sequester or displace emissions of carbon dioxide.

(40) "Offset funds" means the amount of funds determined by the Council to satisfy the applicable carbon dioxide emissions standard pursuant to OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2) and (4).

(41) "Owner" means owner or lessee under a capital lease.

(42) "Permit" means any permit, license, certificate or other approval required by state statute, state administrative rule or local government ordinance.

(43) "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.

(44) "Project order" means the order, including any amendments, issued by the Office of Energy under ORS 469.330.

(45) "Qualified organization" means an organization that:

(a) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;

(b) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;

(c) Has in effect articles of incorporation that:

(A) Require that offset funds received under OAR 345-024-0710(3) are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions;

(B) Require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the Council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to OAR 345-024-0550, OAR 345-024-0590, and OAR 345-024-0620 and the holders of such site certificates; and

(C) Require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under OAR 345-024-0710(3).

(d) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization's use of funds pursuant to ORS 469.503 conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(e) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(f) Has to the extent applicable, except for good cause, complied with OAR 345-024-0710(3).

(46) "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.

ty. "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.

(47) "Reviewing agency" means an agency 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. For the purpose of this definition, "agency" means any agency as defined in ORS 183.310(1) or any local government.

(48) "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.

(49) "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.

(50) "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.

(51) "Special nuclear material" means plutonium, uranium-233, or uranium enriched in the isotope 233 or in the isotope 235.

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

(53) "Study area" means the minimum area for which an applicant shall assess environmental impacts in the notice of intent. In the case of an expedited review granted under OAR 345-015-0300, the analysis areas are the study areas defined in this rule. A study area is an area within the state that includes all the area within the site boundary and the area within the following distances from the site boundary. For the purposes of this definition, "site boundary" means the perimeter of the site of the proposed energy facility and its related or supporting facilities and, for a facility that is a pipeline or a transmission line, all corridors proposed by the applicant. Except as specified in subsections (h) through (j), the following distances apply:

(a) For air quality impacts, five miles.

(b) For surface water and groundwater quality and availability impacts, 5 miles or the distance to the point of withdrawal, whatever is greater.

(c) For impacts to threatened and endangered plant and animal species, 5 miles.

(d) For impacts to scenic and aesthetic areas and for socioeconomic impacts, 30 miles.

(e) For land use impacts, one-half mile.

(f) For impacts on recreational opportunities, 5 miles.

(g) For impacts to protected areas described in OAR 345-022-0040, 20 miles.

(h) The distances stated in subsections (a) through (c) above do not apply to electric power generating plants using solar or wind energy exclusively, or to surface facilities related to an underground gas storage reservoir.

(i) The distance stated in subsections (a) through (c) and (f) above do not apply to pipelines or transmission lines.

(j) If the facility is a biomass, oil-fired or coal-fired electric power generating plant, a synthetic fuel plant or a storage facility for liquefied natural gas, the following distances apply:

(A) For air quality impacts, 10 miles.

(B) For surface water quality and availability impacts, the distance to the point of withdrawal or one mile upstream and 15 miles downstream, whichever is greater, and for groundwater quality and availability impacts, 10 miles.

(C) For impacts to wildlife and wildlife habitat and to threatened and endangered plant and animal species, 10 miles.

(D) For impacts on recreational opportunities, 10 miles.

(54) "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.

(55) "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.

(56) "Surface facilities related to an underground gas storage reservoir" means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:

(a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment, and compressors;

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

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

(57) "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.

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

(59) "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.

(60) "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.

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

(62) "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.

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

(64) "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 section, "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.

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

[Publications: The publication referred to or incorporated by reference in this rule is available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.300 - ORS 469.570, ORS 469.590 - ORS 469.619 & 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; Renumbered 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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, for the transport of radioactive materials, and for the disposal of radioactive waste and uranium mine overburden. These rules are to assure that the siting, construction, operation and retirement of energy facilities and disposal facilities and the transport of radioactive materials are done 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 Council shall use the rules of this chapter to determine whether to grant or deny a site certificate and, if the Council grants a site certificate for a facility, to oversee the construction, operation and retirement of the facility. The Council shall use the rules of this chapter in proceedings for amendment, suspension, revocation, transfer or termination of a site certificate.

(3) When the Council deems appropriate, it may adopt additional rules on matters within its jurisdiction. The Council shall adopt any additional rules relating to site certificates sufficiently in advance of the close of testimony in a contested case proceeding 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 469.470, ORS 469.556, ORS 469.559 & ORS 469.607

Stats. Implemented: ORS 469.310, ORS 469.374, ORS 469.401, ORS 469.501, ORS 469.525 & ORS 469.603 - ORS 469.615

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-001-0030

Applicability

The rules in this chapter apply to all matters under Council jurisdiction, except that the rules in effect before the date of adoption of this rule apply to site certificate amendment proceedings pending before the Council as of that date.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310 & 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-001-0035

Electric and Magnetic Field Committee

(1) The chair shall appoint an Electric and Magnetic Field Committee composed of Council members and representatives of the public, utilities, manufacturers and state agencies. 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 the Legislative Assembly.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.480

Hist.: EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-001-0040

Information Exempt from Public Records Law

All information submitted to the Office of Energy 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 Office determines, upon written request by the person submitting the information at the time of submission, that the information is exempt from the public records law, ORS Chapter 192 as provided for in ORS 469.560(2). The Council and the Office shall treat information determined by the Office to be exempt 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 469.470

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 Office of Energy retained by the Office are available for public inspection and copying at the Office during usual business hours, except for information that the Office has determined to be 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 Office 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) The Office shall not charge a fee for inspection of public records unless the records are stored off the premises of the Office, in which case the Office may charge for the staff time necessary to make the records available to the requester. Except as provided in section (4), the Office may charge fees for the reproduction of any Office or Council document or electronic record as follows:

(a) A fee not to exceed five cents (\$.05) per page of copy for use of the Office of Energy's photocopying equipment if the request does not require significant staff time. If the request requires 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. The requester shall pay all charges for photocopying costs before delivery of documents, except other government agencies or parties in proceedings before the Council need not pay before delivery of the documents.

(b) A fee of five dollars (\$5.00) per tape for copies of cassette tapes of Council proceedings.

(c) A fee of five dollars (\$5.00) per disk for any public document in a medium and format used by the Office on 3 1/2 inch floppy disk.

(d) Fees for reimbursement of expenses in providing printed reports and fax services to the public.

(4) Any fee established in sections (1) through (3) 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 written request to the secretary of the Council. 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
Stats. 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-001-0060

Council Representation at Contested Case Hearings

(1) A Council member, an officer of the Office of Energy, or an employee of the Office may 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 or to the officer or employee of the Office pursuant to ORS 183.450(7) to represent the Council. Before each contested case hearing in which the Council wishes to appear by a member or by an officer or employee of the Office, 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. The Office and the Department of Justice shall maintain a copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given such consent.

(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 469.470
Stats. Implemented: ORS 183.450(8) & ORS 469
Hist.: EFSC 1-1988, f. & cert. ef. 5-11-88; EFSC 2-1992, f. & cert. ef. 8-28-92; Renumbered from 345-010-0028; EFSC 2-1999, f. & cert. ef. 4-14-99

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 petitioner shall set forth the specified grounds for reconsideration. The petitioner may support the petition by a written argument.

(3) The petitioner 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 Council may grant or deny a petition by summary order, and, if the Council does not take action, the petition is 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. The Council shall grant reconsideration if approved by a majority of the Council. The procedural and substantive effect of granting reconsideration under this section is identical to the effect of granting a party's petition for reconsideration.

(6) The Council shall not grant reconsideration 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 469.470
Stats. Implemented: ORS 469.403
Hist.: EFSC 2-1992, f. & cert. ef. 8-28-92; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

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 under this rule, the Council shall limit its consideration to the effects that may result from the proposed expansion of the facility.

Stat. Auth.: ORS 469.470
Stats. 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; EFSC 2-1999, f. & cert. ef. 4-14-99

Energy Generation Areas

345-001-0200

Creation of an Energy Generation Area

(1) The Council shall define the boundaries of an energy generation area by rule when:

(a) The Council finds that a geographical area exists within which the effects of development of two or more small generating plants, as defined in OAR 345-001-0210, are likely to accumulate so the small generating plants have effects of a magnitude similar to a single generating plant with a nominal electric generating capacity of 25 megawatts or more;

(b) The Council finds that creation of an energy generation area is in the public interest; and

(c) The Council finds that energy resource, environmental, social, economic, public health or safety justification exists to create the energy generation area.

(2) In defining the boundaries of an energy generation area, the Council shall consider:

- (a) The location of geothermal, solar or wind resources;
 - (b) The effect of energy facility development on wildlife or wildlife habitat;
 - (c) Natural geographical features; and
 - (d) Political and treaty boundaries.
- Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.300 & ORS 469.320
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-001-0210

Effect of an Energy Generation Area

- (1) For the purpose of this rule:
 - (a) "Energy resource" means geothermal, solar or wind power;
 - (b) "Small generating plant" means one or more electric power generating devices that:
 - (A) Have a combined nominal electric generating capacity of more than 3 megawatts and less than 25 megawatts;
 - (B) Are connected to a common switching station or are constructed maintained or operated as a contiguous group of devices; and
 - (C) Are owned by a single person or entity or subsidiaries of a single entity.
 - (c) "Accumulated effects" means the effects of a proposed small generating plant or proposed expansion to a small generating plant combined with the effects of all existing small generating plants using the same energy resource within the energy generation area. "Accumulated effects" includes the effects of all related or supporting facilities;
 - (d) Expansion of a small generating plant includes any enlargement of the site and any increase in the small generating plant's nominal electric generating capacity;
 - (e) Construction of a small generating plant includes the creation of a small generating plant by constructing one or more new electric power generating devices or otherwise adding to the nominal electric generating capacity of one or more existing electric power generating devices that have a combined nominal electric generating capacity of 3 megawatts or less.

(2) For the designated energy resource within an energy generation area created under OAR 345-001-0200:

- (a) Except as described in subsection (b), any person who intends to construct or expand a small generating plant shall submit a request for exemption to the Office of Energy, as described in OAR 345-015-0360(6);
- (b) If the expansion of a small generating plant would create an electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, a person shall not expand the small generating plant unless the Council has granted a site certificate or an amendment to an existing site certificate.

(3) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(4) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(5) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(6) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(7) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(8) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(9) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(10) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(11) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(12) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant of 25 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate.

(e) The contribution of the proposed small generating plant or proposed expansion to a small generating plant toward maintaining reliable energy delivery to an area in the state; and

(f) Significant public benefits of the proposed small generating plant or proposed expansion to a small generating plant.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.320
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-001-0220

Energy Generation Areas

The following areas are energy generation areas: The Umatilla Wind Generation Area is defined as that area bounded by:

- (1) The Oregon-Washington Border on the north;
- (2) The western boundary of Range 31 E on the west;
- (3) The eastern boundary of Range 35 E on the east; and
- (4) The southern boundary of Township 3 N on the south.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.300 & ORS 469.320
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

DIVISION 11

COUNCIL MEETINGS

345-011-0000

Authority and Purpose

The purpose of the rules in this division is to provide procedures for the orderly conduct of meetings of the Council.

Stat. Auth.: ORS 183 & ORS 469.470
Stats. Implemented: ORS 192 & ORS 469.460
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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 shall 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 for the Council to act on any matter before it; however, in accordance with ORS 469.370(7), a Council decision to approve or reject an application for a site certificate requires the affirmative vote of at least four members.

(3) The Council shall not vote on any proposed Council action unless a Council member has moved, and another Council member has seconded, the proposed action.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 174.130, ORS 469.370 & ORS 469.460
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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0010

Officers

(1) The Council shall annually elect a chair and a 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 that must be executed in the name of the Council. The Administrator of the Energy Resources Section of the Office of Energy shall serve as Council secretary.

(3) The chair may take action on behalf of the Council in emergencies that arise between meetings, subject to ratification by the Council. When 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 469.470
Stats. Implemented: ORS 469.450

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 Council secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of the Council.

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

(3) The Council may hold meetings by telephone or other electronic communication. If the Council holds a meeting by telephone or other electronic means, the Council shall conduct the meeting in accordance with ORS 192.610 to 192.690.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640, ORS 192.670, 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0020**Agendas for Regular Meetings**

(1) The Council secretary shall prepare an agenda for each regular Council meeting after consulting with the chair. On the agenda, the secretary shall specify all matters scheduled to come before the Council at the meeting and shall identify the proponent of agenda items scheduled at the request of a member of the public as described in OAR 345-011-0035.

(2) On the agenda, the secretary may include a consent calendar, identifying items that the secretary considers to be 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) The secretary shall include on each agenda a designated time period reserved for the presentation of concerns by interested citizens who wish to address the Council regarding any item within the Council's jurisdiction. The chair shall establish the duration of this period and may lengthen or shorten it at the Council meeting as the length of the meeting and timing and duration of other Council business dictate.

(4) The secretary shall mail the agenda, together with minutes of all previous meetings that the Council has not approved, to Council members at least one week before a regular meeting. The secretary shall send the agenda to each person or organization on the Council's general mailing list.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640, ORS 469.460 & ORS 469.470

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

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 that the Council secretary did not place on the agenda. The Council shall not act on a matter not on the agenda unless a majority of the members present agree that the matter is so substantial and of such immediate concern that the Council should not defer action until the next regular Council meeting.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0030**Order of Business**

(1) The order of business of Council meetings is 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 before the meeting, the Council may waive the reading of the minutes.

(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 469.470

Stats. Implemented: ORS 192.650 & ORS 469.460

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0035**Requests to Place Action and No-Action Items on the Agenda**

(1) Any person may request formal Council action on a particular subject (an "action item"). The Council intends to employ a first and second reading approach for all action items. The requester shall submit the action item to the Office of Energy in writing at least 14 days before a regularly scheduled meeting. For the purpose of this rule, an action item is submitted when it is received by the Council secretary. With the concurrence of the chair, the Council secretary shall place the requested action item on the agenda for the next regularly scheduled meeting occurring at least 14 days after the request is received by the Council secretary. The Council shall treat the requested action item as a discussion item at that meeting but shall not take final action on it unless a majority of the members present agree that the request constitutes an emergency. The Council may schedule action on the requested action item at any later Council meeting.

(2) Any person may request the Council secretary to place an item for discussion on the agenda of a regular Council meeting, including a suggestion for a meeting location (a "no-action item"). The requester shall submit the no-action item to the Office of Energy in writing at least 14 days before a regularly scheduled meeting. For the purpose of this rule, a no-action item is submitted when it is received by the Council secretary. With the concurrence of the chair, the secretary shall place the requested no-action item on the agenda for the next regularly scheduled meeting occurring at least 14 days after the request is received by the Council secretary.

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640 & ORS 469.460

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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) The Council secretary shall record the membership of the committees and subcommittees appointed by the chair in the minutes of the Council.

(3) The secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of Council committees and subcommittees.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.460

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0050

Council Files — Duties of Secretary

The Council secretary shall maintain minutes of all Council meetings, Council committee meetings and other records of the Council at the Office of Energy for at least five years and thereafter shall transfer them to the State Archives. The Council secretary shall keep a record of the location of all files.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 192.640 & ORS 469.460

Hist.: EFSC 7-1980, f. & ef. 10-9-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0055

Council Communications

(1) Members of the Council shall not write letters, other than routine or form letters, in the name of the Council unless authorized by a majority of the Council. The Council secretary shall prepare any letter issued on behalf of the Council and shall retain a copy at the Office of Energy and send a copy to each Council member. Majority approval by the Council is required before the Council or the Council secretary issues any correspondence that may materially affect policies and procedures of the Council. 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.

(2) The mailing address of the Council is Office of Energy, 625 Marion Street, NE, Suite 1, Salem, OR, 97301-3742.

Stat. Auth.: ORS 469.470

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0060

Waiver and Suspension

Inadvertent failure by the Council to comply with the rules of this division does 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 469.470

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0070

Council Requests for Information

The Council may at any time request that any person subject to the Council's jurisdiction submit information to the Council about any matter within the Council's jurisdiction.

Stat. Auth.: ORS 469.470

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-011-0080

Unacceptable Conduct

The chair may expel any person who engages in conduct that disrupts any Council proceeding. In any proceeding of a Council committee, the chairman or chairwoman of the committee may expel any person who engages in conduct that disrupts the proceeding.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.460

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- 10- 021; EFSC 2-1999, f. & cert. ef. 4-14-99

DIVISION 15

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

345-015-0001

Purpose and Authority

The rules in this division, authorized by ORS 469.040, 469.470 and 469.440, establish procedures governing Office of Energy and Council review processes, including contested case hearings. The Council shall apply the Attorney General's Uniform and Model Rules, as specified in OAR 345-001-0005, for contested case proceedings and collaborative dispute resolution.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 469.040, ORS 469.370, ORS 469.405 & ORS 469.440

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 2-1999, f. & cert. ef. 4-14-99

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.

(2) A party or limited party shall file a pleading or document with the Council 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 or limited 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 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405 & ORS 469.440

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0014

Contested Case Notices

(1) In the circumstances described in subsections (a) through (d), the Office of Energy shall issue a contested case notice as described in ORS 183.415(2). In the notice, the Office shall specify a date by which others must request party or limited party status and shall set a date for the prehearing conference. The Office shall send the notice to the Council's general mailing list and to any mailing list established for the matter that is the subject of the contested case. The Office shall issue the notice:

(a) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0070, OAR 345-027-0080, OAR 345-027-0090, OAR 345-027-0095 or on any matter not otherwise specifically addressed in this rule;

(b) Following a request for a hearing on assessment of a civil penalty under OAR 345-029-0070;

(c) Following initiation of a contested case proceeding on a revocation or suspension under OAR 345-029-0100; or

(d) Following a request for a hearing on denial of an Oregon Radioactive Material Transport permit under OAR 345-060-0004.

(2) Following the issuance of a proposed order by the Office of Energy on an application for a site certificate as described in OAR 345-015-0230, the Office shall issue a contested case notice as described in ORS 183.415(2). In the notice, the Office shall specify a date by which others must request party or limited party status, set a date for the prehearing conference, and state that par-

participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016(2). The Office shall send the notice to the applicant and to all persons who appeared in person or in writing at the public hearing described in OAR 345-015-0220.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.085, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0016

Requests for Party or Limited Party Status

(1) A person requesting 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 person shall submit the request to the hearing officer by the date specified in the Office of Energy's contested case notice issued under OAR 345-015-0014.

(2) To become a party or limited party in a contested case proceeding on an application for a site certificate, a person must have appeared in person or in writing on the record of the public hearing described in OAR 345-015-0220. To raise an issue that may be the basis for a contested case proceeding, a person must have raised the issue in person or in writing not later than the close of the record at or following the final public hearing described in OAR 345-015-0220, unless the Office of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-0230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding.

(3) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0018

Authorized Representative

An authorized representative may represent a party or limited party, other than a state agency, participating in a contested case proceeding before the Council as provided in OAR 137-003-0008. An authorized representative may represent a state agency participating in a contested case as a party, limited party or interested agency subject to the requirements of ORS 183.450(7) and (8).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

Hist.: EFSC 1-1988, f. & cert. ef. 5-11-88; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0022

Petition for Indigent Status

(1) By petition to the hearing officer in a contested case submitted before the time of the prehearing conference, a party or limited party may request to be treated as an indigent. In the petition, the petitioner 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 and the reasons why the 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. The hearing officer's determination is final unless the petitioner submits an appeal to the Council within seven days after the date of service of the determination.

(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.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0023

Duties of Hearing Officer

(1) The Council shall appoint a hearing officer to conduct a contested case proceeding 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, an employee of the Office of Energy, 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, for a contested case proceeding on an application for a site certificate, 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 or limited 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 consideration 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, the hearing officer shall enter into the record the substance of any significant contact with Office of Energy 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 or limited party, remove a hearing officer if it determines that the hearing officer is not competent to conduct the proceeding, is demonstrably biased for or against any party, or is otherwise unable to conduct the proceeding.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0024

Suspension of Hearing and Exclusion of a Party

(1) If any person engages in conduct that 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. Conduct that interferes with the hearing officer's duties includes, but is not limited to, conduct impeding discovery, hearing schedules or the conduct of the contested case hearing.

(2) If the hearing officer issues an order permanently excluding a party, limited party, or legal counsel from further participation in a contested case proceeding, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven calendar days of service of the order.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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 2-1999, f. & cert. ef. 4-14-99

345-015-0038

Separate Hearings

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0043

Evidence: Testimony Submitted in Writing

A hearing officer may require parties or limited parties to submit to the hearing officer, in writing, the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits that a party or limited party proposes to introduce in conjunction with the testimony of a witness. Parties and limited parties shall send to all other parties and limited parties copies of all written materials submitted to the hearing officer under this rule.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 2-1999, f. & cert. ef. 4-14-99

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 specialized knowledge of the Council or the Office of Energy.

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

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0051

Evidence: Resolutions of Cities, Counties and Tribes

Upon the request of a governing body of a city, county or tribe, the Office of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0054

Motions

(1) All parties, including limited parties, shall submit any motions in a contested case to the hearing officer. Unless a motion is made orally on the record during a contested case hearing, or unless the hearing officer directs otherwise, the moving party shall submit the motion in writing and shall state with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. The moving party shall serve the motion on all parties and limited 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 or limited 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 hearing officer.

(3) The parties shall not have oral argument on a motion unless permitted by the hearing officer. The hearing officer shall dispose of motions by written order served on all parties and limited parties or read into the hearing record.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0057

Prohibitions on Interlocutory Appeals to Council

(1) Except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding.

(2) A party or limited party shall submit an appeal involving that party's right to participate in a contested case proceeding, with supporting arguments and documents, to the Council within seven calendar days after the date of the ruling of the hearing officer.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0054(6); EFSC 2-1999, f. & cert. ef. 4-14-99

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 stays a contested case proceeding or extends the time for the performance of any act.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0054(7); EFSC 2-1999, f. & cert. ef. 4-14-99

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 or limited 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 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

Hist.: EFSC 8-1980, f. & ef. 10-31-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-015-0048; EFSC 2-1999, f. & cert. ef. 4-14-99

Specific Procedures for Site Certificates Applications and Amendments of Site Certificates

345-015-0080

Participation by Government Agencies

(1) Any state or local government agency, other than the Office of Energy, may request participation in a contested case as a party, limited party or interested agency. The agency shall submit the request to the hearing officer in writing by the date specified in the Office of Energy's contested case notice issued under OAR 345-015-0014(1).

(2) A reviewing agency participating in a contested case proceeding on an application for a site certificate as a party, limited party or interested agency shall, as appropriate, provide 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 propose conditions to ensure compliance with such statutes, rules and ordinances.

(3) The Office of Energy shall participate in all contested case proceedings conducted by the Council and shall have all the rights of a party.

(4) All government agencies participating in a contested case proceeding on an application for a site certificate are subject to the limitations described in OAR 345-015-0016(2).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0083

Prehearing Conference and Prehearing Order

(1) Following issuance of a notice of contested case by the Office of Energy, 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 order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220. 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 an application for a site certificate constitutes a waiver of that issue.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0085

Hearing Officer's Proposed Order—Exceptions

(1) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions that the party believes are necessary or appropriate to implement the policy of ORS 469.310 or to meet the requirements of any other applicable statute, administrative rule or local government ordinance. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer.

(2) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited 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) After the hearing in a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed order stating the hearing officer's findings of fact, conclusions of law, and recommended site certificate conditions. The hearing officer shall serve the proposed order on all parties and limited parties. In the proposed order, the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision record for the application but are not part of the Council's order.

(4) After the hearing in a contested case proceeding on any matter other than an application for a site certificate or proposed site certificate amendment, the hearing officer shall issue a proposed order stating the hearing officer's findings of fact and conclusions of law. The hearing officer shall serve the proposed order on all parties and limited parties.

(5) Parties and limited 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. A party filing exceptions shall serve a copy of the exceptions on all other parties and limited parties. In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceedings on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.

(6) Parties and limited 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. A party filing responses to exceptions shall serve a copy of the responses to exceptions on all other parties and limited parties.

(7) After the period for filing responses to exceptions, the Council shall issue a final order. The Council may adopt, modify or reject the hearing officer's proposed order.

(8) Following a contested case proceeding on an application for a site certificate, the Council, in its final order, shall either grant or deny issuance of a site certificate. If the Council grants issuance of a site certificate, the Council shall issue a site certificate, which is effective upon execution by the Council Chair and by the applicant.

(9) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615 & ORS 469.992

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 345-015-0053; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

Procedures for Council and Office of Energy Review of an Application for a Site Certificate

345-015-0110

Notice of Intent — Public Notice

(1) After receiving a notice of intent (NOI), the Office of Energy shall issue a public notice of the NOI by mailing notice to persons on the Council's general mailing list and any special mailing list set up for the proposed project and:

(a) Except as provided in subsection (b), by publishing notice in a newspaper of general circulation available in the vicinity 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 vicinity of the proposed facility. Additionally, the Office shall mail notice to the owners of property within or adjacent to the corridor(s) described in the NOI whose names and addresses the applicant has supplied as required by OAR 345-020-0011.

(2) In the public notice of the NOI, the Office shall include the following information:

(a) A description of the proposed facility;

(b) The location of the site of the proposed facility, as described in the NOI;

(c) A summary of significant potential impacts of construction and operation of the proposed facility, as described in the NOI;

(d) If the proposed facility is a nongenerating facility for which the applicant must demonstrate need under OAR 345-23-0005, a brief discussion of the need for the proposed facility, as described in the NOI;

(e) The date when the applicant expects to submit an application for a site certificate;

(f) A brief description of the Council's review process, including a statement that failure to comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 precludes participation in the contested case proceeding as a party or limited party and the right to appeal 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 on the NOI that the Office has scheduled;

(i) The final date for submission of comments on the NOI to the Office;

(j) For persons wanting more information about the NOI, the address of the Office;

(k) If the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300:

(A) An explanation that the applicant may present adjustments to the proposed corridor(s) at the informational meeting;

(B) An explanation that, in selecting one or more corridors for analysis in the application for a site certificate, the applicant shall consider public comments on the corridor(s) proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting;

(C) A deadline for submitting written comments on the proposed corridor(s) and corridor adjustments; and

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

(3) It is Council policy to encourage public participation in local land use decisions on energy facilities. To that end, the Council encourages the Office to send notice to the Council's mailing list if the Office learns that an 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0120

Circulation of Submitted Notice of Intent to Other Agencies— Office of Energy Memorandum

The Office of Energy shall prepare a memorandum to accompany the copies of the notice of intent (NOI) distributed by the applicant as described in OAR 345-020-0040. In the memorandum, the Office shall:

(1) Request the recipient to return comments or recommendations to the Office 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);

(3) State the date, location, agenda and purpose of any informational meeting that the Office has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting;

(4) State that failure to comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 precludes participation in the contested case proceeding as a party, limited party or interested agency and the right to appeal 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0130

Informational Meetings on Notices of Intent

(1) After issuing the public notice described in OAR 345-015-0110, the Office of Energy 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) During each informational meeting, the Office shall present the following information:

(a) An explanation of the notice of intent (NOI) process and the application process, including the means and opportunities for the general public to participate in these processes and a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue is subject to the limitations described in OAR 345-015-0016(2);

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

(c) If the proposed facility is a nongenerating facility for which the applicant must demonstrate need under OAR 345-023-0005, a description of the need for the proposed facility;

(d) A summary of significant potential impacts of construction and operation of the proposed facility;

(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 applicant shall select the corridor(s) for analysis in the application for a site certificate and shall consider public comments on the corridor(s) proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.

(f) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a statement of the means by which the applicant intends to comply with the standard.

(g) The final date for submission of comments on the NOI to the Office.

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

(4) The applicant 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0140

Review by the Office of Energy

(1) The Office of Energy shall review the notice of intent (NOI) and any comments and recommendations received by the final date for submission of comments specified in the public notice described in OAR 345-015-0110. The Office shall provide copies of any written comments or recommendations to the applicant.

(2) The Office 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 applicant no later than 60 days after the date the NOI is submitted, the Office may waive or modify those requirements in OAR 345-021-0010 that the Office determines are not applicable to the facility as described in the NOI.

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 granted under OAR 345-015-0300, following receipt of an application for a site certificate, the Office of Energy shall send a project order to the applicant establishing the following:

(a) All state statutes and administrative rules containing standards or criteria that must be met 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 the proposed facility;

(c) All application requirements in OAR 345-021-0010 applicable to the proposed facility, including information necessary to enable the Office 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 to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances;

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

(g) If the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, any adjustments to the corridor(s) that the applicant shall evaluate in the corridor selection assessment described in OAR 345-021-0010(1)(b);

(h) If the applicant chooses to demonstrate need for a proposed electric transmission line, natural gas pipeline, or liquefied natural gas storage facility under the economically reasonable rules, OAR 345-023-0030 and OAR 345-023-0040, the alternatives the applicant must evaluate in the application for a site certificate in lieu of construction and operation of the proposed facility in addition to the alternatives described in OAR 345-021-0010(1)(n)(E) or (F), if any;

(i) Except in the case of an expedited review granted under OAR 345-015-0300, the expiration date of the notice of intent, according to OAR 345-020-0060(1).

(2) In determining the application and study requirements to be included in the project order, the Office shall consider the size and type of proposed facility and significant potential impacts of the proposed facility. In the project order, the Office shall note and give the reason for any application or study requirements that the Office has waived or modified under OAR 345-015-0140(3).

(3) The Council or the Office may amend the project order at any time.

(4) The project order is not a final order.

(5) Except in the case of an expedited review granted under OAR 345-015-0300, the Office shall, to the extent practicable, 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 & ORS 469.370

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0180

Circulation of Application to Other Agencies

After receiving an application for a site certificate, the Office of Energy shall prepare a memorandum to accompany the copies of the application distributed by the applicant as described in OAR 345-021-0050. In the memorandum, the Office shall:

(1) Request the recipient to return comments or recommendations described in OAR 345-021-0050(2) to the Office 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 (4);

(3) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;

(4) State that failure to comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 precludes participation in the contested case proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision; and

(5) For any special advisory group designated by the Council under ORS 469.480, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend applicable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350 & ORS 469.504

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0190

Determination of Completeness — Date of Filing — Public Notice

(1) Within 60 days after receipt of an application for a site certificate the Office of Energy shall notify the applicant whether the application is complete. In the notification, the Office shall either:

(a) State that the application is complete and state the date of determination of completeness; or

(b) State that the application is incomplete or that the Office cannot determine whether the application is complete and:

(A) Describe any information needed to complete the application, to the extent known to the Office at the time of the notification. If the Office finds that the applicant did not give adequate consideration to public or agency comment on the corridors the applicant proposed in the notice of intent, the Office may find the application incomplete;

(B) Ask the applicant to submit the needed information by a specified date;

(C) Explain the reasons why the Office cannot determine completeness; and

(D) Estimate the additional time the Office will need to make a determination of completeness.

(2) If the Office determines the application contains adequate information for the Council to make findings on all applicable Council standards, the Office may determine the application complete, regardless of whether the application contains all information required under OAR 345-021-0010.

(3) The Office shall send the notification described in subsection (1)(b) by certified mail.

(4) If the Office does not notify the applicant that the application is complete within 60 days after receiving of the application for a site certificate or, if applicable, within the time estimated under part (1)(b)(D), the application is deemed complete and the date of filing is the ending date of the applicable time period.

(5) At the request of the applicant, the Office may extend the deadline for the submission of the information requested under subsection (1)(b). The applicant shall submit the original and ten copies of the information requested by the Office under subsection (1)(b). If the applicant does not submit the information required by the deadline established by the Office, including all extensions, the Office may reject the application.

(6) The date of filing is the date the Office determines the application is complete.

(7) The Office shall inform the public of the date of filing of the application for a site certificate by publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility. The Office shall provide for notice to those property owners listed in Exhibit F of the application. The Office shall mail notice to persons on the Council's general mailing list and any special mailing list set up for the proposed facility.

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

(9) In the public notice of the date of filing of an application for a site certificate, the Office shall include the following information:

(a) A description of the proposed facility;

(b) The location of the site of the proposed facility, including the legal description of the site as described in the application;

(c) If the proposed facility is a nongenerating facility for which the applicant must demonstrate need under OAR 345-023-0005, a summary of the applicant's analysis of need for the proposed facility;

(d) A summary of significant potential impacts of construction and operation 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 and a statement that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue is subject to the limitations described in OAR 345-015-0016(2);

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

(g) For persons wanting more information about the application, the name, address and telephone number of the Office of Energy project officer;

(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 government(s) making or having made the land use determination;

(i) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a summary of the applicant's proposed means of compliance with the standard.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0200

Notice to Agencies of Filed Application

The Office of Energy shall notify each reviewing agency, as defined by OAR 345-001-0010, of the date of filing of an application for a site certificate. In the notification, the Office shall:

(1) Describe the agency report required under OAR 345-021-0060, state the date by which the Office must receive the agency report, and request the agency to send a copy of the report to the applicant;

(2) State the date by which the Office must receive any final land use decisions made pursuant to ORS 469.504(1)(a);

(3) Explain that the agency reports and final land use decisions are part of the decision record for the application for a site certificate; and

(4) Explain that if an agency wishes to raise an issue in the contested case, the agency must raise the issue in the manner described in OAR 345-015-0016.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0210

Draft Proposed Order

(1) Following the deadline for its receipt of agency reports and final land use decisions stated under OAR 345-015-0200, the Office of Energy shall issue a draft proposed order on the application that includes its recommendation to grant with conditions or deny a site certificate for the proposed facility and a discussion of the reasons for that 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.

(2) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(a), the Office shall include in the draft proposed order the local government's land use decisions on the proposed facility, if available, including findings of fact, conclusions of law, and conditions.

(3) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(b), the Office shall include in the draft proposed order the Office of Energy'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 469.504(2).

(4) The Office shall issue the draft proposed order not less than 20 days before the public hearing described in OAR 345-015-0220.

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0220

Public Hearings on the Draft Proposed Order

(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 the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing.

(2) The Office of Energy 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 vicinity of the proposed facility;

(b) Mail notice of the date, time and location of the public hearing(s) to persons on the Council's general mailing list and any special mailing list set up for the proposed project, including a mailing list made up of those persons listed in Exhibit F of the site certificate application;

(c) In the notices described in subsections (a) and (b), state that participation as a party or limited party in the contested case proceeding and the opportunity to raise any issue is subject to the limitations described in OAR 345-015-0016(2); and

(d) In the notices described in subsections (a) and (b), include the information specified in ORS 469.370(2)(b), (c) and (d) and the name and address of the presiding officer who will conduct the public hearing(s).

(3) During the public hearing, the Office 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. The Office shall include a statement that failure to comment in person or in writing on the record of the public hearing precludes participation in the contested case proceeding as a party or limited party and the right to appeal the Council's final decision;

(b) A description of the proposed facility and the analysis areas;

(c) If the proposed facility is an energy facility for which the applicant must demonstrate need under OAR 345-023-0005, a summary of the need for the proposed facility;

(d) A summary of significant potential impacts of construction and operation of the proposed facility and a statement of the Office of Energy's proposed findings concerning the facility's compliance with applicable standards; and

(e) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a summary of the applicant's proposed means of compliance with the standard.

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

(a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person or in writing not later than the close of the record at or following the final public hearing before the issuance of the Office of Energy's proposed order and must raise the issue with sufficient specificity to afford the Council, the Office of Energy and the applicant an adequate opportunity to respond; and

(b) The Council does 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. The Council or its hearing officer shall record all presentations made during the public hearing, and the presentations are part of the decision record for the application. The hearing officer in the contested

case proceeding shall allow any party the opportunity to rebut oral statements recorded during a public hearing and written statements received by the hearing officer before the close of record at or following the final public hearing on the draft proposed order, if such statements relate to an issue identified in the prehearing order for the contested case proceeding.

(6) Following the public hearing and before the Council review described in OAR 345-015-0230, the Office of Energy 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0230

Council Review — Issuance of Proposed Order

(1) Following the final public hearing on the draft proposed order conducted under OAR 345-015-0220, the Council reviews the draft proposed order. This Council review is the first reading of the decision record for the application in accordance with the Council's process described in OAR 345-011-0035. The Council does not permit public comment during the first reading.

(2) Following the Council's first reading of the draft proposed order, the Office of Energy shall issue a proposed order, taking into consideration the comments of the Council, testimony at the public hearing, written comments received by the hearing officer before the close of record at or following the final public hearing on the draft proposed order, and agency consultation. In the proposed order, the Office shall recommend either granting with conditions or denying a site certificate for the proposed facility.

(3) Following issuance of the proposed order, the Office shall issue a notice of a contested case on the proposed order, as described in OAR 345-015-0014.

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-015-0240

Close of the Decision-Making Record

The decision-making record on an application for a site certificate includes the decision record for the Office of Energy's proposed order and the record of the contested case proceeding.

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; EFSC 2-1999, f. & cert. ef. 4-14-99

Procedures for Expedited Review of Certain Energy Facilities

345-015-0300

Request for Expedited Review

(1) In accordance with ORS 469.370(10), any person proposing to construct and operate an energy facility with a nominal electric generating capacity of less than 100 megawatts may submit to the Office of Energy a request expedited review of the application for a site certificate. If the proposed energy facility has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition of ORS 469.300(9), the proposed energy facility is not eligible for expedited review.

(2) In the request for expedited review, the applicant shall include:

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

(b) The applicant's name and address;

(c) A schedule stating when the applicant expects to submit an application for a site certificate;

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

(e) A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval pursuant to ORS 469.504(1)(a)

or by seeking a Council determination pursuant to ORS 469.504(1)(b); and

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

(3) In an expedited review granted under this rule, the Office shall issue a project order following the applicant's submission of an application for a site certificate. For the purposes of the application, the analysis areas are the study areas as defined in OAR 345-001-0010, unless the applicant requests an exception in the request for expedited review and the Office approves the exception. The Office may, in consultation with reviewing agencies, make changes to analysis areas and request additional information from the applicant, as provided in OAR 345-015-0190, before determining the application complete. Submission of the site certificate application and the Office of Energy's review of the application in all other respects are the same for expedited review as for other site certificate applications.

(4) The Council hereby grants any request for expedited review from an applicant proposing a facility meeting the definition in section (1) if the Office determines that the request satisfies the requirements of section (2).

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; EFSC 2-1999, f. & cert. ef. 4-14-99

Exemptions from Council Jurisdiction

345-015-0350

Council Determination of Exemption

The Council shall, upon request, determine whether a proposed facility or proposed expansion of a facility is exempt under from the requirement to obtain a site certificate. A site certificate is not 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 high efficiency cogeneration facility, as defined in OAR 345-001-0010.

(4) A small generating plant or an expansion to a small generating plant, as defined in OAR 345-001-0210, if the Council finds that the accumulated effects do not have a magnitude similar to a single generating plant of 25 megawatts or more, as described in OAR 345-001-0210(3).

(5) An energy facility as defined in ORS 469.300(9)(a)(G), if the facility:

(a) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

(b) Has received local land use approval under the applicable acknowledged comprehensive plan and land use regulations of the affected local government and the facility complies with any statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility under ORS 197.646(3);

(c) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate; and

(d) Produces synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge.

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; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-99

345-015-0360

Contents of Request for Exemption

(1) Any person wishing to construct and operate a facility exempt from Council jurisdiction shall submit a request for exemption to the Office of Energy.

(2) In a request for an exemption under OAR 345-015-0350(1)(a) for a modification of a facility for which no site certificate has been issued that 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 person shall 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) In a request for an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no site certificate has been issued that 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, the person shall provide the following information in support of the request:

(a) The information described in subsections (2)(a) through (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 (b).

(4) In a request for an exemption under OAR 345-015-0350(2) for construction or expansion of an 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, the person shall provide a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission for the proposed pipeline or associated underground natural gas storage facility, or other comparable evidence that the proposed pipeline or storage facility is within that agency's jurisdiction.

(5) In a request for an exemption based on a very efficient use of fuel (high efficiency cogeneration) under OAR 345-015-0350(3), the person shall 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 that the proposed facility is a high efficiency cogeneration facility under the definition in OAR 345-001-0010. The person shall provide calculations in sufficient detail to facilitate independent review by the Office. The person 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, the location by address as well as township and range and any associated linear equipment needed.

(6) In a request for an exemption of a small generating plant or expansion of a small generating plant, as defined in OAR 345-001-0210, the person shall include the following information:

(a) A description of the proposed small generating plant or proposed expansion to a small generating plant and a description of related or supporting facilities;

(b) Identification of the person or persons who will construct, operate and own the plant;

(c) An analysis of the factors described in OAR 345-001-0210(3); and

(d) Any other information the Office of Energy determines the Council needs to make the finding described in OAR 345-001-0210(3).

(7) In a request for an exemption under OAR 345-015-0350(5) for a plant that converts biomass to a liquid fuel, the person shall include the following information:

(a) A description of the proposed plant, including, but not limited to, the location, acreage and annual production capacity of the proposed plant and the type of liquid fuel the plant will produce;

(b) A statement verifying that the facility will use biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

(c) The identity of the affected local government that has given land use approval under the applicable acknowledged comprehensive plan and land use regulations and copies of all land use approval documents the local government has issued;

(d) The statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility and evidence to support a finding by the Council that the facility complies with those goals and rules;

(e) A description of the expected electrical loads and fuel needs of the facility and a statement verifying that the facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate; and

(f) A statement verifying that the plant will produce synthetic fuel, at least 90 percent of which will be used in an industrial or refueling facility located within one mile of the facility or will be transported from the facility by rail or barge and evidence that adequate rail and barge facilities are available to serve the proposed site.

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; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-99

345-015-0370

Consideration of Request for Exemption

(1) The Council shall act on a request for exemption as described in OAR 345-011-0035.

(2) Within 45 days after receipt of a request for exemption, the Office of Energy shall review the request for exemption for completeness and provide the requestor with either a notice of filing of the request for exemption or a request for additional information. When the Office finds the submitted request for exemption is complete, the Office shall issue a notice of filing. Within 60 days after issuing the notice of filing, the Office shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.

(3) When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Office of Energy and Council relating to the review and decision by the Council.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320, ORS 469.421 & ORS 469.441

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

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) and that has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an application for a 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 a site certificate.

(3) Any person submitting an application for a site certificate under section (1) or (2) may request expedited review as described in OAR 345-015-0300 if the nominal electric generating capacity of the energy facility is less than 100 megawatts.

(4) Any person operating a plant that the Council has determined exempt under OAR 345-015-0350(5) must apply for a site certificate before making any change in the operation of the plant such that the plant would no longer meet the criteria of that rule, including, but not limited to, use of feedstock other than grain, whey or potatoes, construction of a new transmission line or gas or petroleum product pipeline that would require a site certificate, or reduction below 90 percent in the use of the fuel product in an industrial or refueling facility located within one mile of the facility or transportation from the facility by rail or barge.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.320

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 4-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-99

Confidentiality and Inadmissibility of Mediation Communications

345-015-0500

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation;

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule; or

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondisclosable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as

the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the chair of the Council determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt

from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

DIVISION 20

NOTICE OF INTENT

345-020-0006

Notice of Intent — When Required

(1) The purpose of the notice of intent (NOI) is to notify the Office of Energy 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 an NOI to the Office of Energy with the fee required by the fee schedule established under ORS 469.421, payable to the Oregon Office of Energy.

(2) Notwithstanding section (1), an applicant granted expedited review as described in OAR 345-015-0300 need not submit an NOI.

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-020-0011

Contents of Notice of Intent

(1) The applicant shall, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant shall describe each alternative separately. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person;

(B) The contact name, address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.

(C) If the applicant is a corporation, it shall give:

(i) The full name, official designation, mailing address and telephone number of the officer responsible for submitting the NOI;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the NOI; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(D) If the applicant is a wholly owned subsidiary of a company, corporation, or other business entity, in addition to the information required by paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners;

(E) If the person submitting the NOI is an association of citizens, a joint venture or a partnership, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the NOI;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member.

(F) If the applicant is a public or governmental entity, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the NOI; and

(ii) Written authorization from the entity's governing body to submit an NOI.

(G) If the applicant is an individual, the individual shall give his or her mailing address and telephone number.

(b) **Exhibit B.** Information about the proposed facility, including:

(A) A description of the proposed energy facility, including as applicable:

(i) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy;

(ii) Methods for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates, the applicant's plans for disposal of wastewater and storm water, and the location of disposal;

(iii) For thermal power plants and electric generating facilities producing energy from wind, solar or geothermal energy:

(I) A discussion of the source, quantity, availability, and energy content of all fuels (higher heating value) or the wind, solar or geothermal resource used to generate electricity or useful thermal energy. For the purpose of this sub-paragraph, "source" means the coal field, natural gas pipeline, petroleum distribution terminal or other direct source;

(II) Methods for disposal of waste heat;

(III) Approximate nominal electric generating capacity.

(iv) For transmission lines, approximate transmission line voltage, load carrying capacity, and type of current;

(v) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day;

(vi) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;

(vii) For facilities to store liquefied natural gas, the approximate volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour.

(B) A description of major components, structures and systems of each related or supporting facility;

(C) The approximate dimensions of major facility structures and visible features.

(c) **Exhibit C.** A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility, including the approximate land area of each and identification of the Oregon Building Code Seismic Zone designation;

(d) **Exhibit 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 at least two proposed corridors, as

defined in OAR 345-001-0010, or an explanation of why only a single corridor can meet the applicant's needs and satisfy the Council's standards. The applicant shall include an explanation of the basis for selecting the proposed corridor(s) and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (n) and (p) that is available from existing maps, aerial photographs, and a search of readily available literature;

(e) **Exhibit E.** Identification of all federal, state and local government permits needed before construction and operation the proposed facility, legal citation of the statute, rule or ordinance governing each permit, and the name, address and telephone number of the agency or office responsible for each permit;

(f) **Exhibit F.** 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 or adjacent to the site of the facility. In addition to incorporating the list in the NOI, the applicant shall submit the list to the Office of Energy in electronic format suitable to the Office for the production of mailing labels. If the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, the list of property owners shall include the owners of property located within or adjacent to the corridors the applicant has identified under subsection (d). Property adjacent to the site of the facility means property that is:

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

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

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

(g) **Exhibit G.** A map or maps showing:

(A) The proposed locations of the energy facility site, and all related or supporting facility sites, in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(C) The study area(s) for the proposed facility as defined in OAR 345-001-0010;

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

(E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas; and

(F) The location of any wetlands identified in the Statewide Wetland Inventory of the Division of State Lands that are on or adjacent to the site.

(h) **Exhibit H.** If the proposed facility is a non-generating energy facility for which the applicant must demonstrate need under OAR 345-023-0005, identification of the rule in Division 23 of this chapter under which the applicant intends to demonstrate need and a summary statement of the need and justification for the proposed facility;

(i) **Exhibit I.** A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).

(j) **Exhibit J.** Identification of significant potential environmental impacts of construction and operation of the proposed facility on the study areas, 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;

(k) **Exhibit K.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the study area to provide the services listed in OAR 345-022-0110;

(l) **Exhibit L.** Information about water requirements the applicant anticipates for construction and operation of the proposed facility, including:

(A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source;

(B) If a new water right is required, the approximate location of the points of diversion and the estimated quantity of water to be taken at each point;

(C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.

(m) **Exhibit M.** If the proposed facility would emit carbon dioxide, an estimate of the gross rate of carbon dioxide emissions, a table listing all the factors that form the basis for calculating the estimate, and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-0560, OAR 345-024-0600, or OAR 345-024-0630.

(n) **Exhibit N.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant shall analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.

(o) **Exhibit O.** A schedule stating when the applicant expects to submit an application for a site certificate;

(p) **Exhibit P.** 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;

(2) 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 contain some of the information required by section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the NOI. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the NOI, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the NOI as needed to meet the requirements of section (1) of this rule.

(3) In each NOI submitted to the Office of Energy, the applicant shall include an index or table of contents clearly identifying by page number the location of each exhibit required by this rule. The applicant shall submit the original NOI and six copies to the Office and shall prepare and distribute additional copies of the NOI as required by OAR 345-020-0040. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) of the NOI in electronic format suitable to the Office.

(4) The applicant or the applicant's representative shall attend all public informational meetings on the NOI as described in OAR 345-020-0130 to discuss the proposed facility and to answer questions from the public. If the proposed facility or related or supporting facility is a pipeline or a transmission line as defined in ORS 469.300, the applicant may present adjustments to the proposed corridor(s) at any public informational meeting. An adjustment is any change that is outside the boundaries of the corridors proposed in the NOI and may include an entirely new corridor.

[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(ies).]

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-020-0016

Amendment of Notice of Intent

(1) The applicant may amend the notice of intent (NOI). The applicant shall submit the original amendment and six copies to the Office of Energy.

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

(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;

(b) Changes the proposed fuel type, significantly increases the generating capacity of the proposed energy facility, increases the voltage of a proposed transmission line, or significantly increases the capacity or operating pressure of a proposed pipeline;

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

(d) Changes the source of water; or

(e) Significantly changes the means of compliance with the carbon dioxide standard, if applicable.

(3) For any amendment described in section (2), the applicant shall deliver copies of the amendment to the officers, agencies and tribes described in OAR 345-020-0040.

(4) If the applicant submits an amendment described in section (2) after the informational hearing on the original NOI described in OAR 345-015-0110, the Office may hold one or more additional informational hearings concerning the amendment.

(5) If the applicant submits an amendment described in section (2) after issuance of the project order as described in OAR 345-015-0160, the Office shall issue a revised project order unless the Office determines, in consultation with other agencies, that a revised project order is not required, in which case the Office shall notify the applicant of this determination in writing.

(6) Submission of an amendment described in section (2) does not extend the expiration date of the NOI. The applicant, however, may petition the Council to extend the duration of the NOI 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-020-0040

Circulation to Other Agencies

(1) As soon as is practical after the submission of the notice of intent (NOI), the applicant shall distribute, by hand delivery or mailing, copies of the NOI 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 agency identified by the Office of Energy or by the applicant in the NOI;

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

(q) The governing body of any city or county within the study area as defined in OAR 345-001-0010 for socio-economic impacts;

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

(s) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.

(2) The applicant shall attach the memorandum from the Office, described in OAR 345-015-0120, to the copies of the NOI distributed according to section (1).

(3) Reviewing agencies, as defined by OAR 345-001-0010, shall send comments or recommendations to the Office that include:

(a) A list of all the state statutes, administrative rules and local government ordinances administered by the agency that 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 NOI that is not required in the application for a site certificate but is necessary for determining compliance with the statutes, rules and ordinances identified in subsection (a);

(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 NOI 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 analysis 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 NOI and the agency's recommendation, if any, on the selection of a corridor.

(4) The officers, agencies and tribes listed in section (1), other than reviewing agencies defined by OAR 345-001-0010 and except for the Building Codes Division and the Office of State Fire Marshal, shall send comments or recommendations to the Office that include:

(a) A list of requirements or tribal codes that the officer, agency or tribe recommends to the Council for its review of the application;

(b) Specific information regarding the proposed facility or study areas described in the NOI that is not required in the application for a site certificate but is necessary for determining compliance with the requirements or tribal codes recommended in subsection (a);

(c) Comments on aspects of the proposed facility that are within the particular responsibility or expertise of the officer, agency or tribe;

(d) The name, telephone number and address of the individual who is assigned to review 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 NOI and the recommendation, if any, of the officer, agency or tribe on the selection of a corridor.

(5) The Building Codes Division and the Office of State Fire Marshal may send comments or recommendations to the Office of Energy as described in section (4).

(6) The applicant shall provide additional copies of the NOI to the Office upon request and copies or access to copies to any person requesting copies.

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. 11-16-96; EFSC 2-1999, f. & cert. ef. 4-14-99

345-020-0060

Expiration Date — Petition to Extend the NOI

(1) A notice of intent (NOI) expires 18 months after the date of issuance of the project order. The applicant may petition the Council to extend the duration of the NOI beyond 18 months for good cause. The applicant shall submit any petition to extend the duration of an NOI to the Office of Energy no later than 45 days before the expiration of the NOI. The applicant's submission of a timely petition for an extension under this rule stays the expiration of the NOI until the Council's decision to grant or deny the extension.

(2) If the applicant does not submit an application for a site certificate for the facility described in an NOI before the expiration of the NOI or any extension period granted by the Council, the applicant must submit a new NOI for the facility 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; EFSC 2-1999, f. & cert. ef. 4-14-99

DIVISION 21

APPLICATION FOR SITE CERTIFICATE

345-021-0000

General Requirements

(1) Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to OAR 345-015-0370, no person may construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.

(2) An applicant shall not submit an application for a site certificate before the Office of Energy has issued a project order for the proposed facility as described in OAR 345-015-0160. If the applicant chooses, the applicant may submit a draft application before the issuance of a project order.

(3) Notwithstanding the requirement of section (2), in the case of an expedited review granted under OAR 345-015-0300, the applicant may submit an application for a site certificate any time after the Office of Energy determines the request for expedited review satisfies the requirements of OAR 345-015-0300.

(4) In addition to the application for a site certificate described in OAR 345-021-0010, the applicant shall submit to the Office of Energy six copies of each application for a state or local government agency permit needed for construction and operation of the facility, unless the applicant chooses to incorporate copies of the permit applications as part of the application for a site certificate. The applicant may submit the site certificate application before submitting copies of each permit application if the applicant submits a schedule of the dates by which the applicant intends to submit the copies of permit applications. The permit applications and letters described in this section are part of the decision record for the Office of Energy's proposed order, described in OAR 345-015-0230. The Office shall not find the site certificate application to be complete before receiving copies of all permit applications and:

(a) For non-federally-delegated permit applications for which the Council must determine compliance with applicable standards, a letter or other indication from each responsible agency stating

that the permit application received from the applicant provides an adequate basis for a permit decision; and

(b) For federally-delegated permit applications, a letter or other indication from each responsible agency stating that the agency has received a permit application from the applicant, identifying any additional information the agency is likely to need from the applicant based on the agency's review of the application as submitted, and estimating the date when the agency will complete its review and issue a permit decision.

(5) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in OAR 345-021-0010, the applicant shall submit to the Office three copies of each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate copies of the plan(s) as part of the application for a site certificate. The applicant shall submit the plan(s) to the Office with the site certificate application. The Office shall not find the site certificate application to be complete before receiving copies of the plan(s). The plan or plans described in this section are part of the decision record for the Office of Energy's proposed order, described in OAR 345-015-0230.

(6) The applicant shall submit an application for a site certificate to the Office with 25 percent of the fee the Office determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Office of Energy. The applicant shall pay the balance of the fee periodically, as specified by the Office.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350, ORS 469.370 & ORS 469.421

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-021-0010

Contents of Application

(1) The project order described in OAR 345-15-160(1) identifies the provisions of this rule applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of this rule. The applicant shall include in its application for a site certificate information that addresses each provision of this rule identified in the project order. In the case of an expedited review granted under OAR 345-015-0300, the applicant shall include in its application for a site certificate information that addresses all provisions of this rule. The applicant shall designate the information with the appropriate exhibit label identified in the following subsections. If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others.

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address and telephone number of the contact person for the application, and if there is a contact person other than the applicant, the name, title, mailing address and telephone number of that person;

(B) The contact name, address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council.

(C) If the applicant is a corporation, it shall give:

(i) The full name, official designation, mailing address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the application; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(D) If the applicant is a wholly owned subsidiary of a company, corporation, or other business entity, in addition to the information required by paragraph (C), it shall give the full name and business address of each of the applicant's full or partial owners;

(E) If the applicant is an association of citizens, a joint venture, or a partnership, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the application;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant shall state that fact over the signature of each member.

(F) If the applicant is a public or governmental entity, it shall give:

(i) The full name, official designation, mailing address and telephone number of the person responsible for submitting the application; and

(ii) Written authorization from the entity's governing body to submit an application.

(G) If the applicant is an individual, the individual shall give his or her mailing address and telephone number.

(b) **Exhibit B.** Information about the proposed facility, construction schedule and temporary disturbances of the site, including:

(A) A description of the proposed energy facility, including as applicable:

(i) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate electricity and useful thermal energy;

(ii) A site plan and general arrangement of buildings, equipment and structures;

(iii) Fuel and chemical storage facilities, including structures and systems for spill containment;

(iv) Equipment and systems for fire prevention and control;

(v) Structures, systems and equipment for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates and the applicant's plans for disposal of wastewater and storm water. If the applicant has submitted any permit applications to the Office, as described in OAR 345-021-0000(4), that contain this information, the applicant may copy relevant sections of those documents into this exhibit or include in this exhibit cross-references to the relevant sections of those documents;

(vi) For thermal power plants and electric generating facilities producing energy from wind, solar or geothermal energy:

(I) A discussion of the source, quantity, availability, and energy content of all fuels (higher heating value) or the wind, solar or geothermal resource used to generate electricity or useful thermal energy. For the purpose of this subparagraph, "source" means the coal field, natural gas pipeline, petroleum distribution terminal or other direct source;

(II) Fuel cycle and usage;

(III) Process flow, including power cycle and steam cycle diagrams to describe the energy flows within the system;

(IV) Equipment and systems for disposal of waste heat;

(V) The maximum number of hours per year and energy content (Btu per year) of alternate fuel use;

(VI) The nominal electric generating capacity;

(VII) The fuel chargeable to power heat rate.

(vii) For transmission lines, the rated voltage, load carrying capacity, and type of current;

(viii) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day;

(ix) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors; and

(x) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour.

(B) A description of major components, structures and systems of each related or supporting facility;

(C) The approximate dimensions of major facility structures and visible features;

(D) If the proposed facility or related or supporting facility is a pipeline or a transmission line as defined in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridor(s) for analysis in the application. In the assessment, the applicant shall evaluate the corridor adjustments the Office has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor. However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant shall discuss the reasons for selecting the corridor(s), based upon evaluation of the following factors:

(i) Least disturbance to streams, rivers and wetlands during construction;

(ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;

(iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to existing pipeline or transmission line rights-of-way;

(iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;

(v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;

(vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist; and

(vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards.

(E) For the corridor(s) the applicant selects under paragraph (D) and for any related or supporting facility that is a pipeline or transmission line, regardless of size:

(i) The length of the pipeline or transmission line;

(ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened;

(iii) The diameter and location, above or below ground, of each pipeline; and

(iv) A description of transmission line structures and their dimensions.

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction;

(G) A map showing all areas that may be temporarily disturbed by any activity related to the design, construction and operation of the proposed facility.

(c) **Exhibit C.** Information about the location of the proposed facility, including:

(A) A map or maps showing the proposed locations of the energy facility site, and all related or supporting facility sites, in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(B) A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility, including the approximate land area of each. If a proposed

pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant shall state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known; and

(C) A legal description of the proposed energy facility site.

(d) **Exhibit D.** Information about the organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0010, including :

(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;

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise; and

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program.

(e) **Exhibit E.** Information about permits needed for construction and operation of the facility, including:

(A) Identification of all federal, state and local government permits needed before construction and operation of the proposed facility, legal citation of the statute, rule or ordinance governing each permit, and the name, address and telephone number of the agency or office responsible for each permit;

(B) A description of each permit and the reasons the permit is needed for construction or operation of the facility;

(C) If the applicant will not itself obtain a federal, state or local government permit related to any facility standard adopted by the Council but will instead rely on a permit issued to a third party, identification of any such third-party permit and for each:

(i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;

(ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit; and

(iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard.

(D) For federally-delegated permit applications, evidence to support the applicant's reasonable expectation that the responsible agency can issue the permit at approximately the same time as the Council issues a site certificate for the proposed facility;

(E) For non-federally-delegated permit applications for which the Council must determine compliance with applicable standards, evidence to support findings by the Council that construction and operation of the proposed facility will comply with all statutes, rules and standards applicable to the permit. The applicant may show this evidence:

(i) In Exhibit J for permits related to wetlands;

(ii) In Exhibit O for permits related to water rights; and

(F) The applicant's proposed monitoring program, if any, for compliance with permit conditions;

(f) **Exhibit F.** 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 or adjacent to the site of the facility. The applicant shall submit an updated list of property owners as requested by the Office of Energy before the Office issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220. In addition to incorporating the list in the application for a site certificate, the applicant shall submit the list to the Office in electronic format suitable to the Office for the production of mailing labels. If the proposed energy facility or related or supporting facility is a transmission line or a pipeline as defined in ORS 469.300, the list of property owners shall include the owners of property within or adjacent to the corridor(s) analyzed in the application. Property adjacent to the site of the facility means property that is:

(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.

(g) **Exhibit G.** A materials analysis including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

(h) **Exhibit H.** Information from reasonably available sources regarding the geological and soil stability of the site and vicinity, providing evidence to support findings by the Council as required by OAR 345-022-0020, including :

(A) A description of the geological features and topography of the site and vicinity;

(B) A description of site specific geological and geotechnical work performed or planned to be performed before construction. The applicant shall include:

(i) A proposed schedule for geotechnical work;

(ii) A description of the nature and extent of the work with a discussion of the methods used to assess the expected ground response, including amplification, at the site;

(iii) A list of the professional literature relied on in characterizing the site; and

(iv) The names of the personnel responsible for the work and a description of their relevant experience.

(C) For transmission lines as defined in ORS 469.300 and for related or supporting facilities that are transmission lines, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends, corners, and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction;

(D) For pipelines as defined in ORS 469.300 and for related or supporting facilities that are pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings and portions of the proposed alignment where geologic reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction;

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

(F) An assessment of seismic hazards. For the purposes of this assessment, the maximum probable earthquake (MPE) is the maximum earthquake that could occur under the known tectonic framework and that has not more than a 10 percent chance of being exceeded in a 50 year period. If seismic sources are not mapped sufficiently to identify the ground motions above, the applicant shall provide a probabilistic seismic hazard analysis to identify the peak ground accelerations expected at the site for a 500 year recurrence interval and a 5000 year recurrence interval. In the assessment, the applicant shall include:

(i) Identification of the Oregon Building Code Seismic Zone designation for the site;

(ii) Identification and characterization of all earthquake sources capable of generating median peak ground accelerations greater than 0.05g on rock at the site. For each earthquake source, the applicant shall assess the magnitude and minimum epicentral distance of the maximum credible earthquake (MCE) and the MPE;

(iii) 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 ground shaking at the site more intense than the Modified Mercalli III intensity. The applicant shall include the date of occurrence and a description of the earthquake that includes its magnitude and highest intensity and its epicenter location or region of highest intensity;

(iv) Assessment of the median ground response spectrum from the MCE and the MPE and identification of the spectral accelerations greater than the design spectrum provided in the Oregon Building Code. The applicant shall include a description of the probable behavior of the subsurface materials and amplification by subsurface materials and any topographic or subsurface conditions that could result in expected ground motions greater than those characteristic of the Oregon Building Code Seismic Zone identified above; and

(v) An assessment of seismic hazards expected to result from reasonably probable seismic events. As used in this rule “seismic hazard” includes ground shaking, landslide, lateral spreading, liquefaction, tsunami inundation, fault displacement, and subsidence.

(G) An assessment of soil-related hazards such as landslides, flooding and erosion which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility;

(H) An explanation of how the applicant will design, engineer and construct the facility to avoid dangers to human safety from the seismic hazards identified in paragraph (F). The applicant shall include proposed design and engineering features, applicable construction codes, and any monitoring for seismic hazards; and

(I) An explanation of how the applicant will design, engineer and construct the facility to adequately avoid dangers to human safety presented by the hazards identified in paragraph (G).

(i) **Exhibit I.** Information from reasonably available sources regarding soil conditions and uses of the site and vicinity, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types at the site and its vicinity;

(B) Identification and description of any land uses on the proposed site and in its vicinity, such as growing crops, that require or depend on productive soils;

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills;

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils; and

(E) The applicant’s proposed monitoring program, if any, for impact to soils.

(j) **Exhibit J.** Information based on literature and field study, as appropriate, about significant potential impacts of the proposed

facility on wetlands that are within state jurisdiction under ORS Chapter 196, including:

(A) A map showing the location of any wetlands under state jurisdiction on or near the site and the source of the water for the wetlands, including any wetlands identified in the Statewide Wetland Inventory of the Division of State Lands;

(B) A description of each wetland identified in (A);

(C) A description of significant potential impact to each wetland, if any, including the nature and amount of material the applicant would remove from or place in each wetland and the specific locations where the applicant would remove or fill that material;

(D) Evidence that all required fill and removal permits of the Oregon Division of State Lands can be issued to the proposed facility in compliance with ORS 196.800 et seq., including:

(i) A discussion and evaluation of the factors listed in ORS 196.825 and OAR Chapter 141 Division 85; and

(ii) A description of the steps the applicant proposes to mitigate impacts to wetlands; and

(E) The applicant’s proposed monitoring program, if any, for impacts to wetlands.

(k) **Exhibit K.** Information about the proposed facility’s compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030. The applicant shall state whether the applicant elects to address the Council’s land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 504(1)(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 the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, “affected local government” means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant shall:

(A) Include a map showing the comprehensive plan designations and land use zones of the facility site and property adjacent to the site;

(B) If the applicant elects to obtain local land use approvals:

(i) Identify the affected local government(s) from which land use approvals will be sought;

(ii) Describe the land use approvals required in order to satisfy the Council’s land use standard;

(iii) Describe the status of the applicant’s application for each land use approval; and

(iv) Provide an estimate of time for issuance of local land use approvals.

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

(i) Identify the affected local government(s);

(ii) Identify the 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 that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;

(iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;

(iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals; and

(v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2); and

(D) If the proposed facility will be located on federal land:

(i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;

(ii) Explain any differences between state or local land use requirements and federal land management requirements;

(iii) Describe how the proposed facility complies with the applicable federal land management plan;

(iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;

(v) Provide an estimate of time for issuance of federal land use approvals; and

(vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

(l) Exhibit L. Information about the proposed facility's impact on protected areas, providing evidence to support a finding by the Council as required by OAR 345-022-0040, including:

(A) A map showing the location of the proposed facility in relation to the protected areas listed in OAR 345-022-0040 located within the analysis area;

(B) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

(i) Noise resulting from facility construction or operation;

(ii) Increased traffic resulting from facility construction or operation;

(iii) Water use during facility construction or operation;

(iv) Wastewater disposal resulting from facility construction or operation;

(v) Visual impacts of facility structures, including cooling tower or other plumes, if any; and

(vi) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 visual resources as described in OAR 340-031-0120.

(C) The applicant's proposed measures, if any, to avoid, reduce or otherwise mitigate impacts described in (B); and

(D) The applicant's proposed monitoring program, if any, for impacts to protected areas.

(m) **Exhibit M.** Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050. Nothing in this subsection shall require the disclosure of information or records protected from public disclosure by any provision of state or federal law. The applicant shall include:

(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

(B) The type and amount of the applicant's proposed bond, security or other financial instrument to meet the requirements of OAR 345-022-0050; and

(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond, security or other financial instrument, in the amount proposed in paragraph (B), before beginning construction of the facility.

(n) **Exhibit N.** If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, information about the need for the facility, providing evidence to support a finding by the Council as required by OAR 345-023-0005, including:

(A) Identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need;

(B) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule:

(i) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need;

(ii) The name, address, and telephone number of the person responsible for preparing each energy resource plan identified in subparagraph (i);

(iii) For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:

(I) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or

(II) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Office of Energy can obtain a complete copy of the public record.

(iv) Identification of the section(s) of the short-term action plan(s) that call(s) for the acquisition of the proposed facility or a facility substantially similar to the proposed facility; and

(v) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that a facility substantially similar to the proposed facility is called for in the plan(s).

(C) In addition to the information described in paragraph (B), if the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon:

(i) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in paragraph (B);

(ii) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence; and

(iii) The expected annual emissions in tons of the pollutants listed in the definition of "net emissions" in OAR 345-001-0010 and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan.

(D) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (G) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (G), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(E) In addition to the information described in paragraphs (B) and (C), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant shall include the information described in paragraph (F) of this subsection if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in paragraph (F), the applicant shall provide a list of citations to the sections of the energy resource plan(s) that contain the information;

(F) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, the system reliability rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility.

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for electricity and firm annual electrici-

ty sales for the area to be served by the proposed facility. The applicant shall separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales 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;

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

(IV) Retail customer fuel choice.

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources, and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant shall list each resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility; and

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant shall include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table. The applicant shall evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

(I) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(II) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(III) 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

(IV) Adding standard sized smaller or larger transmission line capacity.

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

(G) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas under OAR 345-023-0040, the economically reasonable rule:

(i) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant shall include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the proposed facility. In the tables, the applicant shall list flowing supply and storage supply separately;

(ii) Within the tables described in subparagraph (i), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant shall separate firm capacity demands into firm demands of retail customers, system losses, and each wholesale contract for firm sale. The applicant shall accompany the tables with load duration curves of firm capacity 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. In the forecast of firm capacity demands, the applicant shall include a discussion of how the forecast incorporates reductions in firm capacity demand 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;

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

(IV) Retail customer fuel choice.

(iii) Within the tables described in subparagraph (i), a forecast of existing and committed firm resources used to meet the demands described in subparagraph (ii). The applicant shall include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant shall list each committed resource separately;

(iv) A discussion of the reasons each resource is being retired or displaced if the forecast described in subparagraph (iii) includes expected retirements or displacements;

(v) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in subparagraph (iii);

(vi) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;

(vii) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in subparagraphs (viii) or (ix). In the discussion, the applicant shall include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost of the proposed facility and each alternative. The applicant shall include documentation of assumptions and calculations supporting the table;

(viii) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(II) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;

(III) 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

(IV) Adding standard sized smaller or larger pipeline capacity.

(ix) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(I) Implementation of cost-effective conservation, peak load management, and voluntary customer interruption as a substitute for the proposed facility;

(II) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;

(III) 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

(IV) Adding smaller or larger liquefied natural gas storage capacity; and

(x) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier that determine these dates.

(o) **Exhibit O.** Information about the water requirements the applicant anticipates for construction and operation of the proposed facility. If the applicant has submitted any permit applications to the Office, as described in OAR 345-021-0000(4), that contain this information, the applicant may copy relevant sections of those documents into this exhibit or include in this exhibit

cross-references to the relevant sections of those documents. The applicant shall include:

(A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source under annual average and worst-case conditions;

(B) 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;

(C) A description of how the water is to be used;

(D) A description of each avenue of water loss or output from the facility site, the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions, and the final disposition of all wastewater, including storm water;

(E) For operation, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions;

(F) If the facility does not require a groundwater permit, a surface water permit, or a water rights transfer, an explanation why no such permit or transfer is required for the construction and operation of the proposed facility;

(G) Evidence to support Council findings that the Water Resources Department should issue a groundwater or a surface water permit under ORS Chapter 537 or should approve a transfer of a water use under ORS Chapter 540, including a discussion and evaluation of all relevant factors, including those listed in ORS 537.153(2) and (3), ORS 537.170(8) and OAR Chapter 690, Divisions 15 and 310;

(H) A discussion of any steps proposed by the applicant to reduce consumptive water use; and

(I) A discussion of any mitigation steps proposed by the applicant to address the impact of the applicant's water use on affected resources.

(p) **Exhibit P.** Information about the fish and wildlife habitats and the fish and wildlife species, other than the species addressed in subsection (r) that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0060. The applicant shall include:

(A) Identification and description of all habitat within the analysis area, classified by the habitat categories as set forth in OAR 635-415-0030;

(B) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey;

(C) A map showing the locations of the habitat identified in (A);

(D) A description of the nature, extent and duration of significant potential impacts on the habitat identified in (A) that may result from construction, operation and retirement of the proposed facility;

(E) A description of any measures the applicant proposes to avoid, reduce or mitigate potential adverse impacts;

(F) Evidence that the proposed facility, including any proposed mitigation, complies with the fish and wildlife habitat mitigation goals and standards in OAR 635-415-0030; and

(G) The applicant's proposed monitoring program, if any, for impacts to such fish and wildlife species and their habitats.

(q) **Exhibit Q.** Information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant shall include:

(A) Based on appropriate literature and field study, identification of all 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;

(B) For each species identified under (A), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it;

(C) For each species identified under (A), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact;

(D) For each plant species identified under (A), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3);

(E) For each plant species identified under paragraph (A), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species;

(F) For each animal species identified under (A), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(G) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species.

(r) **Exhibit R.** An analysis of significant potential impacts of the proposed facility, if any, on scenic and aesthetic values identified as significant or important in applicable federal land management plans or in local land use plans for the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0080, including:

(A) Identification of the applicable federal land management plans and local land use plans;

(B) Identification and description of the scenic and aesthetic values identified as significant or important in the applicable plans;

(C) A description of significant potential adverse impacts to the scenic and aesthetic values identified in (B), including, but not limited to, potential impacts such as:

(i) Loss of vegetation or alteration of the landscape as a result of construction or operation;

(ii) Visual impacts of facility structures, including cooling tower or other plumes, if any; and

(iii) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 visual resources as described in OAR 340-031-0120.

(D) The measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts;

(E) A map or maps showing the location of the visible scenic and aesthetic values analyzed under (B); and

(F) The applicant's proposed monitoring program, if any, for impacts to scenic and aesthetic values.

(s) **Exhibit S.** Information about historic, cultural and archaeological resources providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(A) Historic and cultural resources within the analysis 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 analysis area;

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

(D) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in paragraphs (A), (B) and (C) and a plan for protection of those 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 paragraphs (A), (B) and (C);

(ii) The results of surveys, inventories, and subsurface testing work recommended by the state and federal agencies listed in sub-

paragraph (i), 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 subparagraph (i) or discovered during construction; and

(iv) A completed copy of any permit applications submitted pursuant to ORS 358.920. Notwithstanding OAR 345-021-0000(4), the applicant shall include copies of the permit applications as part of the site certificate application. If the same information required by subparagraphs (i) through (iii) above is contained in the permit applications, then the applicant may provide cross-references to the relevant sections of the permit applications in substitution; and

(E) The applicants proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction, operation and retirement of the proposed facility.

(t) **Exhibit T.** Information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

(A) A description of any important recreational opportunities in the analysis area considering the criteria in OAR 345-022-0100;

(B) An assessment of significant potential adverse impacts to the opportunities identified in (A) including, but not limited to, potential impacts such as:

(i) Direct or indirect loss of an opportunity as a result of construction or operation;

(ii) Noise resulting from facility construction or operation;

(iii) Increased traffic resulting from facility construction or operation;

(iv) Water use during facility construction or operation;

(v) Wastewater resulting from facility construction or operation;

(vi) Visual impacts of facility structures, including cooling tower or other plumes, if any; and

(vii) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 visual resources as described in OAR 340-031-0120.

(C) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate the significant adverse impacts identified in (B);

(D) A map of the analysis area showing the locations of important recreational opportunities identified in (A); and

(E) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.

(u) **Exhibit U.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant shall include:

(A) The important assumptions the applicant used to evaluate potential impacts;

(B) Identification of the communities in the analysis area that would likely be affected;

(C) Identification of the providers of the services listed in OAR 345-022-0110 in each of the communities identified in (B);

(D) A description of any likely adverse impact to the ability of the providers identified in (C) to provide the services listed in OAR 345-022-0110;

(E) Evidence that adverse impacts described in (D) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(F) The applicant's proposed monitoring program, if any, for impacts to the ability of communities in the vicinity to provide the services listed in OAR 345-022-0110.

(v) **Exhibit V.** Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence

to support a finding by the Council as required by OAR 345-022-0120. The applicant shall include:

(A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate;

(B) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A);

(C) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility;

(D) Evidence that adverse impacts described in (C) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(E) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

(w) **Exhibit W.** Information about facility retirement and site restoration, providing evidence to support a finding by the Council as required by OAR 345-022-0130. The applicant shall include:

(A) The estimated useful life of the proposed facility;

(B) The actions that the applicant proposes for retirement of the facility and restoration of the site to a useful, non-hazardous condition; and

(C) The estimated costs to retire the facility and restore the site to a useful, non-hazardous condition and a discussion of the methods and assumptions used to estimate retirement and restoration costs.

(x) **Exhibit X.** Information about noise generated by construction and operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-035-0035. The applicant shall include:

(A) A baseline noise assessment for the proposed site and vicinity;

(B) Predicted noise levels resulting from construction and operation of the proposed facility;

(C) An assessment of the proposed facility's compliance with the applicable noise regulations in OAR 340-035-0035;

(D) Any measures the applicant proposes to reduce noise levels or noise impacts;

(E) The assumptions and methods used in the noise analysis; and

(F) The applicant's proposed monitoring program, if any, for noise generated by construction and operation of the facility.

(y) **Exhibit Y.** If the facility is a base load gas plant, a non-base load power plant, or a nongenerating energy facility that emits carbon dioxide, a statement of the means by which the applicant elects to comply with the applicable carbon dioxide emissions standard under OAR 345-024-0560, OAR 345-024-0600, or OAR 345-024-0630 and information, showing detailed calculations, about the carbon dioxide emissions of the energy facility, including:

(A) The gross annual carbon dioxide emissions of the facility and total carbon dioxide emissions for 30 years, unless an applicant for a nongenerating energy facility proposes to limit operation to a shorter time;

(B) The gross carbon dioxide emissions rate expressed as:

(i) Pounds of carbon dioxide per kilowatt hour of net electric power output for a base load gas plant or a non-base load power plant;

(ii) Pounds of carbon dioxide per horsepower hour for non-generating facilities for which the output is ordinarily measured in horsepower; or

(iii) A rate comparable to pounds of carbon dioxide per kilowatt hour of net electric power output for nongenerating facilities other than those measured in horsepower.

(C) The net annual carbon dioxide emissions and the net total carbon dioxide emissions for 30 years, unless an applicant for a nongenerating energy facility proposes to limit operation to a shorter time;

(D) The net carbon dioxide emissions rate, using the same measure as required for paragraph (B);

(E) The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices;

(F) The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:

(i) For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels;

(ii) For a non-base load power plant, the applicant's proposed limited capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels;

(iii) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time.

(G) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration;

(H) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration;

(I) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate, the applicant shall include:

(i) The 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) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use 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 a description 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 or estimates, if the production facility is new;

(v) The efficiency of each boiler that the thermal energy will displace;

(vi) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy;

(vii) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel;

(viii) The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period; and

(ix) A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy.

(J) If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0560(2), OAR 345-024-0600(2) or OAR 345-024-0630(1), the applicant shall include:

(i) A description of each offset project;

(ii) A description of who will implement the offset project, including qualifications and experience;

(iii) Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project;

(iv) A proposed monitoring and evaluation program for each project or combination of projects; and

(v) For each offset project, an explanation of how the applicant's estimates of the carbon dioxide offsets account for certainty, quantifiability and verifiability of the offset project and evidence that the offset project would not likely have been implemented if not for the applicant's activities; and

(K) If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2), the applicant shall include:

(i) A statement of the applicant's election to use the monetary path;

(ii) The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path;

(iii) The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant shall include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council shall not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996; and

(iv) A description of the financial instrument by which the applicant proposes to provide funds to the qualified organization. If the applicant proposes to provide a financial instrument other than a bond, letter of credit, or escrow account, the applicant shall provide a complete draft of the financial instrument for the Council's approval.

(z) **Exhibit Z.** If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

(A) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact;

(B) The predicted locations and frequency of occurrence of icing and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads;

(C) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses;

(D) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift;

(E) The assumptions and methods used in the plume analysis; and

(F) The applicant's proposed monitoring program, if any, for cooling tower plume impacts.

(aa) **Exhibit AA.** If the proposed facility includes an electric transmission line:

(A) Information about the expected electric and magnetic fields, including:

(i) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;

(ii) The type of each occupied structure within 200 feet on each side of the proposed center line of each proposed transmission line;

(iii) The approximate distance in feet from the proposed center line to each structure identified in (A);

(iv) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;

(v) Any measures the applicant proposes to reduce electric or magnetic field levels;

(vi) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line; and

(vii) The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels; and

(B) 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.

(bb) **Exhibit BB.** Any other information that the Office requests in the project order;

(cc) **Exhibit CC.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant shall identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, whether or not identified in the project order. To the extent not addressed by other materials in the application, the applicant shall include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(2) The applicant shall submit an affidavit with the original application that, to the applicant's best knowledge and belief, the information in the application is true and accurate. If the applicant is not an individual, the affidavit must be signed by an individual authorized to act on behalf of the applicant. The applicant shall include a copy of the affidavit in each copy of the application.

(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 contain some of the information required under section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant shall include additional information in the site certificate application as needed to meet the requirements of section (1) of this rule.

(4) In each application for a site certificate submitted to the Office of Energy, the applicant shall include an index or table of contents clearly identifying by page number the location of each exhibit required by this rule. The applicant shall submit the original application for a site certificate and ten copies to the Office and shall prepare and distribute additional copies of the application as required by OAR 345-021-0050. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) of the application in electronic format suitable to the Office.

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

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Energy Facility Siting Council.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350, ORS 469.370, ORS 469.501, ORS 469.503 & ORS 469.504

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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, in an application for a site certificate for a surface facility related to an underground storage reservoir, the applicant shall include 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;

(4) The estimated carbon dioxide emissions from the compressor for the projected life of the facility; and

(5) The proposed location of all wells.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.350 & ORS 469.503

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 345-01-0040; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-100-0025 & 345-100-0055; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-021-0050

Circulation to Other Agencies

(1) When the applicant submits an application for a site certificate to the Office of Energy, the applicant shall send a copy of the submitted application to each officer, agency and tribe listed in OAR 345-020-0040(1) accompanied by a memorandum from the Office as described in OAR 345-015-0180.

(2) In written comments or recommendations to the Office, the officers, agencies and tribes receiving copies of the site certificate application as described in section (1) shall:

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

(b) Describe the status of applications for permits, if any, that the applicant has submitted to the officer, agency or tribe and that are necessary for the construction and operation of the proposed facility.

(3) The Office shall, as soon as practicable, send the applicant copies of all comments submitted under section (2) that identify additional information needed by the officer, agency or tribe to review the application.

(4)(a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Office of Energy under section (2), describe the status of the local land use proceedings and state the date when the local government expects to issue 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 under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility shall, in the comments or recommendations submitted to the Office under section (2), include:

(A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. "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;

(B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);

(C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations; and

(D) An assessment of the accuracy and completeness of the applicable substantive criteria the applicant identified in the site certificate application.

(c) If possible, the local government shall submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.

(5) The applicant shall provide additional copies of the submitted application to the Office upon request, and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.350
Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-021-0055

Distribution of Filed Application

(1) The applicant shall prepare either a supplement to the application for a site certificate or a revised application for a site certificate. In the supplement or revised application, the applicant shall include all amendments to the application and all additional information requested by the Office of Energy before the date of filing as determined by OAR 345-015-0190. The applicant shall submit the original supplement or revised application and ten copies to the Office. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) of the supplement or revised application in electronic format suitable to the Office. The applicant shall send one copy of the supplement or revised application to each officer, agency and tribe listed in OAR 345-020-0040, accompanied by the notice from the Office specified in OAR 345-015-0200.

(2) After the date of filing as determined by OAR 345-015-0190, a filed application consists of the revised application for site certificate or the application for site certificate submitted as required by OAR 345-021-0010(4) and the supplement submitted as required under section (1).

(3) The applicant shall provide additional copies of the filed application to the Office upon request and copies or access to copies to any person requesting copies.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.350
Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-021-0060

Reports from Other Agencies

Before the date specified in the notice described in OAR 345-015-0200, each reviewing agency, as defined by OAR 345-001-0010, shall submit to the Office of Energy and mail to the applicant a report containing the following information:

(1) The status of applications, if any, that the applicant has filed with the reviewing agency for permits that the reviewing agency must issue if the Council grants a site certificate for the proposed facility;

(2) Issues significant to the reviewing agency;

(3) The reviewing agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the reviewing agency;

(4) If the reviewing agency is a local government with land use jurisdiction, an assessment of the proposed facility's compliance with the applicable substantive criteria that the local government recommended as described in OAR 345-021-0050(4)(b);

(5) A list of conditions that the reviewing agency proposes for inclusion in the site certificate; and

(6) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.350
Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-021-0080

Coordination of Agencies' Review of Applications for Proposed Facility

(1) Each reviewing agency, as defined by OAR 345-001-0010, is encouraged to conduct its review of the application for a site certificate and other permit applications for the proposed facility filed with the reviewing agency on a time line and in a manner that enables the reviewing agency to:

(a) Make recommendations to the Office of Energy and Council about compliance of the applications 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 site certificate application; 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 date established under OAR 345-015-0200 for issuance of the agency reports, the Office may convene a meeting of the appropriate reviewing agency personnel to coordinate review of the site certificate application and other permit applications for the proposed facility by the reviewing agency and the Office.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.350
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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-021-0090

Amendment of Application

(1) Before the date of filing as determined by OAR 345-015-0190, the applicant may amend the application without prior approval of the Office of Energy. The applicant shall submit the original and ten copies of the amendment to the Office. In addition to the printed copies, the applicant shall submit the text (and graphical information to the extent practical) of the amendment in electronic format suitable to the Office.

(2) After the date of filing as determined by OAR 345-015-0190, the applicant shall not amend the application without the approval of the Office. After issuance of a contested case notice under OAR 345-015-0014, the applicant shall not amend the application without the approval of the Council's hearing officer. The applicant shall give notice of the amendment and serve copies of the amendment according to the order of the Office or hearing officer and any applicable contested case procedures.

(3) Information submitted to the Office under OAR 345-015-0190(8) does not constitute an amendment to the application.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.350
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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-021-0100

Contested Case Proceeding on the Application — Burden of Proof

(1) After the issuance of a notice of contested case as described in OAR 345-015-0230, the hearing officer shall conduct a contested case proceeding on a filed application according to the provisions of OAR Chapter 345, Division 15.

(2) The applicant has 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 469.370
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; EFSC 2-1999, f. & cert. ef. 4-14-99

DIVISION 22

**GENERAL STANDARDS FOR SITING
NON-NUCLEAR FACILITIES**

345-022-0000

General Standard of Review

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall 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 as described in section (2);

(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 amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the council cannot waive any applicable state statute.

(2) The Council may issue or amend a site certificate for a facility that does not meet the standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility at the proposed site outweigh the damage to the resource that is protected by the standard the facility does not meet, considering the following:

(a) To issue or amend a site certificate for a facility that does not meet a standard, the Council must find that the damage to the resource is acceptable or inconsequential in ultimate effect. The Council shall consider factors including, but not limited to, the following in making this finding:

(A) The uniqueness and significance of the resource that would be affected;

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

(C) Whether there are reasonable alternatives to allowing the damage to occur; and

(D) The magnitude of the anticipated damage to the resource.

(b) As used in this rule "overall public benefits" means the public benefits that the Council finds are likely to result from construction and operation of the proposed facility at the proposed site. The Council shall consider factors including, but not limited to, the following in making this finding:

(A) The contribution of the proposed facility toward maintaining reliable energy delivery to an area in the state;

(B) The expected effect of the proposed facility on total resource cost, as defined in OAR 345-001-0010, and average delivered price of energy to end users;

(C) The overall environmental effects of the facility, considering resources other than the resource protected by the standard the facility does not meet and effects other than those considered under paragraph (B);

(D) Consistency of the proposed facility with Oregon energy policy as described in ORS 469.010; and

(E) Recommendations from any special advisory group designated by the Council under ORS 469.480.

(3) Notwithstanding section (2) of this rule, the Council shall not issue or amend a site certificate for a proposed facility that does not meet the standards of OAR 345-022-0040 if the statutes or administrative rules governing the management of the protected area 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 Council statutes if other agencies have special expertise, the Office of Energy shall consult with such other agencies during the notice of intent, site certificate application and site certificate amendment processes. 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 & ORS 469.501

Stats. Implemented: ORS 469.501, ORS 469.503, ORS 469.504 & ORS 469.505

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, 345-080-0075, 345-100-0052, 345-011-0055, 345-115-0052 & 345-125-0070(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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 proposed facility. To conclude that the applicant has the organizational, managerial and technical expertise to construct and operate the proposed facility, the Council must find that the applicant has a reasonable probability of successful construction and operation of the proposed facility considering the experience of the applicant, the availability of technical expertise to the applicant, and the past performance of the applicant in constructing and operating other facilities, 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) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the 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.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the 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 469.470 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 as to seismic zone and expected ground motion and ground failure, taking into account amplification, during the maximum credible and maximum probable seismic events; and

(2) The applicant can design, engineer, and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence;

(3) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and

(4) The applicant can design, engineer and construct the facility to avoid dangers to human safety presented by the hazards identified in section (3).

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: 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 345-79-0060, 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

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) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

(A) The proposed facility complies with applicable substantive criteria as described in section (3) and 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);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the "applicable substantive criteria" are criteria from the affected local government's acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-021-0050, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) 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.

(5) If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(6) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(9)(a)(C) to (E) or for 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(9)(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 decide 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 the decision, 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 469.504

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-022-0040

Protected Areas

(1) Except as provided in sections (2) and (3), the Council shall not issue a site certificate for a proposed facility 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 proposed facility located outside the areas listed below is not likely to result in significant adverse impact to the areas listed below. Cross-references in this rule to federal or state statutes or regulations are to the version of the statutes or regulations in effect as of the effective date of this rule:

(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), 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), if other alternative routes or sites have been studied and determined by the Council to have greater impacts. Notwithstanding section (1), the Council may issue a site certificate for surface facilities related to an

underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps 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) do not apply to transmission lines or natural gas pipelines routed within 500 feet of an existing utility right-of-way 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 that is operated at a pressure of 125 psig.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 to a useful, non-hazardous condition if the certificate holder either begins but does not complete construction of the facility or permanently closes the facility before establishing the financial mechanism or instrument described in OAR 345-027-0020(9).

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-022-0070

Threatened and Endangered Species

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction, operation and retirement of the proposed facility, taking into account mitigation:

(a) Is consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction, operation and retirement of the proposed facility, taking into account mitigation, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: 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, 345-80-0060(6), 345-100-0040, 345-111-035, 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 local land use plans in the analysis area.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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, cultural or archaeological 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 469.470 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 analysis area. The Council shall consider the following factors in judging the importance of a recreational opportunity:

- (1) Any special designation or management of the location;
- (2) The degree of demand;
- (3) Outstanding or unusual qualities;
- (4) Availability or rareness;
- (5) Irreplaceability or irretrievability of the opportunity.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: 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 2-1999, f. & cert. ef. 4-14-99

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 analysis area to provide the following governmental services: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-022-0120

Waste Minimization

To issue a site certificate, the Council must find that, to the extent reasonably practicable:

(1) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction, operation, and retirement of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

(2) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 & ORS 469.501

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

DIVISION 23

NEED FOR FACILITY STANDARDS

345-023-0005

Need for a Facility

This division applies to nongenerating facilities as defined in OAR 345-001-0010, except nongenerating facilities that are related or supporting facilities. To issue a site certificate for a facility described in sections (1) through (3), the Council must find that the applicant has demonstrated the need for the facility. The Council may adopt need standards for other nongenerating facilities. This division describes the methods the applicant shall use to demonstrate need. In accordance with ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-effectiveness for generating facilities. The applicant shall demonstrate need:

(1) For electric transmission lines under the least-cost plan rule, OAR 345-023-0020(1), or the system reliability rule for transmission lines, OAR 345-023-0030;

(2) For natural gas pipelines under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for natural gas pipelines, OAR 345-023-0040;

(3) For storage facilities for liquified natural gas with storage capacity of three million gallons or greater under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for liquified natural gas storage facilities, OAR 345-023-0040.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501 & ORS 469.503

Hist.: EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-023-0020

Least-Cost Plan Rule

(1) The Council shall find that the applicant has demonstrated need for the facility if the capacity of the proposed facility or a facility substantially similar to the proposed facility, as defined by OAR 345-001-0010, 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, other governmental body that makes or implements energy policy, or electric transmission system operator that has a governance that is independent of owners and users of the system 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, as defined in OAR 345-001-0010, 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 gas storage 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) For storage facilities for liquified natural gas, 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, natural gas pipelines and underground gas storage facilities 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 smaller or larger liquified natural gas storage capacity.

(g) Includes the development and evaluation of alternative resource plans to meet forecast energy or capacity needs over the planning time period;

(h) 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;

(i) Aims to minimize long-run total resource costs while taking into account reliability, compatibility with the energy system, strategic flexibility and external environmental costs and benefits. The value provided by reliability, compatibility with the energy system, strategic flexibility and external environmental costs and benefits may justify actions that increase the total resource cost of the plan. The Council finds 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;

(j) Includes a short-term plan of action;

(k) 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 or capacity demands can be met while aiming to minimize total resource cost; and

(l) 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 & ORS 469.501

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-023-0030

System Reliability Rule for Electric Transmission Lines

The Council shall find that the applicant has demonstrated need for an electric transmission line as defined in ORS 469.300 if the Council finds that:

(1) The facility is needed to enable the transmission system of which it is to be a part to meet firm capacity demands for electricity or firm annual electricity sales that are reasonably expected to occur within five years of the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the facility;

(2) The facility is consistent with the minimum operating reliability criteria contained in the Western System Coordinating Council Bulk Power Supply Program 1997-2007, dated April 1, 1998, as it applies either internally or externally to a utility system; and

(3) Construction and operation of the facility is an economically reasonable method of meeting the requirements of sections (1) and (2) compared to the alternatives evaluated in the application for a site certificate.

Stat. Auth.: ORS 469.470 & ORS 469.501

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; 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 2-1999, f. & cert. ef. 4-14-99

345-023-0040

Economically Reasonable Rule for Natural Gas Pipelines or Liquefied Natural Gas Storage Facilities

The Council shall find the applicant has demonstrated need for a natural gas pipeline as defined in ORS 469.300 or a facility that stores liquefied natural gas, if the Council finds that:

(1) The facility is needed to enable the natural gas supply system of which it is to be a part to meet firm capacity demands for natural gas that are reasonably expected to occur within five years following the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the proposed facility; and

(2) Construction and operation of the facility is an economically reasonable method of meeting the demands described in section (1) compared to the alternatives evaluated in the application for a site certificate.

Stat. Auth.: ORS 469.470 & ORS 469.501

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 345-125-040; 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; EFSC 2-1999, f. & cert. ef. 4-14-99

DIVISION 24

**SPECIFIC STANDARDS FOR SITING
NON-NUCLEAR FACILITIES AND RELATED
OR SUPPORTING FACILITIES**

Specific Standards for Wind Facilities

345-024-0010

Public Health and Safety Standards for Wind Energy Facilities

(1) For the purposes of this rule and OAR 345-024-0015, "wind energy facility" means an energy facility that consists of one or more wind turbines or other such devices and their related or supporting facilities that 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) To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

(a) Can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment;

(b) Can design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 6-1980, f. & ef. 8-26-80; EFSC 1-1993, f. & cert. ef. 1-15-93; Renumbered from 345-115-0020 & 345-115-030; 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 2-1999, f. & cert. ef. 4-14-99

345-024-0015

Siting Standards for Wind Energy Facilities

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

(1) Can design and construct the facility to reduce visual impact by methods including, but not limited to:

(a) Not using the facility for placement of advertising, except that advertising does not include the manufacturer's label or signs required by law;

(b) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation

Administration or the Oregon Department of Transportation, Transportation Development Branch, Aeronautics Section; and

(c) Using only those signs necessary for facility operation and safety and signs required by law.

(2) Can design and construct the facility to restrict public access by the following methods:

(a) For a horizontal-axis wind energy facility with tubular towers, using locked access sufficient to prevent unauthorized entry to the interior of the tower;

(b) For a horizontal-axis wind energy facility with lattice-type towers:

(A) Removal of wind facility tower climbing fixtures to 12 feet from the ground;

(B) Installation of a locking, anti-climb device on the wind facility tower; or

(C) Installation of a protective fence at least 6 feet high with a locking gate; or

(c) For a vertical-axis wind energy facility, installation of a protective fence at least 6 feet high with a locking gate.

(3) Can design and construct facility to reduce cumulative adverse environmental impacts in the vicinity to the extent practicable by measures including, but not limited to, the following, where applicable:

(a) Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts;

(b) Combining transmission lines and points of connection to local distribution lines;

(c) Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations; and

(d) Avoiding, to the extent practicable, the creation of artificial habitat for raptors or raptor prey. Artificial habitat may include, but is not limited to:

(A) Above-ground portions of foundations surrounded by soil where weeds can accumulate;

(B) Electrical equipment boxes on or near the ground that can provide shelter and warmth; and

(C) Horizontal perching opportunities on the towers or related structures.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

**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

To issue a site certificate for a proposed surface facility related to an underground gas storage reservoir, the Council must make the following findings:

(1) The proposed facility is located at distances in accordance with the schedule below from any existing permanent habitable dwelling:

(a) Major facilities, such as compressor stations, stripping plants and main line dehydration stations— 700 feet;

(b) Minor facilities, such as offices, warehouses, equipment shops and odorant storage and injection equipment— 50 feet;

(c) Compressors rated less than 1,000 horsepower— 350 feet;

(d) Roads and road maintenance equipment housing— 50 feet.

(2) The applicant can construct and maintain the facility 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 applicant has developed a program using technology that is both practicable and reliable to monitor the facility to ensure the public health and safety; and

(4) The applicant can design, construct and operate the facility 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 referred to or incorporated by reference in this rule is available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1980, f. & ef. 2-28-80; EFSC 1-1981, f. & 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; EFSC 2-1999, f. & cert. ef. 4-14-99

Specific Standards for Transmission Lines

345-024-0090

Siting Standards for Transmission Lines

To issue a site certificate for a facility that includes any high voltage transmission line under Council jurisdiction, the Council must find that the applicant:

(1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;

(2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

Stat. Auth.: ORS 469.470 & ORS 469.501

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 345-080-0055; 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; EFSC 2-1999, f. & cert. ef. 4-14-99

Standards for Energy Facilities That Emit Carbon Dioxide

345-024-0500

General

To issue a site certificate, the Council must find that the energy facility complies with any applicable carbon dioxide emissions standard adopted by the Council or enacted by statute. The Council shall adopt standards for fossil-fueled power plants and may adopt carbon dioxide emission standards for other energy facilities that emit carbon dioxide.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0510

Principles for the Adoption of New Standards for Fossil-Fueled Power Plants

The council shall adopt carbon dioxide emissions standards for fossil-fueled power plants by rule. In adopting or amending such carbon dioxide emissions standards, the Council shall consider and balance at least the following principles. In the rule-making record, the Council shall include findings on these principles:

- (1) Promote facility fuel efficiency;
- (2) Promote efficiency in the resource mix;
- (3) Reduce net carbon dioxide emissions;
- (4) Promote cogeneration that reduces net carbon dioxide emissions;
- (5) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;
- (6) Minimize transaction costs;
- (7) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;
- (8) Allow either the applicant or third parties to implement offsets;
- (9) Be attainable and economically achievable for various types of power plants;
- (10) Promote public participation in the selection and review of offsets;
- (11) Promote prompt implementation of offset projects;

(12) Provide for monitoring and evaluation of the performance of offsets;

(13) Promote reliability of the regional electric system.

Stat. Auth.: ORS 469.470 & ORS 469.503

Stats. Implemented: ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0550

Standard for Base Load Gas Plants

To issue a site certificate for a base load gas plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.70 pounds of carbon dioxide per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis;

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0560, or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0560(2), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in subsections (a) to (c). In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria:

(a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(4) Before beginning construction, the certificate holder shall notify the Office of Energy in writing of its final selection of a gas turbine vendor and shall submit a written design information report to the Office of Energy sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. In the report, the certificate holder shall include the proposed limits on the annual average number of hours of facility operation on distillate fuel oil, if applicable. In the site certificate, the Council may specify other information to be included in the report. The Office of Energy shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0560.

Stat. Auth.: ORS 469.470 & ORS 469.503

Stats. Implemented: ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0560

Means of Compliance for Base Load Gas Plants

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for base load gas plants:

(1) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;

(2) Implementing offset projects directly or through a third party. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(3) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in OAR 345-024-0710. In accordance with ORS 469.503(2)(c)(C), the Council shall deem the payment of 57 cents to result in a reduction of one ton of carbon dioxide emissions, unless the Council by rule changes the monetary offset rate as authorized under the statute. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(4) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(5) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (2) or (4) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of section (3) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Auth.: ORS 469.470 & ORS 469.503

Stats. Implemented: ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0570

Modification of the Standard for Base Load Gas Plants

Notwithstanding the net carbon dioxide emissions rate in OAR 345-024-0550, no sooner than two years after June 26, 1997, the Council may by rule modify the carbon dioxide emissions standard for base load gas plants if the Council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the Council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions and reset the carbon dioxide emissions standard at 17 percent below this rate.

Stat. Auth.: ORS 469.470 & ORS 469.503

Stats. Implemented: ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0580

Changes in the Monetary Offset Rate

After three years from June 26, 1997, the Council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. The Council shall base any change to the monetary offset rate on empirical evidence of the cost of carbon dioxide offsets and the Council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the Council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

Stat. Auth.: ORS 469.470 & ORS 469.503

Stats. Implemented: ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0590

Standard for Non-Base Load Power Plants

To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.70 pounds of carbon dioxide per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility and the limitation on the hours of generation for each fuel type. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis;

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0600, or any combination thereof. The Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0600(2), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in subsections (a) to (c). In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria:

(a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(4) Before beginning construction, the certificate holder shall notify the Office of Energy in writing of its final selection of an equipment vendor and shall submit a written design information report to the Office sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. The certificate holder shall include the proposed limit on the annual average number of hours for each fuel used, if applicable. The certificate holder shall report a total number of hours for all fuels that is greater than or equal to the total annual average number of hours the Council specified in the site certificate but less than 6,600 total hours. In the site certificate, the Council may specify other information to be included in the report. The Office shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the gross carbon dioxide emissions from the facility and the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0600;

(5) Every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual annual hours of operation by fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate and the actual hours of operation on each fuel during the five-year period, exceed the projected gross carbon dioxide emissions

for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council.

Stat. Auth.: ORS 469.470 & ORS 469.503
Stats. Implemented: ORS 469.501 & ORS 469.503
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0600

Means of Compliance for Non-Base Load Power Plants

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for non-base load power plants:

(1) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved;

(2) Implementing offset projects directly or through a third party. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(3) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of 57 cents to result in a reduction of one ton of carbon dioxide emissions, unless the Council by rule changes the monetary offset rate as authorized under ORS 469.503(2)(c)(C). The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets;

(4) Notwithstanding sections (1), (2) or (3), if the certificate holder exceeds the projected gross carbon dioxide emissions calculated under OAR 345-024-0590(4) during any five-year reporting period described in OAR 345-024-0590(5), the certificate holder shall offset excess emissions for the specific reporting period according to subsection (a) and shall offset the estimated future excess emissions according to subsection (b). The certificate holder shall offset excess emissions using the monetary path as described in OAR 345-024-0710 or as approved by the Council;

(a) In determining the excess carbon dioxide emissions that the certificate holder must offset for a five-year period, the Council shall credit the certificate holder with offsets equal to the difference between the carbon dioxide emissions allowed by the site certificate in previous periods and actual emissions, if actual emissions were lower than allowed. Once a certificate holder has used a credit, the certificate holder shall not use it again. The certificate holder shall pay for the excess emissions at a rate per ton of carbon dioxide emissions that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the present value per ton of carbon dioxide and the qualified organization. The Office of Energy shall calculate excess carbon dioxide emissions and notify the certificate holder of the amount of payment required, using the monetary path, to offset them;

(b) The Council shall specify in the site certificate a methodology for estimating future excess carbon dioxide emissions. The Office shall calculate estimated future excess emissions and notify the certificate holder of the amount of payment required, using the monetary path, to offset them, according to the site certificate. To estimate excess emissions for the remaining period of the deemed 30-year life of the facility, the Office shall use the annual average number of hours of operation during the five-year period in which

the certificate holder exceeded the estimated gross carbon dioxide emissions described in OAR 345-024-0590(5) and the new and clean heat rate and capacity for the facility. If the annual average hours exceeds 6,600, the Office shall estimate emissions at 100 percent capacity. In estimating future excess carbon dioxide emissions, the Office shall not credit lower emissions from earlier reporting periods. The certificate holder shall pay for the remaining excess emissions at a rate per ton of carbon dioxide emissions that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the present value of the offset fund rate. At the request of the certificate holder, the Council may, by amendment of the site certificate, use an alternative methodology to estimate future excess carbon dioxide emissions.

(5) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(6) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (2) or (5) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of sections (3) and (4) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Auth.: ORS 469.470 & ORS 469.503
Stats. Implemented: ORS 469.501 & ORS 469.503
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0610

Modification of the Standard for Non-Base Load Power Plants

Notwithstanding the net carbon dioxide emissions rate specified in OAR 345-024-0590, no sooner than two years after the effective date of this rule, the Council may by rule modify the carbon dioxide emissions standard for non-base load power plants so that the standard remains equivalent to the standard for the net carbon dioxide emissions rate of a base load gas plant, subject to the principles described in OAR 345-024-0510.

Stat. Auth.: ORS 469.470 & ORS 469.503
Stats. Implemented: ORS 469.501 & ORS 469.503
Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0620

Standard for Nongenerating Energy Facilities

To issue a site certificate for a nongenerating energy facility that emits carbon dioxide, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.522 pounds of carbon dioxide per horsepower hour. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. In determining gross carbon dioxide emissions for a nongenerating facility, the Council shall calculate carbon dioxide emissions for a 30-year period unless the applicant requests, and the Council adopts in the site certificate, a different period. The Council shall determine gross carbon dioxide emissions based on its findings of the reasonably likely operation of the energy facility. The Council shall use a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if the applicant proposes to use such fuel. If the applicant proposes to use any other fossil fuel, the Council shall use the appropriate carbon dioxide content rate from the most recently published edition of the US Environmental Protection Agency's *State Workbook: Methodologies for Estimating Greenhouse Gas Emissions* as of the effective date of this rule;

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0630, or any combination thereof. The Council shall determine the amount of carbon diox-

ide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard;

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0630(1), the Council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in subsections (a) to (c). In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of carbon dioxide emission reduction on the following criteria:

(a) The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;

(b) The ability of the Council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance;

(c) The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(4) Before beginning construction, the certificate holder shall notify the Office of Energy in writing of its final selection of an equipment manufacturer and shall submit a written design information report to the Office sufficient to verify the facility's designed rate of fuel use and its nominal capacity for each fuel type. In the site certificate, the Council may specify other information to be included in the report. The Office shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of carbon dioxide emissions reductions the certificate holder must provide under OAR 345-024-0630;

(5) In the site certificate, the Council shall specify the schedule by which the certificate holder shall provide carbon dioxide emission offsets. In the schedule, the Council shall specify the amount and timing of offsets the certificate holder must provide to a carbon dioxide emissions offset credit account. In determining the amount and timing of offsets, the Council may consider the estimate of total offsets that may be required for the facility and the minimum amount of offsets needed for effective offset projects. The Office shall maintain the record of the offset credit account.

[Publications: The publication referred to or incorporated by reference in this rule is available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501 & ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0630

Means of Compliance for Nongenerating Energy Facilities

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for nongenerating energy facilities:

(1) Implementing offset projects directly or through a third party. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved;

(2) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard according to the schedule set forth pursuant to OAR 345-024-0620(5). The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of 57 cents to result in a reduction of one ton of carbon dioxide emissions, unless the Council by rule changes the monetary offset rate. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust

the amount of the offset funds based on the actual performance of offsets;

(3) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard;

(4) Each year after beginning commercial operation, the certificate holder shall report to the Office data showing the amount and type of fossil fuels used by the facility and its horsepower-hours of operation. The Council shall specify in the site certificate how the Office shall use those data to calculate the gross carbon dioxide emissions from the facility during the report year and the net emissions in excess of the carbon dioxide emissions standard. The Office shall then subtract excess emissions from the carbon dioxide emissions offset credit account. The Council shall specify in the site certificate the minimum amount of carbon dioxide offset credits that a certificate holder shall provide to establish the offset credit account. The Council may specify an amount of offset credits equal to the total offsets required for the facility. The Council shall specify the minimum amount of carbon dioxide offset credits that a certificate holder must maintain in the account and the minimum amount of carbon dioxide offset credits the certificate holder shall provide to replenish the account. The Office shall notify the certificate holder when it must replenish its offset credit account according to the conditions in the site certificate. The certificate holder shall maintain a positive balance in the offset credit account for 30 years, unless the Council specifies a different period in the site certificate;

(5) If the certificate holder is replenishing its offset credit account by meeting the monetary path payment requirement described in OAR 345-024-0710, the certificate holder may replenish its offset credit account without amending the site certificate by using the calculation methodology detailed in conditions that the Council adopts in the site certificate;

(6) If the certificate holder proposes to replenish the offset credit account under OAR 345-024-0630(1), the Council may amend the site certificate conditions to ensure that the proposed offset projects are implemented;

(7) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (3) or (6) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of section (2) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501 & ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0640

Modification of the Standard for Nongenerating Energy Facilities

Notwithstanding the net carbon dioxide emissions rate specified in OAR 345-024-0620, no sooner than two years after the effective date of this rule, the Council may by rule modify the carbon dioxide emissions standard for nongenerating energy facility so that it remains equivalent to the standard for the net carbon dioxide emissions rate of a base load power plant.

Stat. Auth.: ORS 469.470 & ORS 469.501

Stats. Implemented: ORS 469.501 & ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0710

Monetary Path Payment Requirement

(1) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a bond or comparable security in a form reasonably acceptable to the Council to ensure the payment of the offset funds and the additional funds required under section (4). The applicant shall provide such security by the date specified in the site certificate. In the site certificate, the Council shall specify a date no later than the commencement of construction of the facility for base load gas plants and non-base load power plants. For nongenerating facilities, the Council shall speci-

fy a date no later than the commencement of construction of the facility for providing the initial bond or comparable security, and the Council shall specify conditions for providing subsequent incremental payments to meeting the monetary path payment requirement. The certificate holder for a nongenerating facility must meet its incremental monetary path payment requirements before exhausting its offset credit account, as described in OAR 345-024-0630(4). In no case shall the applicant diminish the bond or comparable security or receive a refund from a qualified organization based on the calculations of the facility's emissions on a new and clean basis for a fossil-fueled power plant or any other measure for a nongenerating energy facility. A qualified organization shall not refund any offset funds to a certificate holder based on the operation or performance of a non-base load power plant during any five-year period reported under OAR 345-024-0590(5) or, for a nongenerating facility, on any offset credits the certificate holder provided under OAR 345-024-0620(5).

(2) In the site certificate, the Council shall require the certificate holder to disburse the offset funds and other funds required as specified in sections (3) and (4), unless the Council finds that no qualified organization exists, in which case the Council shall require the certificate holder to disburse the offset funds as specified in OAR 345-024-0720(2).

(3) When the certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case the certificate holder shall make available only the remaining amount of the offset funds. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(4) At the request of the qualified organization and in addition to the offset funds, the certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. The certificate holder for a base load gas plant shall pay not less than \$50,000, unless the Council specifies a lesser amount in the site certificate. In the site certificate, the Council may specify a minimum amount that other fossil-fueled power plants or nongenerating energy facilities must pay. This payment compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(5) Notwithstanding any provision to the contrary, a certificate holder subject to this rule has no obligation with regard to offsets, the offset funds or the funds required by section (4) other than to make available to the qualified organization the total amount required under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4), OAR 345-024-0630(2), (4) and (5), and section (4) of this rule. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the qualified organization.

(6) For monetary path payments a certificate holder must make before beginning construction, the certificate holder shall make all offset fund payments and all payments required by section (4) to the qualifying organization in real dollars of the year in which the Council issues a final order applying the carbon dioxide emissions standard to the energy facility. In the site certificate, the Council shall specify an appropriate inflation index for calculating real dollars. For a non-base load power plant, if a certificate holder must make a payment as described in OAR 345-024-0600(4), the certificate holder shall make a payment that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. In the site certificate, the Council shall specify the methodology for calculating present value. If the certificate holder of a nongenerating facility must make payments

as described in OAR 345-024-0630(4) and (5), the Council shall specify in the site certificate the method for calculating the rate for the dollar value per ton of carbon dioxide offsets required according to subsection (a) or (b) below:

(a) Unless the applicant and the Council agree to the methodology in subsection (b), the certificate holder shall make payments that have the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall set an appropriate discount rate for calculating the present value, using the cost of capital most recently approved by a state utility regulatory commission for that utility or a similar utility as a guide; or

(b) If the applicant requests and the Council agrees, the certificate holder shall make payments at the monetary path offset rate in effect on the date the certificate holder makes the payment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

345-024-0720

Qualified Organization

(1) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4), or OAR 345-024-0630(2), (4) and (5), the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996.

(2) If the Council finds there is no qualified organization, the certificate holder shall disburse the offset funds according to one or more contracts for implementation of offsets as determined by the following process:

(a) The Council shall establish criteria for selection of offsets, based on the reduction of net carbon dioxide emissions and the criteria set forth in OAR 345-024-0550(3) for base load plants, OAR 345-024-0590(3) for non-base load power plants and OAR 345-024-0620(3) for nongenerating facilities. The Council may consider the costs of particular types of offsets in relation to the expected benefits of such offsets. In establishing criteria, the Council shall not require the certificate holder to select particular offsets and shall allow the certificate holder a reasonable range of choices in selecting offsets;

(b) Based on the criteria established by the Council, the certificate holder shall select one or more offsets. The certificate holder shall give written notice of its selections to the Council and to any person requesting notice. For the purposes of this rule, the date of notice is the date the certificate holder places the notice in the United States mail, with first-class postage prepaid;

(c) On petition by the Office of Energy or by any person adversely affected or aggrieved by the certificate holder's selection of offsets, or on the Council's own motion, the Council may review the selection. The petition must be received by the Council within 30 days of the date of notice;

(d) The Council shall approve the certificate holder's selection unless it finds that the selection is not consistent with criteria established under subsection (a);

(e) The certificate holder shall execute one or more contracts to implement the selected offsets within 18 months after commencing construction of the facility unless the Council allows additional time based on a showing of good cause by the certificate holder. If a certificate holder would have made a payment to a qualified organization as described in OAR 345-024-0600(4) or OAR 345-024-0630(4) or (5), the certificate holder shall instead execute one or more contracts to implement the selected offsets, by a method acceptable to the Council, within 18 months after reporting to the Council as described in OAR 345-024-0590(5) or within 18 months after the Office notifies the certificate holder that the certificate holder must replenish the offset credit account

as described in OAR 345-024-0630(4). The certificate holder shall, under such contracts, obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. The certificate holder may spend no more than 15 percent of the offset funds on monitoring, evaluation and enforcement of such contracts;

(f) Notwithstanding any provision to the contrary, the certificate holder shall have no financial liability for implementation, monitoring, evaluation and enforcement of offsets under this section beyond the amount contractually obligated and the amount of any remaining offset funds not already contractually obligated. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the person or persons implementing, monitoring or evaluating the selected offsets.

(3) Every qualified organization that has received funds under this rule shall, at five-year intervals beginning on the date of receipt of such funds, provide the Council with the information the Council requests about the qualified organization's performance. The Council shall evaluate the information requested and, based on such information, may make recommendations to the Legislative Assembly.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & ORS 469.503

Hist.: EFSC 2-1999, f. & cert. ef. 4-14-99

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 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430 & ORS 469.507

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 2-1999, f. & cert. ef. 4-14-99

345-026-0010

Legislative Authority

(1) Under ORS 469.430, the Council has continuing authority over the site for which a site certificate is issued and may inspect, direct the Office of Energy to inspect, or ask another state agency or local government to inspect, the site at any time to assure that the certificate holder is operating the facility in compliance 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 of Energy to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the facility is being operated in compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

(3) According 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 469.310, ORS 469.410, ORS 469.430 & ORS 469.507

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0015

Scope and Construction

(1) To the extent that any rules in this division conflict or are inconsistent with administrative rules lawfully adopted by other state agencies, these rules are 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.

(2) To the extent that any rules in this division conflict or are inconsistent with a condition contained in a site certificate (or amendment thereto), the latter is controlling.

(3) Certificate holders shall comply with all applicable lawful rules and requirements of federal agencies.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401, ORS 469.503 & ORS 469.504

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0048

Compliance Plans

Following receipt of a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. The certificate holder shall document the compliance plan and maintain it for inspection by the Office of Energy or the Council.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430 & ORS 469.507

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0050

Inspections

(1) General provisions:

(a) Each certificate holder shall allow properly identified representatives of the Council or Office of Energy 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 certificate holder's representative may accompany Council or Office inspectors during an inspection.

(c) Council or Office inspectors may refuse to permit any individual who deliberately interferes with a fair and orderly inspection to be present during an 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 the conference. The Office shall keep inspection reports on file.

(e) If the inspector finds any actual or potential violations of state, federal or local law, Council rules, a Council order, or site certificate conditions or warranties, the inspector shall notify the Council secretary, the Council and the certificate holder. The Council secretary shall be responsible for reporting all pertinent findings to the Council at its next scheduled meeting.

(2) Requests for inspections:

(a) Any person may request Office inspection of a facility if the requestor believes:

(A) That a violation of a Council order or a site certificate condition or warranty 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 person submitting a request for inspection shall describe, in writing, the specific grounds for the request. The requestor shall submit the request to the Office, or, during an inspection, to the Office of Energy'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) The Office 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, the Office shall forward the request to the appropriate agency.

(e) The Office shall make a prompt evaluation of allegations related to matters under Council jurisdiction. If the Office 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 Office shall cause an inspection to be made as soon as practicable.

(f) If the Office 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 send a copy of the request to the certificate holder by certified mail. The certificate holder may submit a written statement of its position to the Council, and the Council shall provide a copy of the statement, if any, 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 Office. The Council shall send written notification of its decision and reasoning to the requestor and the certificate holder.

(g) Inspections conducted under subsection (e) 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 Office representative, or otherwise exercised options afforded to the worker under these rules.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430 & ORS 469.507

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0080

Reporting for Non-Nuclear Facilities

(1) General reporting obligation for non-nuclear facilities under construction or operating:

(a) Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the Council. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall include such information related to construction as specified in the site certificate. When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule;

(b) The certificate holder shall, within 120 days after the end of each calendar year after beginning construction, submit an annual report to the Council addressing the subjects listed in this rule. The Council secretary and the certificate holder may, by mutual agreement, change the reporting date.

(c) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, the certificate holder may submit excerpts from such other reports to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.

(2) In the annual report, the certificate holder shall include the following:

(a) Facility Status: An overview of site conditions, the status of facilities under construction, and a summary of the operating experience of facilities that are in operation. In this section of the annual report, the certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major

accidents or the like that occurred during the year and that 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, the certificate holder shall describe them and its plans to minimize or eliminate their recurrence;

(B) The efficiency with which the power plant converts fuel into electric energy. If the fuel chargeable to power heat rate was evaluated when the facility was sited, the certificate holder shall calculate efficiency using the same formula and assumptions, but using actual data; and

(C) The facility's annual hours of operation by fuel type and, every five years after beginning operation, a summary of the annual hours of operation by fuel type as described in OAR 345-024-0590(5).

(c) Status of Surety Information: Documentation demonstrating that the bond or other security described in OAR 345-027-0020(8) or the financial mechanism or instrument described in OAR 345-027-0020(9) 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: A discussion of 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: A description of all instances of non-compliance with a site certificate condition. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate;

(g) Facility Modification Report: A summary of changes to the facility that the certificate holder has determined do not require a site certificate amendment in accordance with OAR 345-027-0050; and

(h) Nongenerating Facility Carbon Dioxide Emissions: For nongenerating facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual hours of operation of the carbon dioxide emitting equipment as described in OAR 345-024-0630(4).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.501 & ORS 469.507

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 2-1999, f. & cert. ef. 4-14-99

345-026-0100

Schedule Modification

The certificate holder shall promptly notify the Office of Energy of any changes in major milestones for construction, decommissioning, operation, or retirement schedules. Major milestones are those identified by the certificate holder in its construction, retirement or decommissioning plan.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430 & ORS 469.507

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 2-1999, f. & cert. ef. 4-14-99

345-026-0105

Correspondence With Other State or Federal Agencies

The certificate holder and the Office of Energy shall exchange copies of all correspondence or summaries of 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. The certificate holder may submit abstracts of reports in place of full reports; however, the certificate holder shall provide full copies of abstracted reports and any

summarized correspondence at the request of the Office of Energy.

Stat. Auth.: ORS 469.470
Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430 & ORS 469.507
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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0170

Notification of Incidents

(1) The certificate holder shall notify the Office of Energy 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; or

(c) There is any fatal injury at the facility.

(2) For nuclear power plants:

(a) In the event of incidents or accidents requiring notification of the Nuclear Regulatory Commission by telephone, the certificate holder also shall notify the Office on the same time schedule.

(b) The certificate holder shall notify the Office of all incidents in accordance with the Trojan Emergency Response Plan, Security Plan, and other agreements as established.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507 & ORS 469.530

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0200

Exemption

The Council may, either upon written application or on its own motion, waive or delay compliance with any of the rules in OAR 345-026-0040 through OAR 345-026-0170 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 public health and safety or to the environment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.470, ORS 469.507 & ORS 469.530

Hist.: NTEC 9, f. 2-13-75, ef. 3-11-75; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

Rules for Nuclear Installations

345-026-0300

Regulations Applicable to Nuclear Installations

(1) The requirements of OAR 345-026-0300 through 0390 apply exclusively to nuclear installations in Oregon as defined in ORS 469.300.

(2) OAR 345-026-0300 through 0390 do not apply to research reactors as described in OAR 345-030-0005.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0310

Nuclear Fuel Prohibited in Trojan Reactor Vessel

Placement of nuclear fuel in the Trojan reactor vessel is prohibited.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

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 Office of Energy, with concur-

rence 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 469.470

Stats. Implemented: ORS 469.501 & ORS 469.520

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-026-0330

Radiological Environmental and Effluent Monitoring

(1) A radiological environmental and effluent monitoring program shall be established by the certificate holder.

(2) The 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 Office of Energy 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 Office of Energy approval. These changes shall be submitted to the Office of Energy 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 469.501 & 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 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 Office of Energy concurrence prior to implementation.

(4) Modifications to the plan which do not lessen the effectiveness of the plan may be implemented without prior Office of Energy concurrence. Copies of the revised plan shall be submitted to the Office of Energy within 60 days of the implementation date. The Council shall be informed of these changes at its next scheduled meeting.

[Publications: The publication referred to or incorporated by reference in this rule is available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501 & 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 Office of Energy 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 469.501, ORS 469.530 & ORS 469.533

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 Office of Energy 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 submitted to the Office of Energy 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 469.530

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 Office of Energy 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 Office of Energy receives a decommissioning plan, the Office of Energy 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 Office of Energy'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 Office of Energy report to the Council mailing list. The notice shall include:

(A) A summary of the Office of Energy's recommendations;

(B) Time and place of a hearing on the staff report;

(C) Places where the Office of Energy'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 Office of Energy's recommendation must be received by the Office of Energy;

(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 Office of Energy'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 Office of Energy'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 the 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 below: [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 Office of Energy.

(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 Office of Energy.

(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.

(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 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 Office of Energy 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 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 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 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 off-site 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 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)(l)(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)(l)(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.

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(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)(l) above.

(o) Portland General Electric shall notify the department of any changes made pursuant to this rule within 30 days.

(p) The department or its designee 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 permits 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.

[ED. NOTE: Copies of the Tables referenced in this rule are available from the agency.]

[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 469.470

Stats. Implemented: ORS 469.410 & ORS 469.501

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 Reforming 12-11-97; EFSC 4-1998, f. & cert. ef. 10-26-98; EFSC 2-1999, f. & cert. ef. 4-14-99

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 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 469.470

Stats. Implemented: ORS 469.410 & ORS 469.501

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

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 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; and

(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 subpart (a) of this rule, 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 4(b) of this rule. The safety analysis report shall include a review of the seismic margin analysis referenced in 4(b) and shall demonstrate whether the Seismic Margin Event defined in subsection 4(b) 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 part (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 certificate holder to comply with the standards of OAR 345-026-0370(2)(a) through (f), nor shall it excuse the 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.

(6) The Council approves the plan, as may be amended under Part (i), for an Independent Spent Fuel Storage Installation (ISFSI) as described in the ISFSI Safety Analysis Report (SAR) (PGE-1069) and License Change Application LCA-237. In addition

to the criteria in OAR 345-026-0390(2)(a), (b), and (c), and 4(a) through (k), the plan is subject to the following criteria:

(a) Controlled Area Boundary: Within six months after terminating the NRC operating license, under 10 CFR 50, PGE shall submit to the Oregon Office of Energy for approval evidence of its ability, in the event of an accident to exercise control of personnel access to the Controlled Area as described in the SAR, as may be amended. This evidence may include such factors as any lease or contractual agreements with tenants at the site, administrative controls, or the results of a drill.

(b) Capability for Remote Temperature Monitoring: PGE shall implement design features that minimize the time necessary for ISFSI personnel to be in close proximity to the casks while performing required surveillances. These features should include the capability for remote temperature monitoring, with hand-held, temperature-measuring devices used only as backup for the installed devices.

(c) Radiation Survey Plan: Prior to loading the first basket, PGE shall provide the Office with a radiation dose rate monitoring program including successive measurements for areas of the site outside the ISFSI Access Controlled Area and within the Industrial Area, including the Trojan Central Building, to be performed during ISFSI loading through placement of all casks on the pad. The results of these surveys shall be provided to the Council within six months of placing the final cask on the ISFSI pad.

(d) Radiation and Environmental Monitoring After Decommissioning: Notwithstanding OAR 345-026-0390(4)(e), PGE shall continue the Radiological Effluent Monitoring Program and Radiological Environmental Monitoring Program required under OAR 345-026-0330 until PGE obtains the approval of the Oregon Office of Energy that PGE has implemented acceptable programs, as described in the ISFSI SAR in effect on the date of adoption of this criterion, to monitor the radiological impact of the ISFSI.

(e) Staging of Emergency Equipment: Prior to loading the last basket, PGE shall submit for Council approval a plan for maintaining equipment onsite and having equipment available within a reasonably short time to respond to credible accident scenarios.

(f) Replacement of Cask: Prior to loading the last basket, PGE shall submit for Council approval a plan for construction of new concrete casks.

(g) Unloading Procedure: Prior to loading the first basket, PGE shall demonstrate procedures and supporting analyses to allow removing the spent fuel from a previously loaded basket and safely returning the fuel to the SFP, as described in its October 21, 1998, letter from S. Quennoz to D. Stewart-Smith.

(h) Shipping License: If a 10 CFR 71 shipping license for the TranStor cask has not been received at the time the final fuel assembly is transferred from the SFP to the ISFSI, then PGE shall submit for Council approval alternative plans and cost estimates for shipping spent fuel offsite prior to taking action that would preclude future use of the SFP.

(i) Changes to Commitments: PGE shall establish and submit to the Office a process, subject to Office concurrence, for the control of changes to written commitments made to the Office during the office's review in support of the council's approval of the ISFSI. The process shall be implemented by the next regularly scheduled Council meeting following the adoption of this rule.

(A) This process shall include provisions for:

(i) Identifying and tracking the implementation of commitments;

(ii) Controlling proposed modifications to commitments including criteria defining when prior notification to the Office is required; and

(iii) Reporting and recordkeeping requirements.

(B) PGE shall not make a change that significantly reduces the scope or effectiveness of the commitment control process without prior Office concurrence.

(C) PGE must submit to the Office a proposed change to equipment or administrative controls described in the SAR, LCA-237, or Technical Specifications, or implemented under the above process, if the change may:

(i) Invalidate the basis for any finding of compliance with any of the requirements of OAR 345-026-0390(4); or

(ii) Result in a significant reduction in the scope, surveillance frequency or effectiveness of administrative controls.

(D) Prior Office concurrence is not required when the proposed change would not have the above effects, is required for compliance with the regulations or orders of the U.S. Nuclear Regulatory Commission or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior Office concurrence.

(j) Reporting requirements: Within one year of the first cask loading and annually thereafter, PGE shall provide a written report to the Council on the status of the ISFSI. The report shall include, as a minimum, results of radiation monitoring programs, a summary and breakdown of personnel exposure related to ISFSI maintenance and surveillance activities, a statement of expenses related to maintenance and surveillance activities, an estimate of funds available for continuing ISFSI maintenance and surveillance, and a statement of any significant developments regarding the opening of a federally licensed High Level Waste facility. Other reports submitted pursuant to OAR 345-026-0380 may be used to satisfy this requirement.

(k) Structural Inspection Program: Prior to loading the first basket, PGE shall implement a Structural Inspection Program that establishes acceptance criteria, degradation evaluation methods, repair instructions, and periodic inspections of the surfaces of the concrete casks and the storage pad to ensure that the structural integrity of the concrete is maintained throughout the life of the ISFSI. Changes to this program that reduce its scope require prior Office concurrence.

(l) Reliability of Temperature Monitoring Equipment: Prior to loading the first basket, PGE shall implement programs to ensure the continued reliability of the air outlet temperature monitoring devices for the 40- year ISFSI life. Such programs shall include but not be limited to periodic calibration of electronic circuitry associated with the temperature monitoring devices, and periodic evaluation of the temperature data sufficient to identify anomalous trends that could indicate degraded instrumentation.

(m) Frequency of Temperature Monitoring and Air Vent Inspection: Prior to loading the first basket, PGE shall implement a program for thermal monitoring that includes readings of air outlet and ambient temperatures. The program shall include temperature surveillances every 12 hours, with provisions for more frequent measurements if temperatures approach Technical Specification limits. The program shall also include a requirement to check air inlet and outlet vents for blockage every 24 hours. PGE may reduce these surveillance frequencies with Office concurrence. Extensions of up to 25 percent of individual surveillance intervals may be applied to accommodate minor variations in work scheduling.

[Publications: The publications referenced in this rule are available for review at the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & ORS 469.501

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; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 3-1999, f. & cert. ef. 4-21-99

DIVISION 27

SITE CERTIFICATE CONDITIONS, AMENDMENT, TRANSFER AND TERMINATION

345-027-0000

Certificate Expiration

(1) If the certificate holder does not begin construction of the facility, the site certificate expires on the construction beginning date specified by the Council in the site certificate or in an amendment of the site certificate granted according to the rules of this division.

(2) If the certificate holder begins but does not complete construction of the facility by the construction completion date speci-

fied by the Council in the site certificate or in an amendment of the site certificate granted according to the rules of this division, the certificate holder shall, within 90 days after the construction completion date, submit an application for termination of the site certificate according to OAR 345-027-0110. The site certificate expires on the date of the Council's order terminating the site certificate under that rule.

(3) If the certificate holder completes construction of the facility, the site certificate expires on the date of the Council's order terminating the site certificate according to OAR 345-027-0110.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370 & ORS 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0011

Applicability

The rules in this division do not apply to facilities covered by ORS 469.410(1), including the Trojan energy facility.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.501

Hist.: EFSC 1-1995, f. & cert. f. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0020

Mandatory Conditions In Site Certificates

The Council shall impose the following conditions in every site certificate. The Council may impose additional conditions.

(1) The Council shall not change the conditions of the site certificate except as provided for in this division.

(2) Except as provided in OAR 345-027-0023(6), before beginning construction, the certificate holder shall submit to the Office of Energy a legal description of the site. The Office shall append the legal description to the site certificate.

(3) The certificate holder shall design, construct, operate and retire the facility:

(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.

(4) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.

(5) Except as necessary for the initial survey or as otherwise allowed for transmission lines or pipelines under this section, the certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For transmission lines or pipelines that are energy facilities or related or supporting facilities, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if:

(a) The certificate holder has construction rights on that part of the site; and

(b) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of the transmission line or pipeline occurs during the certificate holder's negotiations to acquire construction rights on another part of the site.

(6) If the Council requires mitigation based on an affirmative finding under any standards of Division 22 or Division 24 of this chapter, the certificate holder shall consult with affected state agencies and local governments designated by the Council and shall develop specific mitigation plans consistent with Council findings under the relevant standards. The certificate holder must submit the mitigation plans to the Office and receive Office approval before beginning construction or, as appropriate, operation of the facility.

(7) The certificate holder shall prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.

(8) Before beginning construction of the facility, 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 site certificate. The Council shall specify an amount adequate to restore the site to a useful, non-hazardous condition if the certificate holder either begins but does not complete construction of the facility or permanently closes the facility before establishing the financial mechanism or instrument described in section (9). The certificate holder shall maintain the bond or comparable security in effect until the certificate holder has established that financial mechanism or instrument;

(9) Before beginning operation of the facility, the certificate holder shall establish a financial mechanism or instrument, satisfactory to the Council, assuring the availability of adequate funds throughout the life of the facility to retire the facility and restore the site to a useful, non-hazardous condition as described in OAR 345-022-0130. The certificate holder shall retire the facility according to an approved final retirement plan, as described in OAR 345-027-0110.

(10) The Council shall include as conditions in the site certificate all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.

(11) Upon completion of construction, 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 the surroundings and proposed use. Upon completion of construction, the certificate holder shall dispose of all temporary structures not required for facility operation and all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.

(12) The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement, and subsidence.

(13) If the facility includes any pipeline under Council jurisdiction:

(a) The certificate holder shall design, construct and operate the pipeline 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; and

(b) The certificate holder shall develop and implement a program using the best available practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.

(14) If the facility includes any high voltage transmission line under Council jurisdiction:

(a) The certificate holder shall design, construct and operate the transmission line in accordance with the requirements of the National Electrical Safety Code (American National Standards Institute, Section C2, 1997 Edition); and

(b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded throughout the life of the line.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401 & ORS 469.501

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0023

Site Specific Conditions

The Council may include the following conditions, as appropriate, in the site certificate:

(1) The certificate holder shall notify the Office of Energy, 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 a site certificate. After the Office receives the notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division and to propose mitigation actions.

(2) The certificate holder shall notify the Office, 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. The certificate holder shall handle coal and ash so as to minimize the likelihood of coal dust and ash being windblown and causing an environmental or public health problem. If the certificate holder permanently disposes of ash on the facility site, the certificate holder shall cover the ash with a layer of topsoil and revegetate the area.

(4) If the energy facility or related or supporting facility is a natural gas pipeline, the certificate holder shall submit to the Office copies of all incident reports involving the certified pipeline required under 49 CFR §192.709.

(5) If the energy facility or related or supporting 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 transmission line.

(6) If the proposed facility or related or supporting facility is a pipeline or a transmission line as defined in ORS 469.300, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the proposed pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor. Before beginning operation of the facility, the certificate holder shall submit to the Office a legal description of the right-of-way where the applicant has built the facility within an approved corridor. The Office shall append the legal description to the site certificate. The site of the facility subject to the site certificate is the area within the right-of-way.

(7) If the facility is a surface facility related to an underground gas storage reservoir, the Council shall, in the site certificate, specify the site boundary and total permitted daily throughput of the facility.

(8) If the facility is a base load gas plant, the certificate holder shall submit a written design information report to the Office, as described in OAR 345-024-0550, before beginning construction.

(9) If the facility is a non-base load power plant, the certificate holder shall submit a written design information report to the Office, as described in OAR 345-024-0590, before beginning construction.

(10) If the facility is a nongenerating energy facility that emits carbon dioxide, the certificate holder shall submit a written design information report to the Office, as described in OAR 345-024-0620, before beginning construction.

(11) If the facility is subject to a carbon dioxide emissions standard adopted by the Council or enacted by statute, the Council

shall include in the site certificate appropriate conditions as described in OAR 345-024-0550, OAR 345-024-0560, OAR 345-024-0590, OAR 345-024-0600, OAR 345-024-0620, OAR 345-024-0630 and OAR 345-024-0710.

[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 469.401, ORS 469.501 & ORS 469.503

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0028

Monitoring Conditions

In the site certificate, the Council shall identify the monitoring programs appropriate to the facility and shall include the following monitoring conditions:

(1) The certificate holder shall consult with affected state agencies, local governments and tribes and shall develop specific monitoring programs for impacts to resources protected by the standards of divisions 22 and 24 of this chapter and resources addressed by applicable statutes, administrative rules and local ordinances. The certificate holder must submit the monitoring programs to the Office of Energy and receive Office approval before beginning construction or, as appropriate, operation of the facility.

(2) The certificate holder shall implement the approved monitoring programs described in section (1) and monitoring programs required by permitting agencies and local governments.

(3) For each monitoring program described in sections (1) and (2), the certificate holder shall have quality assurance measures approved by the Office before beginning construction or, as appropriate, before beginning commercial operation.

(4) If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder shall, as soon as possible, submit a written report to the Office describing the impact on the facility and any affected site certificate conditions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401, ORS 469.501, ORS 469.503 & ORS 469.507

Hist.: EFSC 5-1994, f. & cert. f. 11-30-94; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0030

Amendment to Extend Construction Beginning and Completion Deadlines

(1) The certificate holder may request an amendment to extend the deadlines for beginning or completing construction of the facility that the Council has specified in a site certificate or an amended site certificate. The certificate holder shall submit a request that conforms to the requirements of 345-027-0060 no later than six months before 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.

(2) A request within the time allowed in section (1) to extend the deadlines for beginning or completing construction suspends those deadlines until the Council acts on the request.

(3) The Council shall review the request for amendment as described in OAR 345-027-0070.

(4) If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are not more than two years from the deadlines in effect before the Council grants the amendment.

(5) For energy facilities subject to OAR 345-024-0550, OAR 345-024-0590, or OAR 345-024-0620, the Council shall not grant an amendment extending the deadline for beginning or completing construction unless the certificate holder demonstrates compliance with the carbon dioxide standard in effect at the time of the Council's order on the amendment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.370, ORS 469.405 & ORS 469.503

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0050

Request By Certificate Holder to Amend Certificate — When Required

(1) To change the site boundary or otherwise to design, construct, operate or retire a facility in a manner different from the description in the site certificate, the certificate holder shall submit an amendment request, as described in OAR 345-027-0060, to the Office of Energy if the proposed change:

(a) Could result in a significant adverse impact that the Council did not evaluate and address in the final order granting a site certificate affecting any resource protected by applicable standards in Divisions 22 and 24 of this chapter;

(b) Could result in a significant adverse impact that the Council did not evaluate and address in the final order granting a site certificate affecting geographic areas or human, animal or plant populations;

(c) Could impair the certificate holder's ability to comply with a site certificate condition; or

(d) Could require a new condition or a change to a condition in the site certificate.

(2) Notwithstanding section (1), the Council does not require a site certificate amendment if the proposed change would not violate any condition of the site certificate and is a change:

(a) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10%, or enlarge the facility site;

(b) In the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or enlarge the facility site;

(c) In the number, size or location of pipelines for a geothermal energy facility that would not enlarge the facility site;

(d) To a pipeline or transmission line that is a related or supporting facility that would extend or modify the pipeline or transmission line or expand the right-of-way, when the change is to serve customers other than the energy facility; or

(e) To an aspect or feature of the facility, operating procedures, or management structures not specifically addressed in the site certificate that would not violate the site certificate or applicable statutes or rules.

(3) If the certificate holder decides that the Council does not require a site certificate amendment based on the criteria in section (2), the certificate holder shall, nevertheless, complete a site investigation sufficient to demonstrate that the proposed change would comply with the applicable standards in divisions 22, 23 and 24 of this chapter before making any change to the facility. The certificate holder shall prepare a written evaluation describing the site investigation and shall make the evaluation available to the Office for inspection at any time.

(4) In the annual report required by OAR 345-026-0080, the certificate holder shall describe all significant changes made to the design, construction, operation or retirement of the facility without an amendment of the site certificate. The certificate holder shall keep a written record of the basis for deciding that an amendment of the site certificate was not required. The Office, at any time, may inspect the changes made to the facility and may inspect the certificate holder's written record of the basis for deciding that an amendment of the site certificate was not required.

(5) A certificate holder may ask the Office to determine whether a proposed change meets the criteria of section (1) or (2) and does not require a site certificate amendment. The certificate holder shall submit the request to the Office with a written description of the proposed change, the certificate holder's analysis of the proposed change under section (1) or (2) and the written evaluation described in section (3). The Office shall respond in writing as promptly as possible. The Office may refer its determination to the Council for concurrence, modification, or rejection. At the request of the certificate holder or a Council member, the Office shall refer its determination to the Council for concurrence, modification, or rejection. Notwithstanding section (4) of this

rule, if the Office has determined that a proposed change does not require an amendment, the certificate holder need not describe the change in the annual report required under OAR 345-026-0080.

Stat. Auth.: ORS 469.470

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0060

Contents of Request to Amend Certificate

(1) Except as specified in OAR 345-027-0200, in a request to amend a site certificate, the certificate holder shall include:

(a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request;

(b) A description of the facility including its location and other information relevant to the proposed change;

(c) A detailed description of the proposed change and the certificate holder's analysis of the proposed change under the criteria of OAR 345-027-0050(1);

(d) The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an amendment;

(e) A list of the standards of divisions 22, 23 and 24 of this chapter relevant to the proposed change; and

(f) An analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested. For the purpose of this rule, a law, rule or ordinance is "applicable" if the Council would apply or consider the law, rule or ordinance under OAR 345-027-0070(6).

(g) For an amendment to extend the deadlines for beginning or completing construction of the facility, an updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).

(2) In a request to amend a site certificate, the certificate holder shall provide the information described in applicable subsections of OAR 345-021-0010(1) in effect as of the date of the request. The certificate holder may incorporate by reference relevant information that was previously submitted to the Office of Energy in the site certificate application or that is otherwise included in the Office of Energy's administrative record on the facility.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0070

Review of a Request for Amendment

Except as specified in OAR 345-027-0080 or OAR 345-027-0200, the Council shall review a request for amendment of a site certificate as follows:

(1) Within 15 days after receiving a request to amend a site certificate, the Office of Energy shall:

(a) Send copies of the request to the officers, agencies and tribes listed in OAR 345-020-0040 and shall ask the officers, agencies and tribes to comment on the request within not more than 30 days; and

(b) Send a notice of the amendment request to all persons on the Council's mailing list and on the list of property owners, if any, supplied by the certificate holder under OAR 345-027-0060(1)(g) and shall specify a date by which comments on the request are due.

(2) Within 60 days after receiving a request to amend a site certificate, the Office shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment, unless the Office needs more time to prepare the proposed order because of special circumstances. When the Office needs more time to prepare the proposed order, the Office shall, within the 60-day period, notify the certificate holder in writing of the circumstances that justify the delay. After issuing the proposed

order, the Office shall send a notice of the proposed order to the persons on the Council's mailing list, on any special list established for the amendment, and on the list of property owners, if any, supplied by the certificate holder under OAR 345-027-0060(1)(g).

(3) Any person may, by written request submitted to the Office within 30 days after the Office issues the proposed order, ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Office. In the request, the person 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 a contested case proceeding is significant as defined in OAR 345-001-0010 or otherwise justifies a contested case proceeding.

(a) If the Council finds that the request identifies an issue that is significant or that otherwise justifies a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0002 to OAR 345-015-0085 limited to the issues that the Council found significant or sufficient to justify the proceeding.

(b) If the Council finds that the request does not identify any issue that is significant or that otherwise justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then adopt, modify or reject the proposed order based on the considerations described in section (6). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(5) If no person requests a contested case proceeding within the 30-day period described in section (3), the Council, at its next meeting, shall adopt, modify or reject the proposed order based on the considerations described in section (6). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(6) In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision and shall consider the following:

(a) For an amendment that enlarges the site, the Council shall consider, within the area added to the site by the amendment, whether the facility complies with all Council standards;

(b) For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:

(A) Whether the Council has previously granted an extension of the deadline;

(B) Whether there has been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and

(C) Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:

(i) The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;

(ii) The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;

(iii) The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and

(iv) The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment.

(c) For an amendment that applies subsequent law or rules, the Council shall consider the effects that the proposed application of the law or rule could produce;

(d) For any amendment not described above, the Council shall consider the effects that the proposed change or addition to the site or facility could produce.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0080

Review of Request by Certificate Holder for Expedited Amendment

(1) A certificate holder may ask the Council Chair to grant expedited review of an amendment request. The certificate holder shall submit a request for expedited review to the Office of Energy in writing and shall include in the request:

(a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request;

(b) A description of the facility including its location and other information relevant to the proposed change;

(c) A detailed description of the proposed change and the certificate holder's analysis of the proposed change under the criteria of OAR 345-027-0050(1);

(d) The specific language of the site certificate that the certificate holder proposes to change, add or delete by an amendment;

(e) A list of the applicable standards of divisions 22, 23 and 24 of this chapter relevant to the proposed change;

(f) An evaluation of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested; and

(g) Reasons why the certificate holder needs expedited review of its request and an explanation of why the need for expedited review arose and could not have reasonably been foreseen by the certificate holder.

(2) The Chair may grant a request for expedited review if a delay would unduly harm the certificate holder and if the facility, with the proposed change, would not likely result in a significant adverse impact. If the Chair decides not to grant the request for expedited review, the Council shall review the amendment request as described in OAR 345-027-0070. The Chair shall issue a written decision as soon as is reasonably practicable. In a written decision denying the request, the Chair shall give an explanation of the reasons for the denial.

(3) Within 7 days after the Chair grants expedited review, the Office shall send copies of the amendment request to the officers, agencies and tribes listed in OAR 345-020-0040 and shall ask the officers, agencies and tribes to comment on the request within not more than 15 days. The Office shall send a notice of the amendment request to all persons on the Council's mailing list specifying a date, not more than 15 days after the date of the notice, by which comments are due.

(4) Within 30 days after the Chair grants expedited review, the Office shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Office recommends approval, the Office shall include in the proposed order any new or modified conditions it recommends and shall explain why expedited Council action was warranted. The Office shall send a notice of the proposed order to the persons on the Council's mailing list and any special list established for the amendment. In the notice, the Office shall include information on the availability of the proposed order, the date of the Council meeting when the Council will consider the proposed order and issue a temporary order as described in section (5), a date by which comments on the proposed order are due, and the deadline for any person to request a contested case proceeding on the Council's temporary order.

(5) After considering the proposed order, the Council may issue an order temporarily amending the site certificate. In making a decision whether to issue a temporary order under this rule, the Council shall consider the factors listed in OAR 345-027-0070(6). The Council shall apply state statutes, administrative rules, and local government ordinances in effect on the date the Council issues the temporary order.

(6) Any person may, by written request submitted to the Office within 15 days after the date the Council issues the temporary order described in section (5), ask the Council to hold a contested case proceeding on the temporary order. For the purpose of this rule, the request is submitted when it is received by the Office. In the request, the person 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.

(7) The Council shall determine whether any issue identified in a request for a contested case proceeding is significant as defined in OAR 345-001-0010 or otherwise justifies a contested case proceeding.

(a) If the Council finds that the request identifies an issue that is significant or otherwise justifies a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0002 to OAR 345-015-0085 limited to the issues that the Council found significant or sufficient to justify the proceeding.

(b) If the Council finds that the request does not identify any issue that is significant or that otherwise justifies a contested case proceeding, the Council shall deny the request for a contested case proceeding. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then modify its temporary order or adopt the temporary order as a final order. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(8) If no person requests a contested case proceeding within the 15-day period described in section (6), the Council, at its next meeting, shall modify its temporary order or adopt the temporary order as a final order. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(9) The certificate holder shall not abuse this rule by failing to make timely application for an amendment and thus creating the need for expedited review.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0090

Request by Any Person for Amendment to Apply Subsequent Laws or Rules

(1) Any person other than the certificate holder may submit to the Office of Energy a request for an amendment of a site certificate to apply a local government ordinance, statute or Council rule adopted after the date the site certificate was executed.

(2) In an amendment request under this rule, the person shall include the following:

(a) The name and address of the person submitting the request;

(b) The name and address of the certificate holder;

(c) Identification of 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 the person seeks to apply to the facility;

(e) The particular facts that the person believes 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 specific language of the site certificate that the person proposes to change, delete or add by an amendment.

(3) Upon receipt of a request to amend a site certificate as described in this rule, the Office shall send a copy of the request to the certificate holder with a notice stating the date by which the certificate holder must submit a response.

(4) The Council shall review the request for amendment as described in OAR 345-027-0070, except that:

(a) If the Office recommends approval or modification of the requested amendment, the Office shall include in the proposed order described in OAR 345-027-0070(2) any new or modified site certificate conditions necessary to assure compliance with the statutes, Council rules, and local government ordinances applied to the facility under the proposed order;

(b) Notwithstanding OAR 345-027-0070(4)(b), if the Office in its proposed order recommends approval or modification of the requested amendment, the certificate holder may, by written request submitted to the Office within 30 days after the Office issues the proposed order, ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Office. In the request, the certificate holder shall provide a description of the issues to be contested and a statement of the facts believed to be at issue. If the site certificate holder requests a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0002 to OAR 345-015-0085 limited to the issues stated by the certificate holder; and

(c) The Council shall include new conditions in a site certificate amended under this rule only if the certificate holder agrees to the new conditions or the Council finds that the conditions are necessary based upon a clear showing of a significant threat to the public health, safety or the environment.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401 & ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0095

Request by Certificate Holder for Amendment to Apply Subsequent Laws or Rules

(1) The certificate holder may submit to the Office of Energy a request for an amendment of a site certificate to apply any statute, local government ordinance or Council rule adopted after the date the site certificate was executed.

(2) In an amendment request under this rule, the certificate holder shall include the following:

(a) The name and address of the certificate holder;

(b) A description of the facility and its location;

(c) Identification of the statute, local government ordinance or Council rule that the certificate holder seeks to apply to the facility;

(d) The specific language of the site certificate that the certificate holder proposes to change, delete or add by an amendment;

(e) A statement of reasons for having the statute, local government ordinance or Council rule apply to the facility; and

(f) An analysis of the impacts that would result from applying the new statute, ordinance or Council rule to the facility. In the analysis, the certificate holder shall consider impacts on public health and safety, on the environment, and on the findings the Council made in the order granting the site certificate.

(3) The Council shall review the request for amendment as described in OAR 345-027-0070, except that if the Office recommends approval or modification of the requested amendment, the Office shall include in the proposed order described in OAR 345-027-0070(2) any new or modified site certificate conditions necessary to assure compliance with the statutes, Council rules, and local government ordinances applied to the facility under the proposed order.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401 & ORS 469.405

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0100

Transfer of a Site Certificate

(1) For the purpose of this rule:

(a) A transfer of ownership requires a transfer of the site certificate when the person who will have the legal right to possession and control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility;

(b) "Transferee" means the person who will become the new applicant and site certificate holder.

(2) When the certificate holder has knowledge that any transfer of ownership of the facility that requires a transfer of the site certificate is or may be pending, the certificate holder shall notify the Office of Energy. In the notice, the certificate holder shall include, if known, the name, mailing address, and telephone number of the transferee and the date of the transfer of ownership. If possible, the certificate holder shall notify the Office at least 60 days before the date of the transfer of ownership.

(3) When the transfer of ownership is within the certificate holder's control, the certificate holder shall not complete the transfer of ownership before the Council has issued an amended site certificate as described in section (11) or a temporary amended site certificate as described in section (12).

(4) When the transfer of ownership is within the transferee's control, the transferee shall not complete the transfer of ownership before the Council has issued an amended site certificate as described in section (11) or a temporary amended site certificate as described in section (12).

(5) The transferee shall not construct or operate the facility until an amended site certificate as described in section (11) or a temporary amended site certificate as described in section (12) becomes effective.

(6) When the transferee has knowledge that any transfer of ownership of the facility is or may be pending, the transferee shall submit to the Office an application for an amended site certificate as described in this rule. In the application, the transferee shall include the information described in OAR 345-021-0010(1)(a), (d) and (m), unless otherwise allowed by the Council, and, if known, the date of the transfer of ownership.

(7) The Office may require the transferee to submit a written statement from the current certificate holder, or a certified copy of an order or judgment of a court of competent jurisdiction, verifying the transferee's right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession of the site or the facility.

(8) When the Office receives an application for an amended site certificate from the transferee, the Office shall mail a notice of receipt of the application to all persons on the Council's general mailing list and all persons on any special mailing list set up for the facility, including the current certificate holder. In the notice, the Office shall specify a date by which comments are due and the date of the Council's informational hearing described in section (9).

(9) The Council shall hold an informational hearing following the mailing of the notice described in section (8). The informational hearing is not a contested case hearing.

(10) At the conclusion of the informational hearing or at a later meeting, the Council shall issue a written order approving issuance of an amended site certificate to the transferee if the Council finds that:

(a) The transferee complies with the standards described in OAR 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1);

(b) The transferee is lawfully entitled to possession or control of the site or the facility described in the site certificate;

(c) The transferee 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 the statutes, local government ordinances and Council rules in effect on the date of the Council's

order that the Council decides should apply to the transferred facility based on the transferee's consent or upon a clear showing of a significant threat to the public health, safety or the environment. In the order, the Council shall include any new or amended site certificate conditions necessary to assure compliance with these statutes, local government ordinances and Council rules.

(11) Upon issuing the order described in section (10), the Council shall issue an amended site certificate that names the transferee as the new certificate holder and includes appropriate new or amended site certificate conditions. The amended site certificate is effective upon execution by the Council chair and the transferee.

(12) If a transfer of ownership of the facility occurs before the Council acts on the transferee's application for an amended site certificate and the Council chair determines that special circumstances justify emergency action, the Council chair may, upon a written request from the transferee that includes a showing that the transferee can meet the requirements of section (10), issue a temporary amended site certificate that names the transferee as the new certificate holder and incorporates all terms and conditions of the site certificate to be transferred that the chair decides are applicable. The temporary amended site certificate is effective upon execution by the Council chair and the transferee. The temporary amended site certificate expires when an amended site certificate as described in section (11) becomes effective or as the Council otherwise orders.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.401 & ORS 469.405

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-027-0110

Application for Termination of Site Certificate

(1) A certificate holder may apply to the Council for permission to terminate a site certificate at any time, subject to the requirements of this rule. A certificate holder shall apply to the Council to terminate a site certificate within two years following permanent cessation of operation of the facility.

(2) Along with an application for termination or before submitting the application for termination, the certificate holder shall submit a proposed final retirement plan for the facility and site. The certificate holder may submit a proposed retirement plan at any time before the planned retirement of the facility.

(3) In the proposed final retirement plan, the certificate holder shall include:

(a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment;

(b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including options for post-retirement land use, information on how impacts to fish, wildlife and the environment would be minimized during the retirement process, and measures to protect the public against risk or danger resulting from post-retirement site conditions;

(c) A current detailed cost estimate, a 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.

(4) The Office of Energy shall mail a 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 specifying a date by which comments on the application for termination are due. The Office shall send copies of the application for termination to the officers, agencies and tribes listed in OAR 345-020-0040 and shall ask the officers, agencies and tribes to comment by a specified date.

(5) The Council shall review the proposed final retirement plan and shall consider any comments received from the public, officers, agencies and tribes referred to in section (4) of this rule. If the Council finds that the proposed final retirement plan complies with the rules of this chapter and applicable conditions in the

site certificate and that the proposed actions to retire the facility would not endanger the health and safety of the public or the environment, the Council may approve the final retirement plan, subject to the conditions and limitations the Council deems appropriate and necessary. If the Council approves the final retirement plan, the Council shall issue an order authorizing retirement. The Council's order may be appealed pursuant to ORS 183.480.

(6) The Council shall issue an order to terminate a site certificate if the Council finds that the certificate holder has completed the retirement according to the approved final retirement plan and the Council's order authorizing retirement.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.405 & ORS 469.501

Hist.: EFSC 1-1993, f. & cert. ef. 1-15-93; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

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:

(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.

(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 opportu-

nity 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 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 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 qualified persons to the arbitration administrator to be included in the list, and the arbitration administrator shall include on the list at least one candidate submitted by each party so submitting. 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 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, using only whole positive numbers, with first choice being number 1. If a party fails to return the completed list on time or exceeds the number of allowed strikes, the arbitration administrator shall disregard that party's preference sheet. The arbitration administrator shall assume that any name not stricken or rank-ordered by a party shall receive a rank ordering equal to the total number of candidates. The arbitration administrator shall choose the arbitrator from the candidates not stricken, based on the aggregate rank ordering of the parties. In the event of a tie in the preference points, the arbitration administrator will use his or her discretion to select one of the candidates tied for the best score.

(e) Qualifications of Neutral Arbitrator: 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 a 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 469.470

Stats. Implemented: ORS 469.409

Hist.: EFSC 1-1998, f. & cert. ef. 1-27-98; EFSC 3-1998, f. & cert. ef. 7-10-98; EFSC 2-1999, f. & cert. ef. 4-14-99

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 and conditions of site certificates, Radioactive Materials Transport Permits and applicable statutes, rules and orders of the Council and by obtaining prompt correction of violations. The Office of Energy or the Council may impose a sanction for:

(a) A violation of any term or condition of a site certificate or a Radioactive Materials 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 the Council or Council secretary shall consider in deciding whether conditions or circumstances warrant issuing a notice of violation are:

(a) Did the responsible party report the conditions or circumstances in a timely manner?

(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 a facility for which a site certificate has been issued, and did the certificate holder decide that no amendment of the site certificate was required, based on a reasonable analysis of the criteria 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 469.470, ORS 469.607 & ORS 469.992

Stats. Implemented: ORS 469.085, ORS 469.470, ORS 469.607 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0005

Definitions

As used in this division, the following definitions apply:

(1) "Responsible party" means:

(a) A certificate holder;

(b) A radioactive materials transport permit holder; or

(c) Any person otherwise subject to the requirements of this chapter.

(2) "Council secretary" means the Administrator of the Energy Resources Section, Oregon Office 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 Materials Transport Permit requirements.

Stat. Auth.: ORS 469.470 & ORS 469.605

Stats. Implemented: ORS 469.085 & ORS 469.440

Hist.: EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

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 Materials Transport Permit. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms or conditions of a site certificate, the requirements of OAR 345 Division 50 or a Radioactive Materials Transport Permit, the responsible party shall:

(1) As soon as reasonably possible, notify the Office of Energy 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 Office a written report within 30 days of discovery. The report shall contain:

(a) A discussion of the cause of the reported conditions or circumstances;

(b) The date of discovery of the conditions or circumstances by the responsible party;

(c) A description of immediate actions taken to correct the reported conditions or circumstances;

(d) A description of actions taken or planned to minimize the possibility of recurrence; and

(e) For conditions or circumstances that may violate the terms or conditions of a site certificate, 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.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.440

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0020

Notice of Violation

(1) If the Office of Energy 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 Office may serve a notice of violation upon the responsible party. The Office shall serve the notice of violation by personal service or by first class, certified or registered mail.

(2) In the notice of violation, the Office 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 Office;

(b) A statement of the facts upon which the Office 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's right to a hearing as provided for in OAR 345-029-0070 if the Office later issues a notice of assessment of civil penalty as described under OAR 345-029-0060; and

(e) The Office of Energy'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 certificate holder or Radioactive Material Transport Permit holder in the previous 36 months;

(C) Any adverse impact of the violation on public health and safety; and

(D) For a violation of the terms or conditions of a site certificate, any adverse impact of the violation on resources protected by Council standards or site certificate conditions.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085, ORS 469.440 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0030

Classification of Violations

The Office of Energy shall determine the classification of a violation based upon severity and considering the guidelines in this rule. The Office may issue a notice of violation for Class I or Class II violations. The Office 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; or

(d) Violation of any applicable provision of ORS Chapter 469.

(2) In general, the Office may escalate any Class I violation to a Class II violation. Factors the Office may consider in escalat-

ing 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 the responsible party implemented prompt and effective corrective actions, the impact on public health and safety or on resources protected by Council standards, and the past performance of the responsible party. To escalate a violation to Class II, the Office must find that the violation meets one of the following criteria:

(a) It is a repeated violation. The Office shall 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 469.085, ORS 469.440 & 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0040

Response to Notice of Violation

In the written response required by OAR 345-029-0020(2)(c), the responsible party shall include, as a minimum, the following:

(1) Admission or denial of the violation;

(2) If the responsible party admits the violation and can determine suitable corrective action:

(a) The corrective action taken, and results achieved;

(b) Corrective action that the responsible party plans to take to minimize the possibility of recurrence; and

(c) The date by which the responsible party expects to achieve full compliance; and

(3) If the responsible party admits the violation and cannot determine suitable corrective actions within the 30-day or other time period specified in the notice of violation, a preliminary response that includes a date by which the responsible party will submit a final response that includes all information described in section (2).

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085, ORS 469.440 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0050

Enforcement Conference

(1) After issuing a notice of violation for a Class II violation, the Office of Energy 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 Office may use information discussed at the conference in determining the appropriate enforcement action.

(2) Following the enforcement conference, if any, the Office shall confirm or amend the classification of the violation and shall issue an amended notice of violation, if appropriate.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085, ORS 469.440 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0060

Civil Penalties

(1) Following the responsible party's response to the notice of violation described under OAR 345-029-0040, and any enforcement conference, the Office of Energy may assess a civil penalty for a Class II violation. The Office shall determine the amount of the civil penalty, if any, as follows:

(a) Base amount:

(A) \$1000 per day from the date of discovery for a violation of site certificate terms or conditions, or \$2000 per day from the date of discovery for such violation if the Office finds that sub-

stantially the same violation occurred within the preceding 36 months; or

(B) \$100 per day from the date of discovery of a violation 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 Office finds that substantially the same violation occurred within the preceding 36 months.

(b) The Office may multiply the base amount by a factor of:

(A) 3.0 if the Office finds the violation was intentional or reckless; or

(B) 5.0 if the Office finds the violation was intentional or reckless and the violation involved a requirement relating to public health, safety or the environment.

(c) The Office may multiply the base amount by either or both of the following factors:

(A) 0.75 if the responsible party corrected the violation within the time required to respond to the notice of violation and the responsible party has submitted a plan adequate to minimize the possibility of recurrence; and

(B) 0.8 if the responsible party 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; and

(d) The Office shall not reduce the base amount under subsection (c) above if the Office determines an increase in the base amount is warranted under subsection (b).

(2) In a notice of assessment of the civil penalty, the Office shall include:

(a) An analysis of the violation(s) in light of the criteria described in section (1);

(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 contested case proceeding as provided for in OAR 345-029-0070.

(3) The Office shall serve the notice of assessment of civil penalty by personal service and by certified or registered mail.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.085 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0070

Contested Case Proceeding

(1) Within 20 days after the date of mailing of the notice of assessment of a civil penalty, the responsible party may submit to the Office of Energy a written request for a contested case proceeding. For the purpose of this rule, the request is submitted when it is received by the Office.

(2) If the responsible party requests a contested case proceeding within the time stated in section (1), the Council shall conduct the proceeding under the provisions of OAR 345-015-0002 to 345-015-0085.

(3) If the responsible party does not request a contested case proceeding within the time stated in section (1), the Office of Energy's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), automatically becomes final.

(4) If the responsible party requests a contested case proceeding but fails to appear, the Office of Energy's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), becomes final upon a prima facie case made on the record of the Office.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 183.415, ORS 469.085 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

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 469.470

Stats. Implemented: ORS 469.085 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0090

Council Consideration of Mitigating Factors

Notwithstanding OAR 345-029-0080, the Council in its order after a contested case proceeding initiated under 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 responsible party 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 469.470

Stats. Implemented: ORS 469.085 & ORS 469.992

Hist.: EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-029-0100

Revocation or Suspension of Site Certificate

The Council may revoke or suspend any site certificate after conducting a contested case proceeding on the revocation or suspension under the provisions of OAR 345-015-0002 through 0085. A majority vote of the Council or a request from the Office of Energy initiates a contested case proceeding on a revocation or suspension. The Council shall base revocation or suspension on any of the following grounds:

(1) The applicant made a material false statement in an application for a site certificate or in supplemental or additional statements of fact or studies required of an applicant when a true answer would have warranted denial of a site certificate by the Council;

(2) The applicant failed to comply with a term or condition of the site certificate; or

(3) The applicant violated any provision of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, any administrative rule adopted under those statutes, including but not limited to rules contained in OAR Chapter 345, or any order of the Council.

(4) For a site certificate subject to ORS 469.410, having been executed prior to July 2, 1975, the applicant violated any the provision of ORS 469.300 to 469.520 or failed 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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 this division, a person shall not hold or place discarded or unwanted radioactive material for more than seven days at any geographical site in Oregon except the site at which the radioactive material was used or generated according 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 the Council issued a site certificate.

Stat. Auth.: ORS 469.470

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; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0010

Purpose and Applicability

(1) Because virtually all materials contain some radioactivity, the purpose of the rules in this division is to identify those materials that present such small health hazards that they are exempt from the provisions of ORS 469.525 and may be disposed of within the state.

(2) The rules in this division establish standards for the siting of facilities for disposal of wastes that were generated before June 1, 1981 through industrial or manufacturing processes and that contain naturally occurring radioactive isotopes. These rules implement the requirements of ORS 469.375, 469.470 and 469.501 to 469.559 for such waste disposal facilities. Except as provided in OAR 345-050-0060, these rules do not apply to uranium mine overburden or uranium mill tailings, mill wastes or mill by-product material that are subject to OAR Chapter 345, Divisions 92 and 95.

Stat. Auth.: ORS 469.470

Stats. Implemented: 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; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0020

Exempt Quantities

(1) Materials are exempt from provisions of ORS 469.525 if such materials contain radioactive material in individual quantities none of which exceeds the applicable quantity set forth in **Table 2** and if 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 if the burial is otherwise done in accordance with applicable Oregon law.

[ED. NOTE: The Table 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 97.153

Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 1-1999, f. & cert. ef. 3-5-99; EFSC 2-1999, f. & cert. ef. 4-14-99

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 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-050-0030

Specific Exemptions

In addition to the exemptions under OAR 345-050-0020 and OAR 345-050-0025, the following materials are exempt from the provisions of rule 345-050-0006:

(1) Radioactive material that has been incorporated into a consumer product manufactured 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 are 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 10 microcuries, regardless of concentration.

(4) Thorium-bearing materials containing less than 20 picocuries of radium-228 per gram of solid, if 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, if 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 that are disposed of or treated at a hazardous waste disposal facility licensed by the U.S. Environmental Protection Agency, the Department of Environmental Quality, or another state delegated the responsibility to regulate the disposal or treatment of hazardous waste by the U.S. EPA.

(7) Wastes generated before June 1, 1981, through industrial or manufacturing processes that contain only naturally occurring radioactive isotopes, if such wastes are disposed of at a facility for which the Council has issued a site certificate in accordance with ORS 469.375 and OAR 345-050-0040 through OAR 345-050-0130.

(8) Maintenance of radioactive coal ash at the site of a thermal power plant for which the Council has issued a site certificate.

(9) Wastes containing naturally occurring radioactive isotopes other than those in the uranium and thorium decay series, as long as the isotopes exist in their naturally occurring isotopic concentrations.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0035

Pathway Exemption

Naturally occurring radioactive materials are exempt from the provisions of OAR 345-050-0006 if the Council or the Office of Energy finds that accumulation of material cannot 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**. [Table not included. See ED. NOTE.] The Council or the Office shall base its finding on an evaluation of potential radiation exposures and effluent releases performed under the following conditions:

(1) The evaluation considers material in the form in which 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) The evaluation does not consider any ameliorating effects of land use restrictions, maintenance operations, or cover material at the disposal site.

(3) The evaluation covers accumulations of material over the reasonably projected period of waste generation.

(4) The evaluation bases external gamma radiation exposures on actual measurement with allowance for the degree of equilibrium and for self-shielding.

(5) The evaluation uses the following premises in computing radon concentrations in the air above a disposal site containing radium-226:

(a) The evaluation assumes that any house built on ground contaminated with radium-226 has an eight-foot-high ceiling on the first floor, has one complete air change per hour, and has a foundation constructed so as to meet the **Structural Specialty Code (State of Oregon Uniform Building Code)** in effect on March 1, 1979 without allowance for any special construction or treatments designed to reduce radon diffusion into the structure;

(b) The evaluation bases the relation between radon-emanation rate and radium concentration upon experimental measurements on material intended for disposal.

[ED. NOTE: Copies of the Table referenced in this rule are available from the agency.]

[Publications: Copies of the publication referenced in this rule are available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 9-1978, f. 12-28-78, ef. 3-1-79; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0036

Gamma Pathway Exemption Interpretive Rule

(1) In determining compliance with OAR 345-050-0035 when considering external gamma radiation exposure the Council or the Office of Energy must find that the disposal in Oregon of waste materials containing naturally occurring radioactive materials (NORM) cannot result in doses to individuals greater than 500 millirem (mrem) per year. If doses could exceed this limit, the Council or the Office shall find that the waste material is radioactive and requires disposal in a licensed radioactive waste disposal site. To find the waste materials exempt, the Council or the Office must find that the waste materials 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:

(a) "Waste material" means the annual solid waste stream leaving a site for landfill disposal.

(b) Actual field gamma radiation exposures are measured. The exposure readings are compared with the levels given in section (2) of this rule. The levels given in section (2) 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 assuming the house has a two-inch wooden floor over a two-foot crawl space and assuming 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).

(c) Readings are in microRoentgen per hour (uR/hr) using a detection system that is sensitive enough to determine compliance with the gamma radiation levels in section (2). Systems are calibrated according to National Institute of Standards and Technology (NIST) procedures with an NIST-traceable source, or equivalent calibration as judged by the Council Secretary. Measurements are made at a distance of one foot from the waste container. The contents of the container are proportional in composition to the average waste material. The highest reading measured around the container is used.

(2) 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 subsection (1)(c) of this rule produce readings below the following levels, the Council or the Office shall find the waste material is 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.

(3) The Oregon Office of Energy may approve the use of exemption levels corresponding to container types other than those in section (2) to determine compliance if:

(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 (2);

(b) Measurements are made in compliance with subsections (1)(b) and (c);

(c) The contents of containers larger than a box or drum are uniformly mixed before readings are taken to determine compliance.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

Hist.: EFSC 2-1993, f. & cert. ef. 3-19-93, EFSC 3-1993, f. & cert. ef. 3-22-93; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0040

Standards for Waste Disposal Facilities

OAR 345-050-0040 through 345-050-0130 establish standards for disposal of radioactive waste. The Council shall apply the standards in deciding whether to issue a site certificate for the construction and operation of a waste disposal facility and its related or supporting facilities. If the Council adopts any additional standards, the Council shall do so 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. The Council may use the standards established in OAR 345-050-0040 through 345-050-0130 and any standards adopted under this rule as well as other statutory and regulatory requirements of the Council and federal, state and local agencies in formulating site certificate conditions required by ORS 469.401.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525 & ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0050

Definitions

The definitions set out in ORS 469.300 apply 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 extent of a 500-year flood.

(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 Administrator" means the Administrator of the Oregon Office of Energy.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525

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; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0055

Mandatory Site Certificate Conditions

In addition to any other site certificate conditions the Council may impose under ORS 469.401, the Council shall impose site certificate conditions that require an applicant to design, build and operate a waste disposal facility in accordance with the design standards contained in OAR 345-050-060 and 345-050-0100 and in accordance with any representations the applicant makes in the plan submitted under OAR 345-050-0040 that address compliance with OAR 345-050-0090, 345-050-0110, and 345-050-0130.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.525 & ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0060

Site Suitability

To issue a site certificate for a waste disposal facility, or to carry out a cooperative agreement or arrangement with an agency of the federal government to clean up radioactive waste, uranium mine overburden or contaminated material pursuant to ORS 469.559(2), the Council must find that the site is suitable for the type and amount of waste the applicant intends to dispose of at the site. For purposes of this rule, uranium mine overburden means earth and other material overlying natural deposits of uranium ore and removed to gain access to the ore, if disposal of the material would result in an exceedance of any of the pathways in OAR 345-050-0035 as in effect on the date of this rule. A site is not suitable if it is located in:

(1) An area determined by the Council to be subject to surface water erosion over the projected life of the facility. In making 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 or creek, taking into consideration the area the Council determines under section (1) 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 that the Council finds to be subject to damage from natural forces of volcanic origin that is sufficient to cause meaningful degradation of facility integrity.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

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; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0070

Alternate Site

A person shall not locate a waste disposal facility at a site unless 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 the Council finds it 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 Administrator or the Council finds the list to be deficient, the Council may consider additional sites. The applicant may either perform the additional site evaluations itself or elect to have the Administrator perform it. The applicant shall reimburse the Administrator for all costs of site evaluations done by the Administrator.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0075

Alternate Technology

A person shall not locate a waste disposal facility at a site unless there is no 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 shall consider proven, demonstrated technology, including but not limited to existing hazardous waste and radioactive waste disposal site technologies.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0090

Adjacent State Compatibility

A person shall not locate a waste disposal facility at a site unless the person coordinates disposal of the type and amount of such wastes 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 comply with regulatory limits of the adjacent states.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0100

Release of Radioactivity

(1) A person shall not locate a waste disposal facility at a site unless the facility is designed to contain radioactive releases. To issue a site certificate, the Council must find that the applicant has proposed to construct the site using methods that include, but are not limited to, construction of dikes, liners and covers, such that there can be no release of radioactive materials from the facility.

(2) To find that the proposed radioactive waste disposal facility is designed to contain radioactive releases, the Council shall consider measurements of natural background concentrations of radioactive materials near the facility. For the purpose of this rule, radioactive releases are contained if radiation levels and concentrations of radioactive materials are less than the upper statistical limit of background measurements measured before any waste is placed at the site. In making this finding, the Council shall consider statistical limits determined at the 99 percent confidence level.

(3) The applicant shall take samples to determine background 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. The applicant shall calculate the average of the measurements from each seasonal period and for each sample type to determine the background concentration. From year to year, the applicant may average the values to increase the statistical base of measurements, but only within the same seasonal period. The applicant shall use a sufficient number of monitoring locations to accurately characterize the area.

(4) After construction of the facility, the certificate holder shall determine compliance with release limits by statistically comparing the average of sample measurements to the upper limit of the range of background values. The certificate holder shall make this determination by comparing measurements from individual locations to the established background levels. The certificate holder may average multiple samples from the same location to determine compliance with release limits, but only within the same seasonal period.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0110

Compatibility with Federal Programs

(1) A person shall not dispose of radioactive waste or uranium mine overburden at a site unless the disposal of the type and amount of such wastes is compatible with regulatory programs of the federal government for disposal of such wastes. Regulatory programs of the federal government refers to those programs that

are formally adopted as federal laws or regulations but not to statements of policy or future intent.

(2) Commercial Disposal. To issue a site certificate, the Council must find that the disposal facility is designed to meet all applicable federal and state standards for disposal of the type of material involved.

(3) CERCLA Cleanup. If the project is a remedial action undertaken under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for hazardous substances as that term is defined in **42 USC 9601**, the person responsible for cleanup shall also comply with the applicable portions of CERCLA, **42 USC 9601 et. seq.**

(a) If disposal will occur off-site, the person responsible for cleanup shall transfer the waste to a facility that 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 USC 6924** and **6925**, and with the Toxic Waste Disposal Act, **15 USC 260**;

(b) If the person responsible for cleanup proposes to construct a disposal facility in connection with an on-site cleanup of hazardous substances, the person responsible for cleanup must comply with those portions of OAR 345 Divisions 50, 92 and 95 that are legally applicable or relevant and appropriate under the circumstances of the release or threatened release except as provided in **42 USC Section 9621(d)(4)**.

[Publications: Copies of the publication referenced in this rule are available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1989, f. & cert. ef. 8-8-89; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0120

Bonding and Financial Ability

(1) A person shall not locate a waste disposal facility at a site unless, if federal funding for remedial actions is not available, the applicant provides a surety bond in the name of the state in an amount determined by the Oregon Office 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) The applicant shall estimate the cost of closing the site, including 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. To determine the cost of monitoring the site, providing for its security after closure and, in the case of a facility with a site certificate, ensuring performance of site certificate conditions, the applicant shall base the estimate on the amount of investment principal that would be required to produce proceeds 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 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99

345-050-0130

Ability to Construct and Operate

A person shall not locate a waste disposal facility at a site unless the person or firm proposing to dispose of the material has or can acquire the organizational, managerial, and technical expertise to construct, operate and retire the facility.

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.375

Hist.: EFSC 9-1981, f. & ef. 12-28-81; EFSC 1-1999, f. & cert. ef. 3-5-99

DIVISION 60

TRANSPORTATION OF RADIOACTIVE MATERIAL

345-060-0001

Definitions

(1) The definitions set out in ORS 469.300 are the definitions to be used in interpreting the rules in this division, unless the context requires otherwise or unless a term is specifically defined in this rule. Terms not otherwise defined are defined as found in 10 CFR 71 and 73 and 49 CFR 171 through 178 in effect as of the date of this rule.

(2) "Radioactive material" is as defined in 49 CFR 173.403 in effect as of the date of this rule.

(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 publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470, ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.603 - ORS 469.615

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; EFSC 2-1999, f. & cert. ef. 4-14-99

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 740-110-0060 to 740-110-0080 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 other shipments:

- (a) That are subject to federal physical security requirements;
- (b) That originate from or are destined for a federal facility;

or

- (c) That include material 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 469.470, ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.603 - ORS 469.615

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 2-1999, f. & cert. ef. 4-14-99

345-060-0004

Permits

(1) Persons must obtain an "Oregon Radioactive Material Transport" permit from the Oregon Department of Transportation (ODOT) prior to transport in the State of Oregon of radioactive material that requires a placard on the vehicle according to 49 CFR 172(f) in effect as of the date of this rule.

(2) A carrier shall submit a permit application annually to ODOT, 550 Capitol Street NE, Salem, Oregon 97301. A carrier applying for the first time shall submit the application at least 30 days prior to transporting any materials specified in section (1).

(3) ODOT may issue a permit on an emergency basis by telephone or fax when the carrier cannot comply with the 30 day requirement of section (2) as a result of conditions beyond the carrier's control. A carrier acquiring a permit under this section shall provide the information contained in subsections (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 verification of self insurance.

- (4) In the permit application, the carrier shall include:

- (a) The name and address of the carrier;

(b) The 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. The carrier may satisfy this requirement by submitting copies of federal or state motor carrier safety or hazardous material audit and inspection reports that include descriptions of those violations, if any;

(f) ODOT Operating Authority Identification Number, U.S. Department of Transportation Number, and U.S. Environmental Protection Agency Identification Number, when appropriate; and

(g) Proof of insurance including minimum levels of coverage and policy expiration date or verification of self-insurance.

(5) ODOT shall issue a regular permit 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) ODOT shall issue a conditional permit, which requires pre-trip notification to arrange for inspection, to any carrier who has a "conditional" safety fitness rating pursuant to the authority of Title 49 CFR 385.1 in effect as of the date of this rule.

(7) ODOT shall not issue an Oregon Radioactive Material Transport permit if the carrier has an "unsatisfactory" safety fitness rating pursuant to the authority of Title 49 CFR 385.1 in effect as of the date of this rule.

(8) For all shipments requiring an Oregon Radioactive Material Transport Permit, the carrier shall have a copy of the permit in the vehicle during shipment.

(9) Any person who has been denied a permit under this rule may submit to the Office of Energy a written request for a contested case proceeding. In the request, the person shall describe the issues to be contested, state the facts believed to be at issue, and include the person's mailing address. The Council shall conduct the proceeding under the provisions of OAR 345-015-0002 to 345-015-0085. After the hearing in the contested case proceeding, the Council, in its final order, shall grant or deny the permit.

(10) Once issued, permits remain valid for one year from the date of issuance unless revoked or suspended under section (11).

(11) ODOT or the Office of Energy may revoke or suspend permits for failure to comply with the conditions named on the permit or violations of the motor carrier safety requirements or hazardous or radioactive materials requirements.

(12) For reinstatement of a permit revoked or suspended under section (11) of this rule, the carrier shall submit a new application and evidence that the carrier has taken remedial actions to prevent recurrence of the violation(s).

(13) Temporary permits are available at Field Registration Offices at Oregon Ports of Entry and the Portland Bridge Motor Carrier Transportation Branch field office.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.607

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0005

Notification for Inspection

(1) The shipper shall submit notification pursuant to Nuclear Regulatory Commission rules found in 10 CFR 71.97 and 10 CFR

73.37(f) in effect as of the date of this rule for irradiated reactor fuel and other materials to: Secretary, Energy Facility Siting Council, 625 Marion St., NE., Suite 1, Salem, Oregon 97301-3742, Telephone: (503) 378-4040.

(2) The carrier shall submit notice to the Oregon Department of Transportation and make arrangements for inspection for all spent nuclear reactor fuel shipments, Highway Route Controlled Quantity Shipments, and shipments that require notice and inspection under a conditional Oregon Radioactive Material Transport Permit. The carrier shall submit notice for inspection as follows:

(a) As soon as practicable but no later than 48 hours before time of shipment in Oregon;

(b) When, as a result of conditions beyond the control of the carrier, the carrier cannot comply with the 48-hour minimum notification, then the carrier shall give notice immediately by telephone or fax, 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, the carrier shall give additional notice if the shipper or carrier cancels the shipment or if the carrier will arrive at the inspection location early or late by two or more hours;

(d) The carrier shall make all notice for inspection and scheduled changes in writing or by telephone or fax between 8 a.m. and 5 p.m. (Pacific time) to the Oregon Department of Transportation, 550 Capitol Street NE Salem, Oregon 97301, Telephone: (503) 378-5916, (503) 378-4601, fax (503) 378-8815;

(e) In a notice for inspection, the carrier shall include the following information:

(A) The carrier's name, address, telephone number, Oregon Department of Transportation Operating Authority Identification Number and U.S. Department of Transportation Number;

(B) The shipper's and receiver's name, address, and telephone number;

(C) A description of the material that shall include proper shipping name, hazard class, hazardous material identification number, and total quantity by weight or volume, and number of curies;

(D) A description of the route and approximate schedule; and

(E) A description of the transport vehicle(s) and name(s) of driver(s).

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.607

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0006

Fees

(1) Except as provided in section (2) through (5) of this rule, the carrier shall submit a \$70 fee to the Oregon Office of Energy, 625 Marion St., N.E., Suite 1, Salem, Oregon 97301-3742 for each placarded shipment. The Oregon Office of Energy invoices motor carriers each three months for shipments recorded at Oregon Ports of Entry in the previous quarter. The Oregon Office of Energy may establish with carriers special invoice procedures for shipments that do not regularly pass through an Oregon Port of Entry.

(2) For placarded shipments of well-logging material, radiographic material, and radiopharmaceuticals, the carrier shall submit an annual fee of \$500 or \$70 per shipment, whichever is less.

(3) No additional fee will be charged for shipments for 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;

(b) Other payments or services to the Oregon Office of Energy support applicable safety programs of the state of Oregon;

(c) The shipment of the material involves a single radioactive 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) The carrier shall pay a \$100 fee for each shipment traveling under a temporary permit described under OAR 345-060-0004(12), unless the carrier applies for a permit from the Oregon Department of Transportation within two weeks after the carrier first gives notice of the need for a permit.

Stat. Auth.: ORS 469.470 & ORS 469.607

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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0007

Inspections

The State of Oregon or its agents may inspect shipments under these rules for compliance with applicable rules and regulations. The State shall inspect all spent nuclear reactor fuel (defined in 10 CFR 73.37 in effect as of the date of this rule) and highway route controlled quantity shipments (defined in 49 CFR 173.403(1) in effect as of the date of this rule). The state may inspect samplings of other shipments. The State may inspect highway shipments made under conditional permits described in OAR 345-060-0004(6). The State shall make arrangements for inspection when the carrier gives notice for inspection, as described in OAR 345-060-0005.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470, ORS 469.605 & ORS 469.607

Stats. Implemented: ORS 469.603 - ORS 469.615

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 2-1999, f. & cert. ef. 4-14-99

345-060-0015

Vehicles, Operator, Equipment

The carrier shall maintain all aspects of vehicles, operators and equipment in accordance with Oregon Administrative Rules Chapter 740, Division 100. These Oregon Department of Transportation rules reference the requirements of 49 CFR 390 through 397 in effect as of the date of this rule.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470 & 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 1-1991, f. & cert. ef. 3-12-91; EFSC 3-1995, f. & cert. ef. 11-16-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0025

Packaging, Placarding, Labeling and Documentation

The shipper shall maintain all packaging, placarding, labeling shipment documentation and all other aspects of transporting any radioactive material in accordance with 10 CFR 71 and 73, and 49 CFR 171 through 179 in effect as of the date of this rule.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.607

Stats. Implemented: 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0030

Reporting and Emergency Response

The carrier of any radioactive material shall immediately notify local emergency response authorities and the Oregon Emer-

agency Response System (within Oregon call 1-800-452-0311, outside Oregon call 1-503-378-6377) of any of the following:

- (1) Vehicle accidents regardless of whether radioactive material has been damaged or dispersed;
 - (2) Loss of any radioactive material;
 - (3) Tampering with or obstruction of any shipments.
- Stat. Auth.: ORS 469.470 & ORS 469.607
 Stats. Implemented: ORS 469.603 - 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 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0040

Highway Routes

In Oregon, the carrier shall route all shipments of spent nuclear reactor fuel in accordance with 10 CFR 73.37 in effect as of the date of this rule and all placarded highway shipments of radioactive materials in accordance with 49 CFR 397.101 and 49 CFR 397.103 in effect as of the date of this rule.

[Publications: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.607
 Stats. Implemented: ORS 469.603 - 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 2-1999, f. & cert. ef. 4-14-99

345-060-0045

Financial Assurances

(1) If required by the Price-Anderson Act (42 USC Sections 2014 and 2210, in effect as of the date of this rule), the carrier or shipper shall maintain insurance on shipments of spent nuclear reactor fuel.

(2) Carriers of radioactive materials shall comply with applicable federal and Oregon insurance requirements (see Oregon Administrative Rules, Chapter 740, Division 40, Oregon Department of Transportation rules and Title 49 CFR, Part 387, in effect as of the date of this rule).

(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 publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 469.470 & ORS 469.607
 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; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0050

Weather and Road Conditions

The carrier shall avoid movement of motor vehicles during a road condition advisory of the Oregon State Highway Division unless vehicles have the required chains or traction tires specified in OAR Chapter 734, Division 17.

Stat. Auth.: ORS 469.470 & ORS 469.607
 Stats. Implemented: ORS 469.603 - ORS 469.615
 Hist.: EFSC 5-1986, f. & ef. 9-5-86; EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 2-1999, f. & cert. ef. 4-14-99

345-060-0055

Enforcement

(1) The Administrator of the Oregon Office of Energy may issue an order to halt the transport of radioactive material if he or she believes there is a clear and immediate danger to public health or safety. The Administrator may serve the order without prior hearing or notice.

(2) In accordance with Division 29 of this chapter, the Office of Energy may issue a notice of violation and may assess a civil penalty for violations of the rules of this division or applicable provisions of ORS Chapter 469.

Stat. Auth.: ORS 469.470 & ORS 469.607
 Stats. Implemented: ORS 469.603 - ORS 469.615
 Hist.: EFSC 1-1991, f. & cert. ef. 3-12-91; EFSC 1-1995, f. & cert. ef. 5-15-95; EFSC 2-1999, f. & cert. ef. 4-14-99

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 OAR 345-070-0015(5), or Safeguards Information in

OAR 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, possessors 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 purposes 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 commitments, 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 suf-

ficient 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 min-

ing 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 liquefaction, 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 Virginianus 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 occidentalis*); 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 designated 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 oper-

ation 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. 2-2-80; 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;
 - (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 eco-

nomic 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 scheduled 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 correction 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.

(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 concentration 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 1 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 facility 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 reclamation 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