

# Attachment 3

*The League of Women Voters of Oregon, established in 1920, is a grassroots nonpartisan political organization that encourages informed and active participation in government. We envision informed Oregonians participating in a fully accessible, responsive, and transparent government to achieve the common good. LWVOR Legislative Action is based on advocacy positions formed through studies and member consensus. The League never supports or opposes any candidate or political party.*

October 23, 2023

To: [EFSC Rules Coordinator, Oregon Department of Energy](#)

Re: [Radioactive Waste Materials Rulemaking OAR 345-050](#)—Public Comment

The League of Women Voters (LWV) believes that “*natural resources should be managed as interrelated parts of life-supporting ecosystems. Resources should be conserved and protected to assure their future availability. Pollution of these resources should be controlled in order to preserve the physical, chemical and biological integrity of ecosystems and to protect public health.*” LWV also supports the rule of law and legislative action. Our participation as a member of the Rulemaking Advisory Committee (RAC) operating since the fall of 2021 to develop rules in OAR 345-050 required by the passage of [SB 246](#), which the [League of Women Voters of Oregon supported](#), was based on those beliefs and positions. We respectfully offer the following comments on the proposed Division 50 rules before the Council.

**Our comments on the proposed Division 50 rules are limited to the issues that fell within the expertise of our designated representative.**

The Council was right to establish a RAC to provide a wide range of perspectives on these very important matters, but attention to a significant array of the rules needing attention in OAR 345-050 required extensive, specific scientific knowledge of the principles and operation of radioactive substances. As it turned out, only RAC member entities that had the resources to hire consultants to represent them could participate meaningfully in discussions with staff or provide input on any of the technical matters. We note also that early on, participation by other non-industry member entities dwindled to the point where the League, whose representative also lacks the requisite scientific expertise, became the only member entity that was not representing an industry stakeholder. We appreciate ODOE staff’s responsiveness to our questions and input on matters we could address. We rely on the expertise of ODOE staff to frame these rules in accordance with science and the law. We mean the above only as a point of information for the Council as you consider these rules.

**Our primary focus is the critically important, foundational matter of the singular statutory criterion the law establishes for EFSC to use in its framing of Division 50 definitional rules: “Materials identified by the council by rule as presenting no significant danger to the public.”**

The statute authorizes the Council draw in rules the line between waste that is defined as “radioactive” and therefore not legal to dispose of in Oregon and waste that is “not radioactive” and therefore can legally stay *solely on the basis of its potential short- and very long-term impact on all of us and many generations to follow*. This language “as presenting no significant danger to the public” has been in statute for decades; SB 246 retains it intact. It added no other criterion on which to base the rules. RAC discussions repeatedly ranged in the direction of adjustments in definitions, levels, quantities, types of waste and so on that, if adopted, would result in defining more materials as “not radioactive.” The League finds these efforts unsurprising. Businesses must work to enhance profitability and part of that is keeping costs down. However, the law does not open the door to a priority for identifying *non-radioactive waste* beyond “[that which] present[s] no significant danger to public health.”

We reiterate that we are not in a position to ascertain whether any of the proposed rules before you now have been also subjected to cost-saving adjustments or even those driven by administrative ease. We can only call to your attention this important challenge faced in developing some of these rules.

**We applaud ODOE staff's hard work on the entire body of rules and will point out specifically OAR 345-050-0006, temporary storage.**

A rule already existed pertinent to some procedures for transporting to appropriate out-of-state facilities waste materials that had been determined to be "radioactive," but the seven-day deadline for action had proven unrealistically short. As discussions focused on longer time frames and related matters, the League and perhaps others gave feedback recommending additional new language designed to put in place more specific required actions to increase the public health and safety, including of employees on site at the temporary holding areas. The current version of the proposed rules before you now is the fourth. We again thank Staff for their responsiveness and diligence in the course of this work.

**Information that emerged indicating that Oregon is receiving fossil fuel waste from out-of-state stemmed from discussions of Pb-210.**

Having paid concerted attention with much of the rest of the state to the illegal acceptance of radioactive oil and gas waste at the Arlington Landfill and rule revisions designed to stop that activity, we were surprised to learn via discussions of Pb-210 that a new exemption was wanted, primarily because this radioactive element is present "in some oil and gas waste streams . . . stored in Oregon. The Council will recall that this type of waste came up during the September EFSC meeting. Staff explained that fossil fuel waste containing levels of Pb-210 is, indeed, being accepted for disposal under the Northwest Interstate Compact. Upon our request for further clarification, ODOE staff provided that such waste received is from the "petroleum *refining and storage* [italics ours] industry (and from what we know, not petroleum/gas extraction whether by hydraulic fracking or other methods)." They added that such waste is "hazardous" so is able to be disposed of in appropriate landfills such as Chemical Waste Management's Arlington facility, where clandestine or inadvertent *illegal* radioactive waste associated with fossil fuel *exploration or production* would trigger a portal alarm. We appreciate the additional information, but the League urges caution and continued vigilance on this topic for reasons we have stressed in our work on the Division 29 RAC, including because not all landfills have portal alarms.

**The decision to suspend rulemaking on Pathway Exemption suggests further action.**

This was first agreed at the April 2023 RAC meeting due to substantial ongoing controversy. Some wished to amend this subsection to allow waste with high enough levels of radioactivity to be designated as "radioactive waste" to be nonetheless exempted if buried in landfills. The League was among discussants who saw the proposed rules and procedures out of compliance with the law. The Oregon Department of Justice ruled against the proposal. Staff's recommendation to the Council that the suspension be continued with some technical modifications to the existing Pathway Exemption subsection is outside of our expertise to be able to evaluate. We are willing to assist with the policy implications or possible solutions should the Council make an opportunity to pursue this in the future.

Thank you for the opportunity to comment on these proposed rules.



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Cc: [Max Woods](#), [Sen. Michael Dembrow](#), [Sen. Janeen Sollman](#), [Rep. Pam Marsh](#), and [Karin Power](#), Governor's Natural Resources and Climate Policy Advisor