

ODOE Enforceable Policy Summary as of October, 2021

POLICY SOURCE	ENFORCEABLE POLICY	GENERALLY IMPLEMENTED BY:
<p>ORS Chapter 469 (Energy) Link to ORS Chapter 469 (1987) <i>Statute Edition 1987 approved in Program</i></p>	<p>.300 Definitions</p> <p>.310 Policy</p> <p>.320 Siting certificate required; exceptions</p> <p>.500 <i>(currently numbered 469.507. Following are EPs: .507(1), .507(2), .507(3), .507(4))</i></p> <p>.510 <i>(currently numbered 469.501 and 469.504. Following are EPs: .501e, .501g, .501i, .501k, .501m, and 469.504)</i></p>	<p>- Energy Facility Siting Certificate</p>

**Note: The OCMP is currently in the process of submitting updates to NOAA to revise ORS 469 in the program to a more up-to-date version.*

469.300 Definitions for ORS 469.300 to 469.570 and 469.590 to 469. 621. As used in ORS 469 300 to 469 570, 469 590 to 469 621, 469 930 and 469 992, unless the context requires otherwise

- (1) " Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469 300 to 469 570, 469 590 to 469 621, 469 930 and 469 992
- (2) " Application" means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469 300 to 469 570, 469 590 to 469 621, 469 930 and 469 992
- (3) " Associated transmission lines" means new transmission lines constructed to connect a thermal power plant 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 or to the Northwest Power Grid
- (4) " Combustion turbine power plant" means a thermal power plant consisting of one or more fuel - fired combustion turbines and any, associated waste heat combined cycle generators
- (5) " Construction" means onsite work and construction, the cost of which exceeds \$ 250, 000, excluding exploratory work
- (6) " Council" means the Energy Facility Siting Council established under ORS 469 450
- (7) " Department" means the Department of Energy created under ORS 469 030
- (8) " Director" means the Director of the Department of Energy

(9) " Electric utility" means individuals, regulated electrical companies, people' s utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing

electric energy " Electric utility" includes any person or public agency generating electric energy from an energy facility for its own consumption

(10) " Energy facility" means any of the following

(a) An electric power generating plant with a nominal electric generating capacity of more than 25, 000 kilowatts, including but not limited to thermal power, hydropower, geothermal power produced from a single geothermal reservoir, or combustion turbine power plant

(b) A nuclear installation as defined in this section

(c) A high voltage transmission line of more than 10 miles in length with a capacity in excess of 230,000 volts, to be constructed in more than one political subdivision in this state, but excluding lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity in excess of 230, 000 volts

(d) A solar collecting facility using more than 100 acres of land, or providing more than 25, 000 kilowatts of power

(e) A pipeline that is

(A) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form or other fossil energy resource

(B) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas

(C) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523

(f) A synthetic fuel plant which converts a natural resource including, but not limited to, coal, oil or biomass to a gas, liquid or solid product capable of being burned to produce the equivalent of 2×10^9 Btu of heat a day

(11) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid

(12) " Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source material, special nuclear material or byproduct material as those terms are defined in ORS 453 605, from its intended place of confinement offsite, or causing radiation levels offsite, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property offsite

13) " Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property

due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or byproduct material as those terms are defined in ORS 453 605

(14) " Nuclear installation" means any power reactor, nuclear fuel fabrication plant, nuclear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that quantity of fissionable materials sufficient to form a critical mass " Nuclear installation" does not include any such facilities which are part of a thermal power plant

(15) " Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of more than 25,000 kilowatts, for generation and distribution of electricity, and associated transmission lines

(16) " Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people' s utility district, or any other entity, public or private, however organized

(17)(a) " Radioactive waste" means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by- product material, source material or special nuclear material as those terms are defined in ORS 453 605 The term does not include those radioactive materials identified in OAR 345 -50 -020, 345 -50 -025 and 345 -50 -035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345 -50 as presenting no significant danger to the public health and safety

(b) Notwithstanding paragraph (a) of this subsection, " radioactive waste" does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by- product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979

(18) " Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility

(19) " Site" means any proposed location of an energy facility and related or supporting facilities

(20) " Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate an energy facility on an approved site, incorporating all conditions imposed by the state on the applicant and all warranties given by the applicant to the state

(21) " Thermal power plant" means an electrical or any other facility using any source of thermal energy with a nominal electric generating capacity of more than 25,000 kilowatts, 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

(22) " Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location

(23) " 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

(24) " 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

469.310 Policy. In the interest of the public health and the welfare of the people of this state, it is the declared public policy of the state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 496.300 to 496.570, 496.590 to 496.621, 496.930 and 496.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish a comprehensive system for siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state [formerly 453.315]

469.320 Site certificate required: exceptions. (1) No energy facility shall be constructed or expanded unless a site certificate has been issued or expanded unless a site certificate has been issued or the site thereof in the manner provided in ORS 496.300 to 496.570, 469.590 to 469.621, 469.930 and 469.992, but no site certificate shall be required for an existing industrial or energy facility if the facility is merely modified to increase the electric capacity and not expanded. No energy facility shall be constructed or operate except in conformity with the requirements od ORS 469.300 to 496.570, 469.590 to 469.621, 469.930 and 469.992.

(2) Notwithstanding subsection (1) of this section, no site certificate shall be required for construction or expansion of any interstate natural gas pipeline authorized by and subject to the continuing regulation of the Federal Power Commission or successor agency.

(3) Notwithstanding subsection (1) of this section, no site certificate shall be required for a facility which generates electricity from heat produced as a by-product of the normal industrial process at an existing industrial facility

(4)(a) Notwithstanding subsection (1) of this section, no site certificate shall be required for an energy recovery energy facility that has a nominal electric generating capacity of not more than 50,000 kilowatts

(b) As used in this subsection, “energy recovery energy facility” means a facility that

(A) Is designated to produce thermal energy for industrial use and electric energy, and

(B) Is designated to use straw, forest slash, wood waste, other farm or forest waste or solid waste as defined ORS 459.005 as a fuel [Formerly 453.325, 1977 c 86 §1982]

469.500 *(Due to repeal and replacement, this policy is currently numbered 469.507. Enforceable policies include: .507(1), .507(2), .507(3), .507(4))*

469.507 Monitoring environmental and ecological effects of construction and operation of energy facilities. (1) The site certificate holder shall establish programs for monitoring the environmental and ecological effects of the construction and operation of facilities subject to site certificates to assure continued compliance with the terms and conditions of the certificate. The programs shall be subject to review and approval by the Energy Facility Siting Council.

(2) The site certificate holder shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to guidelines established by the Energy Facility Siting Council or its designee. The council and the Director of the State Department of Energy shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(3) The monitoring program may be conducted in cooperation with any federally operated program if the information available from the federal program is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the council or its designee.

(4) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear fueled thermal power plant or nuclear installation. [1993 c.569 §25 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §22]

496.510 *(Due to repeal and replacement, this policy is currently numbered 469.501 and 469.504. Enforceable Policies Include: .501e, .501g, .501i, .501k, .501m, and 469.504)*

469.501 Energy facility siting, construction, operation and retirement standards; exemptions; rules. (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

(e) Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.

(g) Protection of public health and safety, including necessary safety devices and procedures.

(i) Impacts of the facility on recreation, scenic and aesthetic values.

(k) Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.

(m) Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.

469.504 Facility compliance with statewide planning goals; exception; amendment of local plan and land use regulations; conflicts; technical assistance; rules. (1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The Energy Facility Siting Council determines that:

(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

(C) For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.

(2) 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 an exception process goal, 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.

(3) If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.

(4) An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

(5) Upon request by the State Department of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the department's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:

(a) The number of jurisdictions and zones in question;

(b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and

(c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

(6) The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.

(7) On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.

(8) Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.

(9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction. [1997 c.428 §5; 1999 c.385 §10; 2001 c.134 §11; 2003 c.186 §79; 2005 c.829 §12]