

Oregon Department of **ENERGY**

Radioactive Materials
Enforcement
Rulemaking

Virtual Workshop

December 7, 2020
5:00 – 7:00 PM



Agenda

5:00 pm: Welcome

5:05 pm: Overview of Rulemaking

5:35 pm: Public Comment

7:00 pm: Adjourn

Welcome

Meeting materials and presentation are available from: <https://tinyurl.com/EFSCRulemaking>

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Energy Facility Siting Council Rulemaking

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The Energy Facility Siting Council's rules are set forth in Oregon Administrative Rules Chapter 345.

ORS 469.470 authorizes the Council to adopt standards and rules for the siting of energy facilities and for the implementation of Oregon's energy policy. ORS chapter 183 outlines the steps an agency must take to adopt rules.

At its November 22, 2019 meeting, the Council approved its [2020-2022 Rulemaking Schedule](#). The schedule includes unfinished and pending projects from 2019 as well as new proposed projects. Please see the staff report and attachments for Agenda Item L of the [November 2019 Council meeting](#) for additional information.

Staff may work on projects other than indicated in the Staff Report. Please note that Council may approve additional rulemaking projects may be proposed before the next regular update of the rulemaking schedule.

Current Rulemaking:

- [Protected Areas, Scenic Resources, and Recreation Standard Rulemaking](#)
- [Radioactive Materials Enforcement Rulemaking](#)

Past :

- [Rulemaking for Safe Public Meetings and Hearings](#)
- [Rulemaking to Clarify Standard for Contested Case Requests on Type A Amendments](#)
- [Carbon Offset Rate Update](#)
- [Single Solar PV Facility and Solar PV Facility-Specific Rules](#)
- [2019 Permanent Rules for Amending Energy Facility Site Certificates](#)
- [Housekeeping Project](#)
- [2019 Temporary Rules for Amending Energy Facility Site Certificates](#)
- [Carbon Dioxide Standards, Phase Two: Update CO2 Standards](#)
- [2017 Site Certificate Amendment Process](#)

RESOURCES

- [Energy Facility Siting Council](#)
- [Rulemaking Schedule](#)
- [Oregon Administrative Rules](#)

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For more information, please contact:

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Rulemaking Coordinator
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To request an interpreter for the hearing impaired or accommodations for persons with disabilities, please contact the Oregon Department of Energy at least 72 hours before the meeting at **1-800-221-8035** or fax **503-373-7806**. TTY users should call the Oregon Relay Service at 711.

Click here for meeting materials

Click here to get email updates



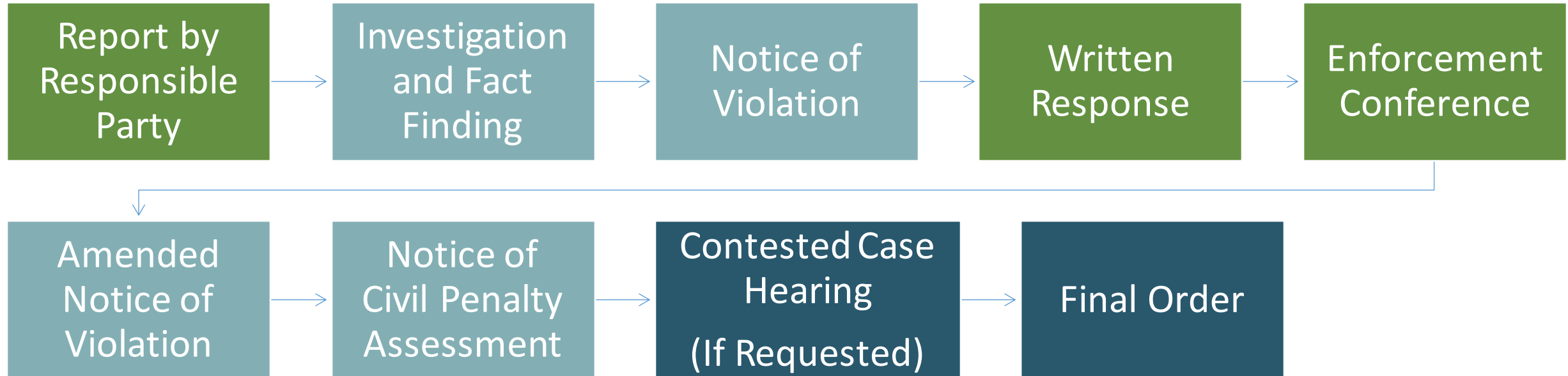
Rulemaking Background

- In May 2020, EFSC initiated review of the administrative rules related to the enforcement of laws and rules governing in the transport and disposal of radioactive materials and wastes.
- Objective is to protect public health and safety, and the environment by:
 - Incentivizing preventative measures
 - Ensure that radioactive materials or wastes are not improperly transported or disposed of in Oregon, and
 - Require appropriate mitigation or penalties when a violation does occur.
- Rulemaking is in addition to a potential legislative concept for the 2021 legislative session.

Overview of Rulemaking process

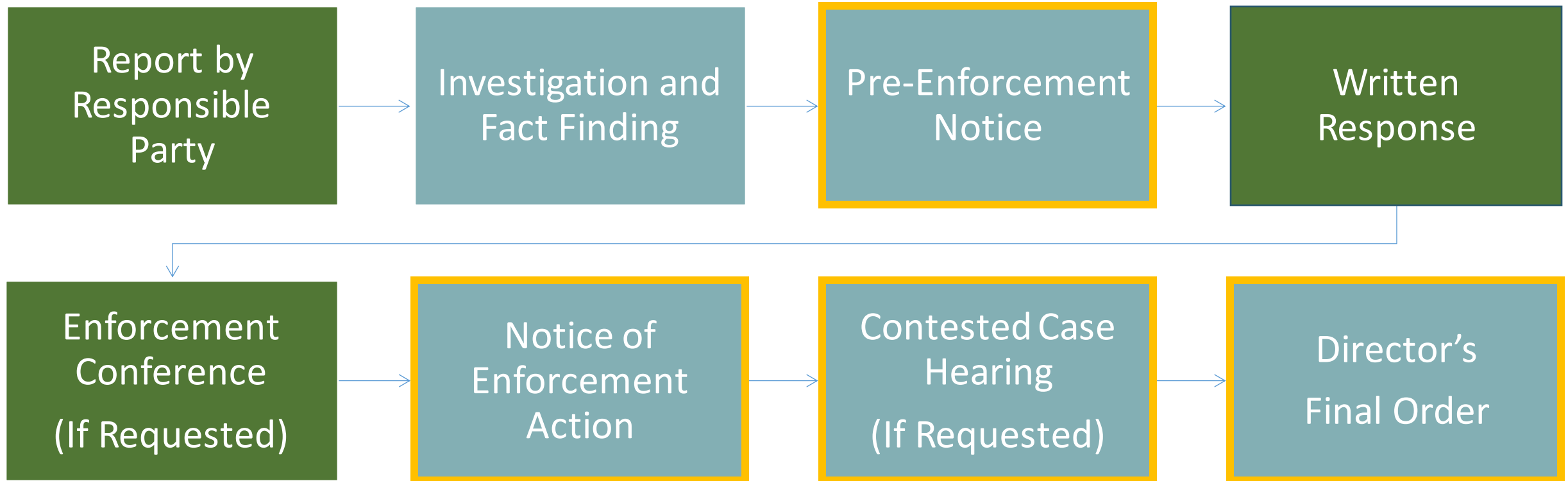


Procedures for Energy Facilities Enforcement/Current Rules OAR 345-029-0003 to 345-029-0100



Procedures for Radioactive Materials Enforcement

OAR 345-029-0503 to 345-029-0560



Notice of Violation/Pre-Enforcement Notice

OAR 345-029-0020/0520

	Energy Facilities/ Current Rules (Notice of Violation)	Radioactive Materials/ Proposed Rules (Pre-Enforcement Notice)
Classifications of Violations	Class II is default Violations may be escalated	Violations classified by type No escalation
Response to Notice	Requires admission or denial	Requires statement of facts
Enforcement Conference	Opportunity Provided	Opportunity Provided

Amended Notice of Violation/ Notice of Enforcement Action

OAR 345-029-0050/0555

	Energy Facilities/ Current Rules (Amended Notice of Violation)	Radioactive Materials/ Proposed Rules (Notice of Enforcement Action)
Civil Penalties	Available for Class I violations	Available for all violations
Contested Cases	Conducted by Council	Conducted by Director/OAH
Final Order by Default	Allowed	Allowed



Calculation of Civil Penalty

345-029-0560, pg. 15

- **Step 1:** Determine Base Penalty Amount based on class/severity of violation
- **Step 2:** Apply aggravating/mitigating multipliers
 - 5 if willful
 - 2.5 is repeated
 - 2.5 if irreversible
 - 0.75 if the responsible party was responsive
 - 0.8 if the violation was voluntarily reported
- **Step 3:** Multiply by total days of violation/number of occurrences
 - \$5 million maximum for a moderate violation; or
 - \$25,000 maximum for a minor violation
- Add amount for Economic Benefit

Classification of Violations

OAR 345-029-0530, pg. 12

Class I	Class II	Class III
<ul style="list-style-type: none">• Illegal disposal of radioactive waste• Failure to obtain an Oregon Radioactive Waste Material Transport Permit• Failure to report an incident involving radioactive materials• Failure to comply with an order of the Director or Council	<ul style="list-style-type: none">• Failure to properly route shipments of spent nuclear fuel or radioactive materials• General violation of OAR 345-060 or terms of an Oregon Radioactive Materials Transport Permit	<ul style="list-style-type: none">• Failure to give notice for inspection or schedule change of a radioactive materials shipment• Failure to maintain packaging, placarding, labeling, or shipment documentation for a radioactive materials shipment.

Severity Determinations

OAR 345-029-0560(1)(b), pg. 15

- **Major violations** include any violation determined to have caused, or having the potential to cause, a significant adverse impact on public health and safety, or the environment.
- **Moderate violations** include any violation determined to have caused, or having the potential to cause, no more than a minimal adverse impact on public health and safety or the environment, but could have the potential to cause a significant adverse impact on public health and safety or the environment if the physical conditions of the disposal did not limit pathways of exposure to human health or the environment.
- **Minor violations** include any violation having caused, or having the potential to cause, no more than a minimal adverse impact on public health and safety or the environment.

Civil Penalty Assessment - Base Penalty Amounts

OAR 345-029-0560(1)(c), pg. 15

	Minor	Moderate	Major
Class I	\$1,000	\$5,000	\$10,000
Class II	\$500	\$2,500	\$5,000
Class III	\$500		

Note: All amounts are per occurrence or per day of violation.

Penalty Scenario 1

- **Step 1: Determine Base Penalty**
 - Radioactive Waste disposed illegally (Class I)
 - Minimal potential for exposure due to conditions of disposal (Moderate Severity)
 - Base Penalty = \$5,000
- **Step 2: Apply Multipliers**
 - Irreversible – waste cannot be safely removed (x2.5)
 - Responsible Party voluntarily reported violation (x0.8)
 - Modified Penalty Amount = \$10,000
- **Step 3: Multiply by Days of Violation**
 - Multiple disposals occurred over past 6 months (x 180 days of violation)
 - Total Penalty Amount = \$1.8M
- **Step 4: Add amount for Economic Benefit**
 - Make reasonable estimate using EPA BEN Model
 - Up to \$2.7M available under statute

Penalty Scenario 2

- **Step 1: Determine Base Penalty**
 - Radioactive Materials transported on unauthorized route (Class II)
 - Minimal Potential for Impact (Minor Severity)
 - Base Penalty = \$500
- **Step 2: Apply Multipliers**
 - Responsible Party had reason to know action was illegal (x5)
 - Responsible Party has history of similar violation (x2.5)
 - Modified Penalty Amount = \$6,250
- **Step 3: Multiply by Days of Violation**
 - 3 shipments occurred (3 occurrences)
 - Total Penalty Amount = \$18,750
- **Step 4: Add amount for Economic Benefit**
 - Make reasonable estimate using EPA BEN Model
 - Up to \$6,250 available under statute

Public Comments

- This workshop is being recorded; audio will be made available on the Department's website.
- To make comments at this workshop:
 - Please “raise your hand.” Use the “chat” feature if you have technical difficulties or follow up questions
 - State your name and affiliation for the record when providing comment
- Send any informal rulemaking advice to efsc.rulemaking@oregon.gov
- Formal testimony will be taken after Notice of Proposed Rulemaking is issued

Thank You



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