

1 **DIVISION 27**

2 **EXPIRATION, AMENDMENT AND TERMINATION OF SITE CERTIFICATES, AND DEPARTMENT OF**
3 **ENERGY APPROVAL OF GAS STORAGE TESTING PIPELINES**

4
5 **345-027-0011**

6 **Applicability**

7 The rules in this division apply to all facilities under the Council's jurisdiction except those
8 facilities described in ORS 469.410(1), including the Trojan energy facility, and except that rules
9 OAR 345-027-0050, ~~0060, 0070, 0080, 0090~~ and through 345-027-0100 that were in effect
10 prior to Month XX, 2017 apply to ~~proposed changes that have been included in~~ requests for
11 amendments to site certificates and change requests that have been received by the
12 Department prior to Month XX, 2017. Additionally, OAR 345-027-0030 through 345-027-0070
13 that were in effect prior to Month XX, 2017 apply to requests for an amendment to the site
14 certificate to extend construction deadlines for facilities, or portions/phases of facilities, not yet
15 in construction, but approved for construction in the site certificate or amended site certificate.

16
17 **345-027-0013**

18 **Certificate Expiration**

19 If the certificate holder does not begin construction of the facility by the construction beginning
20 date specified in the site certificate or amended site certificate, the site certificate expires on
21 the construction beginning date specified, unless expiration of the site certificate is suspended
22 pending final action by the Council on a request for amendment to a site certificate pursuant to
23 OAR 345-027-0085(2).

24
25 **345-027-0050**

26 **Changes Requiring an Amendment**

27 Except for changes allowed under OAR 345-027-0053 of this rule, an amendment to a site
28 certificate is required to:

- 29 (1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-
30 0100;
31 (2) Apply later-adopted law(s) as described in OAR 345-027-0090;
32 (3) Extend the construction beginning or completion deadline as described in OAR 345-027-
33 0085;

34 ~~(4) Add area to the site boundary, unless determined otherwise as described in OAR 345-027-~~
35 ~~0057; and~~

36 ~~(5)~~(4) Design, construct or operate a facility in a manner different from the description in the
37 site certificate if the proposed change:

- 38 (a) Could result in a significant adverse impact that the Council has not addressed in an
39 earlier order and the impact affects a resource or interest protected by a Council
40 standard;
41 (b) Could impair the certificate holder's ability to comply with a site certificate condition; or
42 (c) Could require a new condition or a change to a condition in the site certificate.

43

1 **345-027-0051**

2 **Review Processes for Requests for Amendment-Process**

- 3 (1) The transfer review process, described in 345-027-0100, shall apply to the Council's review
4 of a request for amendment to a site certificate to transfer a site certificate.
- 5 (2) The standard-type A review process, consisting of rules 345-027-0059, -0060, -0063, -0065, -
6 0067, -0069 and -0071, is the default review process and shall apply to the Council's review
7 of a request for amendment proposing a change described in 345-027-0050(2), (3), and (4).
8 and (5).
- 9 (3) The expedited-type B review process, consisting of rules 345-027-0059, -0060, -0063, -0065,
10 -0068, -0070, and -0071, shall apply to the Council's review of a request for amendment
11 that staff the Department and or the Council have approved for expedited-type B review
12 under 345-027-00657.
- 13 (3)(4) The type C review process, described in 345-027-0080, shall apply to the Council's review
14 of a request for amendment that the Department or the Council approves for type C review
15 under 345-027-0080.
- 16 (4)(5) The Council may act concurrently on any combination of proposed changes included in a
17 request for amendment. Concurrent proposed changes are subject to the substantive
18 requirements applicable to each respective proposed change and the Council shall review
19 all proposed changes through the process with the more procedural steps applicable to any
20 one of the proposed changes.

21
22 **345-027-0053**

23 **Changes Exempt from Requiring an Amendment**

24 An amendment to a site certificate is not required if the proposed change in the design,
25 construction or operation of a facility is in substantial compliance with the terms and conditions
26 of the site certificate, and is a change:

- 27 (1) To an electrical generation facility that would increase the electrical generating capacity and
28 would not increase the number of electric generators at the site, change fuel type, increase
29 fuel consumption by more than 10 percent or enlarge the facility site;
- 30 (2) To the number or location of pipelines for a surface facility related to an underground gas
31 storage reservoir that would not result in the facility exceeding permitted daily throughput
32 or a change to the site boundary;
- 33 (3) To the number, size or location of pipelines for a geothermal energy facility that would not
34 result in a change to the site boundary;
- 35 (4) To a pipeline that is a related or supporting facility that delivers natural gas to the energy
36 facility if the change would extend or modify the pipeline or expand the right-of-way, when
37 the change is exclusively to serve gas users other than the energy facility;
- 38 (5) To a transmission line that is a related or supporting facility if the change would extend or
39 modify the transmission line or expand the right-of-way, when the change is exclusively to
40 serve the transmission needs of a separate energy facility or energy user; or
- 41 (6) To construct a pipeline less than 16 inches in diameter and less than five miles in length to
42 test or maintain an underground gas storage reservoir. If the proposed pipeline would
43 connect to a surface facility related to an underground gas storage reservoir for which the

1 Council has issued a site certificate or to a gas pipeline for which the Council has issued a
2 site certificate, the certificate holder must obtain, prior to construction, the approval of the
3 Department of Energy for the construction, operation and retirement of the proposed
4 pipeline. To obtain Department approval, the certificate holder must submit a request as
5 described in OAR 345-027-0210 through OAR 345-027-0240.
6

7 **345-027-0055**

8 **Written Evaluations for Changes Not Requiring Amendment**

- 9 (1) For a proposed change that would add area to the site boundary, see OAR 345-027-0057(1).
10 For a proposed change to the facility that does not include adding area to the site boundary,
11 the certificate holder may evaluate OAR 345-027-0050 and 345-027-0053 and conclude that
12 the proposed change does not require an amendment. If the certificate holder concludes
13 that a proposed change to the facility does not require an amendment to the site
14 certificate, the certificate holder must complete a written evaluation if the change:
15 (a) Could be included in and governed by the site certificate, but the certificate holder has
16 concluded the change is not described in 345-027-0050; or
17 (b) Is exempt from requiring an amendment under 345-027-0053.
18 (2) The written evaluation must explain why an amendment is not required, must be
19 completed before implementing any change, and must be included in the next semiannual
20 construction progress report or the Facility Modification Report required under 345-026-
21 0080. The written evaluation must be retained for the life of the facility.
22 (3) The Department of Energy may, at any time, inspect the changes made to the facility and
23 may inspect the certificate holder's written evaluation concluding that the change did not
24 require an amendment.
25 (4) When the certificate holder implements a change without an amendment, the Department
26 may initiate an enforcement action as described in Division 29 if the Department
27 determines the change required an amendment to the site certificate.
28

29 **345-027-0057**

30 **Amendment Determination Request**

- 31 (1) For a proposed change that would add area to the site boundary, the certificate holder
32 must either:
33 (a) submit a request for amendment to the Department of Energy; or
34 (b) submit an amendment determination request to the Department for a written
35 determination of whether the proposed change requires an amendment under OAR
36 345-027-0050 and is not exempt under 345-027-0053.
37 ~~(1)~~ (2) For a proposed change that would not add area to the site boundary, the certificate
38 holder may submit an amendment determination request to the Department for request a
39 written determination of:
40 (a) whether ~~at~~ the proposed change requires an amendment under OAR 345-027-0050 ~~(5); or~~
41 (b) whether ~~at~~ the proposed change is exempt from requiring an amendment under 345-
42 027-0053.
43 ~~(c) whether a proposed change requires an amendment under OAR 345-027-0050(4); or~~

1 ~~(3)(d)~~ For any request for amendment, the certificate holder may submit an amendment
2 determination request to the Department for a written determination of whether a request for
3 amendment justifies review under the ~~expedited-type B~~ review process described in 345-027-
4 0051(3).

5 ~~(4)(2)~~ Requests ~~under described in~~ section (1), (2), and (3) must be submitted in writing to the
6 Department ~~of Energy~~ and must include:

- 7 (a) A narrative description of the proposed change~~(s)~~;
- 8 (b) Maps and/or geospatial data layers representing the effects and/or location of the
9 proposed change;
- 10 (c) The certificate holder's evaluation of the determination(s) it is requesting under sections
11 (1), (2), and (3); and
- 12 (d) Any additional information the certificate holder believes will assist the Department's
13 evaluation.

14 ~~(3)(5)~~ After receiving an amendment determination request, the Department shall post an
15 announcement on the Department's website to notify the public that an amendment
16 determination request has been received. The announcement shall include a copy of the
17 amendment determination request.

18 (6) Upon receiving a request for a written determination described in section (1) ~~and (2)(a) and~~
19 ~~(b)~~, the Department shall, as promptly as possible, issue a written determination to the
20 certificate holder, indicating whether the proposed change requires an amendment or refer
21 the request to the Council for a written Council determination. After the Department issues
22 its written determination, the Department shall, as promptly as possible, provide the
23 request and the written determination to the Council and post the written determination to
24 its website. At the first Council meeting after the Department issues its written
25 determination, the Department shall provide verbal notice of the request and the written
26 determination to the Council during the consent calendar agenda item. The Department
27 may refer its determination to the Council for concurrence, modification, or rejection. At
28 the request of the certificate holder ~~or a Council member~~, the Department must refer its
29 determination to the Council for concurrence, modification or rejection.

30 ~~(4)~~ Upon receiving a request for a written determination described in section (1)(c), the
31 Department shall, as promptly as possible, issue a written recommendation indicating
32 whether the proposed addition of area to the site boundary should require an amendment
33 and refer the recommendation to the Council for concurrence, modification or rejection.

34 ~~(5)~~ In determining whether the proposed addition of area to the site boundary requires an
35 amendment, the Council:

- 36 ~~(a)~~ Must find an amendment is required if the addition of area requires an amendment
37 under 345-027-0050(5).
- 38 ~~(b)~~ May find an amendment is not required after considering factors including but not
39 limited to, whether the proposed addition of area:
 - 40 ~~(A)~~ Would not establish new adjacent property owners that were not previously
41 notified;
 - 42 ~~(B)~~ Would not change the analysis areas;
 - 43 ~~(C)~~ Would not be temporary in nature;

1 ~~(D) Would not require any additional mitigation;~~

2 ~~(E) Would not cause such undeterminable or significant impacts to prevent the Council~~
3 ~~from reasonably concluding that the proposed addition of area does not require an~~
4 ~~amendment under 345-027-0050(5) without the proposed addition of area being~~
5 ~~reviewed through either the standard or expedited amendment process.~~

6 ~~(7) Upon receiving a request for a written determination described in section (3)(1)(d), the~~
7 ~~Department shall, as promptly as possible, issue a written determination to the certificate~~
8 ~~holder recommendation indicating whether the request for amendment justifies review~~
9 ~~under the expedited review process described in 345-027-0051(1) or the standard review~~
10 ~~process described in 345-027-0051(2), and refer the recommendation to the Council for~~
11 ~~concurrence, modification or rejection. At the request of the certificate holder, the~~
12 ~~Department must refer its determination to the Council for concurrence, modification, or~~
13 ~~rejection.~~

14 (8) In determining whether a request for amendment justifies review under the type B review
15 process described in 345-027-0051(3) which review process the request for amendment is
16 reviewed under, the Department and the Council may consider factors including but not
17 limited to:

- 18 (a) The complexity of the proposed changes;
19 (b) The anticipated level of public interest in the proposed changes;
20 (c) The anticipated level of interest by reviewing agencies;
21 (d) The likelihood of significant adverse impact; and
22 (e) The type and amount of mitigation, if any.

24 **345-027-0059**

25 **Pre-Amendment Conference**

- 26 (1) Prior to submitting a preliminary request for amendment to the site certificate as described
27 in OAR 345-027-0060, the certificate holder may request a pre-amendment conference
28 with the Department of Energy to discuss the scope, timing, and applicable laws and Council
29 standards associated with the request for amendment. ~~If the certificate holder is requesting~~
30 ~~an amendment to add area to the site boundary, the certificate holder must request a pre-~~
31 ~~amendment conference before submitting a preliminary request for amendment.~~
32 (2) A pre-amendment conference request must be in writing and must include a description of
33 the proposed change and, if applicable, maps or geospatial data layers representing the
34 location of the proposed change.
35 (3) Upon receipt of a request as described in section (1), the Department must, as promptly as
36 possible, set a date and time for a pre-amendment conference.

38 **345-027-0060**

39 **Preliminary Request for Amendment**

- 40 (1) To request an amendment to the site certificate required by OAR 345-027-0050(3) and (4)–
41 ~~(5)~~, the certificate holder shall submit a written preliminary request for amendment to the
42 Department of Energy that includes the following:

- 1 (a) The name of the facility, the name and mailing address of the certificate holder, and the
2 name, mailing address, email address and phone number of the individual responsible
3 for submitting the request.
- 4 (b) A detailed description of the proposed change, including:
5 (A) a description of how the proposed change affects the facility,
6 (B) a description of how the proposed change affects those resources or interests
7 protected by applicable laws and Council standards, and
8 (C) the specific location of the proposed change, and any updated maps and/or
9 geospatial data layers relevant to the proposed change.
- 10 (c) References to any specific Division 21 information that may be required for the
11 Department to make its findings.
- 12 (d) The specific language of the site certificate, including conditions, that the certificate
13 holder proposes to change, add or delete through the amendment.
- 14 (e) A list of the Council standards and all other laws - including statutes, rules and
15 ordinances - applicable to the proposed change, and an analysis of whether the facility,
16 with the proposed change, would comply with those applicable laws and Council
17 standards. For the purpose of this rule, a law or Council standard is "applicable" if the
18 Council would apply or consider the law or Council standard under OAR 345-027-
19 0071(2).
- 20 (f) An updated list of the owners of property located within or adjacent to the site of the
21 facility, as described in OAR 345-021-0010(1)(f).

22 (2) After receiving a preliminary request for amendment, the Department shall post an
23 announcement on its website to notify the public that a preliminary request for amendment
24 has been received. The announcement shall include a copy of the preliminary request for
25 amendment.

26 ~~(3)~~(3) For any Council standard that requires evaluation of impacts within an analysis area, the
27 analysis area shall be the larger of either the study area(s) as defined in OAR 345-001-
28 0000(59) or the analysis area(s) described in the project order for the application for site
29 certificate, unless otherwise approved in writing by the Department following a pre-
30 amendment conference.

31 ~~(3)~~(4) The certificate holder may incorporate, by specific reference, evidence previously
32 submitted to the Department in the application for site certificate or previous request for
33 amendment, or evidence that is otherwise included in the Department's record on the
34 facility.

35
36

1 **345-027-0063**

2 **Determination of Completeness for a Request for Amendment**

- 3 (1) Until the Department of Energy determines the request for amendment to the site
4 certificate is complete, it is a preliminary request for amendment. After receiving a
5 preliminary request for amendment, the Department may seek comments from reviewing
6 agencies to determine whether that request is complete.
- 7 (2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a
8 preliminary request for ~~standard~~ amendment under type A review, and within 21 days after
9 receipt of a preliminary request for an expedited amendment under type B review, the
10 Department shall notify the certificate holder whether the request for amendment is
11 complete. In the notification, the Department shall:
12 (a) State that the request for amendment is complete; or
13 (b) State that the request for amendment is incomplete and:
14 (A) Describe any additional information needed to complete the request for
15 amendment to the extent known to the Department at the time of the notification,
16 including identification of applicable laws and Council standards not addressed in
17 the preliminary request for amendment,
18 (B) Ask the certificate holder to submit the additional information by the due dates
19 described in section (4), and
20 (C) Estimate the additional time the Department will need to make a determination of
21 completeness following the submittal of the additional information by the certificate
22 holder.
- 23 (3) If the Department does not notify the certificate holder as described in section (2), the
24 request for ~~standard~~ amendment under type A review is deemed complete 60 days after
25 receipt of a preliminary request for ~~standard~~ amendment, and the request for an
26 expedited amendment under type B review is deemed complete 21 days after receipt of a
27 preliminary request for an expedited amendment. Otherwise, the request for amendment is
28 complete as determined under section (5).
- 29 (4) The Department may specify a date by which the certificate holder must submit additional
30 information needed to complete the request for amendment. If follow-up requests for
31 additional information are needed, the Department may specify dates by which the
32 certificate holder must submit the information. At the request of the certificate holder, the
33 Department may allow additional time for submission of the information. If the certificate
34 holder does not submit the information by the deadline specified by the Department,
35 including any allowed extension, the Council may reject the preliminary request for
36 amendment. The rejection of a preliminary request for amendment is subject to appeal
37 under ORS 469.403(3).
- 38 (5) A request for amendment is complete when the Department finds that the certificate holder
39 has submitted information adequate for the Council to make findings or impose conditions
40 on all applicable laws and Council standards. The Department shall notify the certificate
41 holder when the Department finds that the request for amendment is complete.
- 42 (6) After receiving notification from the Department that the preliminary request for
43 amendment is complete, the Department may require the certificate holder to prepare a

1 consolidated request for amendment that includes all revisions to the preliminary request
2 for amendment and all additional information requested by the Department before the
3 determination of completeness. Upon a request by the Department, the certificate holder
4 shall submit paper and non-copy-protected electronic copies of the consolidated request
5 for amendment to the Department as specified by the Department.

- 6 (7) If, after a determination that a request for amendment is complete, the Department
7 identifies a need for additional information during its review of the request for amendment,
8 the Department may request additional information from the certificate holder.

9
10 **345-027-0065**

11 **Draft Proposed Order for a Request for Amendment**

12 (1) Within ~~715~~ days after a request for amendment to the site certificate described in OAR 345-
13 027-0050(3) ~~and(4),—(5)~~ or a request for amendment to apply later-adopted laws
14 described in OAR 345-027-0090, is determined to be complete, the Department of Energy
15 shall:

16 (a) Send notice to the certificate holder specifying a date for issuance of a draft proposed
17 order. The date of issuance of a draft proposed order for a standard type A request for
18 amendment that is shall be no later than 120 days after the date of the notice. The date
19 of issuance of a draft proposed order for an expedited type B request for amendment
20 shall be no later than 60 days after the date of the notice.

21 (b) Post an announcement on the Department's website to notify the public that a complete
22 request for amendment has been received. The announcement shall include:

- 23 (A) A copy of the complete request for amendment;
24 (B) The date the draft proposed order will be issued, as specified in the notice required
25 by subsection (1)(a); and
26 (C) A statement that the public comment period begins upon issuance of the draft
27 proposed order.

28 (2) No later than the date specified in the notice required by subsection (1)(a), the Department
29 shall issue a draft proposed order recommending approval, modification, or denial of the
30 requested amendment. The Department may issue the draft proposed order at a later date,
31 but the Department shall, no later than the date the Department has specified in the notice
32 required by subsection (1)(a), notify the certificate holder in writing of the reasons for the
33 delay. The draft proposed order may include, but is not limited to draft proposed findings of
34 fact, conclusions of law, and conditions concerning the facility's compliance with applicable
35 laws and Council Standards.

36
37 **345-027-0067**

38 **Public Comment and Hearing on the Draft Proposed Order for ~~a Standard Requests~~ for**
39 **Amendment Under Type A Review**

40 (1) After issuance of the draft proposed order as described in OAR 345-027-0065, the Council
41 shall conduct a public hearing on the request for amendment to the site certificate in the
42 vicinity of the facility. The public hearing must be held at least 20 days after the draft
43 proposed order is issued. The public hearing is not a contested case hearing.

- 1 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
2 0065, the Department of Energy shall:
- 3 (a) Send the notice described in section (3) of this rule by mail or email to:
4 (A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;
5 (B) Persons on any special mailing list established for the facility;
6 (C) The reviewing agencies as defined in OAR 345-001-0010(52); and
7 (D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F,
8 (b) Post the complete request for amendment, draft proposed order, and the notice of the
9 draft proposed order and public hearing on the Department website, and
10 (c) Make physical copies of the draft proposed order available to the public for inspection.
- 11 (3) Notice of the complete request for amendment, draft proposed order and public hearing
12 shall include:
- 13 (a) A description of the facility and the facility's general location.
14 (b) The date, time and location of the public hearing described in this rule.
15 (c) The name, address, email address and telephone number of the Department
16 representative to contact for additional information.
17 (d) Addresses of the physical location(s) and the website where the public may review
18 copies of the complete request for amendment and draft proposed order.
19 (e) The deadline for the public to submit written comments to be included in the record of
20 the public hearing and how such comments should be submitted.
21 (f) A statement that:
22 (A) A complete request for amendment has been received and reviewed by the
23 Department.
24 (B) The Department has issued a draft proposed order.
25 (C) To raise an issue on the record of the public hearing, a person must raise the issue in
26 person at the public hearing or in a written comment submitted after the date of the
27 notice of the public hearing and received by the Department before the close of the
28 record of the public hearing.
29 (D) A person's failure to raise an issue in person or in writing on the record of the public
30 hearing precludes the Council's consideration of whether to grant that person's
31 subsequent contested case request.
32 (E) Failure to raise an issue with sufficient specificity to afford the Council, the
33 Department, and the certificate holder an opportunity to respond to the issue
34 precludes the Council from considering whether that issue justifies a contested case
35 proceeding.
36 (F) To raise an issue with sufficient specificity, a person must present facts, on the
37 record of the public hearing, that support the person's position on the issue.
38 (G) The Council will not accept or consider any further public comment on the request
39 for amendment or on the draft proposed order after the close of the record of the
40 public hearing.
- 41 (4) During the public hearing, the Department shall explain the amendment process, including
42 the means and opportunities for the general public to participate in the process. The
43 Department may provide this explanation by a written handout.

- 1 (5) At the commencement of the public hearing, the presiding officer shall read aloud the
2 following:
3 (a) A person who intends to request a contested case on the proposed order for a site
4 certificate amendment must comment in person or in writing on the record of the public
5 hearing.
6 (b) A person who intends to raise an issue that may be the basis for granting a contested
7 case proceeding must raise that issue on the record of the public hearing with sufficient
8 specificity to afford the Council, the department and the certificate holder an adequate
9 opportunity to respond to the issue. To raise an issue with sufficient specificity, a person
10 must present facts, on the record of the public hearing, that support the person's
11 position on the issue.
- 12 (6) At the public hearing, any person may present information regarding the pending request
13 for amendment without administration of an oath. The presiding officer shall record all
14 presentations made during the public hearing. The presentations are part of the decision
15 record for the request for amendment.
- 16 (7) Following the close of the record of the public hearing on the draft proposed order, the
17 Council shall review the draft proposed order, shall consider all comments received on the
18 record of the hearing, and may provide comments to the Department regarding the draft
19 proposed order. When the Council meets to review a draft proposed order, the Council
20 does not permit the certificate holder, reviewing agencies or the public to comment on any
21 issue that may be the basis for a contested case request.

22
23 **345-027-0068**

24 **Public Written Comment on the Draft Proposed Order for an Expedited Requests for**
25 **Amendment Under Type B Review**

26 (1) After issuance of the draft proposed order as described in OAR 345-027-0065, the Council
27 shall solicit and receive written public comments on the draft proposed order. The
28 Department of Energy shall specify a written comment deadline at least 20 days after the
29 draft proposed order is issued.

30 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
31 0065, the Department shall:

32 (a) Send the notice described in section (3) of this rule by mail or email to:

33 (A) Persons on the Council's general mailing list as defined in OAR 345-011-0020;

34 (B) Persons on any special mailing list established for the facility;

35 (C) The reviewing agencies as defined in OAR 345-001-0010(52); and

36 (D) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F,

37 (b) Post the complete request for amendment, draft proposed order, and the notice of the
38 draft proposed order and written comment deadline on the Department website, and

39 (c) Make physical copies of the draft proposed order available to the public for inspection.

40 (3) Notice of the complete request for amendment, draft proposed order and written comment
41 deadline shall include:

42 (a) A description of the facility and the facility's general location.

- 1 (b) The name, address, email address and telephone number of the Department
2 representative to contact for additional information.
3 (c) Addresses of the physical location(s) and the website where the public may review
4 copies of the complete request for amendment and draft proposed order.
5 (d) The deadline for the public to submit written comments to be included in the record of
6 the draft proposed order and how such comments should be submitted.
7 (e) A statement that:
8 (A) A complete request for amendment has been received and reviewed by the
9 Department.
10 (B) The Department has issued a draft proposed order.
11 (C) To raise an issue on the record of the draft proposed order, a person must raise the
12 issue in a written comment submitted after the date of the notice of the draft
13 proposed order and written comment deadline, and received by the Department
14 before the written comment deadline.
15 (D) The Council will not accept or consider any further public comment on the request
16 for amendment or on the draft proposed order after the written comment deadline
17 that closes the record on the draft proposed order.
18 (E) Only those persons, including the site certificate holder, who provided written
19 comment by the written comment deadline may seek judicial review as provided in
20 ORS 469.403 and issues eligible for judicial review are limited to the issues raised in
21 that person's written comments.
22

23 **345-027-0069**

24 **Proposed Order, Requests for Contested Case and Council's Final Decision on**
25 **Standard Requests for Amendment Under Type A Review**

- 26 (1) No later than 30 days after the Council has reviewed the draft proposed order and
27 considered all comments received on the record of the public hearing under 345-027-0067,
28 the Department of Energy shall issue a proposed order recommending approval,
29 modification or denial of the request(s) for amendment to the site certificate. The
30 Department must consider any oral comments made at the public hearing, written
31 comments received before the close of the record of the public hearing, agency
32 consultation, and any Council comments. The Department may issue the proposed order at
33 a later date, but the Department shall, no later than 30 days after the Council has reviewed
34 the draft proposed order and considered all comments received on the record of the public
35 hearing, notify the certificate holder in writing of the reasons for the delay.
36 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
37 proposed order by posting public notice as an announcement on its website and by sending
38 public notice by mail or email to:
39 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
40 (b) Persons on any special list established for the facility,
41 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
42 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.
43 (3) Notice of the proposed order shall include:

- 1 (a) A description of the facility and the facility's general location.
- 2 (b) A description of the process for requesting a contested case.
- 3 (c) The physical and website addresses of where the public may review copies of the
- 4 proposed order.
- 5 (d) The name, address, email address and telephone number of the Department
- 6 representative to contact for more information.
- 7 (4) On the same date the notice of proposed order as described in section (2) is issued, the
- 8 Department shall send a notice of the opportunity to request a contested case to the
- 9 certificate holder and to all persons who commented in person or in writing on the record
- 10 of the public hearing as described in OAR 345-027-0067. The notice shall include the
- 11 deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and
- 12 (9).
- 13 (5) Only those persons, including the site certificate holder, who commented in person or in
- 14 writing on the record of the public hearing described in OAR 345-027-0067 may request a
- 15 contested case proceeding on the proposed order for an amendment to the site certificate.
- 16 To properly raise an issue in a request for a contested case proceeding on the proposed
- 17 order for an amendment, the issue must be within the jurisdiction of the Council, and the
- 18 person must have raised the issue in person or in writing on the record of the public
- 19 hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-
- 20 0067, or unless the action recommended in the proposed order differs materially from the
- 21 draft proposed order, including any recommended conditions of approval, in which case the
- 22 person may raise only new issues within the jurisdiction of the Council that are related to
- 23 such differences. If a person has not raised an issue at the public hearing with sufficient
- 24 specificity to afford the decision maker an opportunity to respond to the issue, the Council
- 25 shall not grant a contested case proceeding for that issue. To have raised an issue with
- 26 sufficient specificity, the person must have presented facts at the public hearing that
- 27 support that person's position on the issue.
- 28 (6) Contested case requests must be submitted in writing and must be received by the
- 29 Department by a specified deadline that is at least 30 days from the date of notice in
- 30 section (4). Contested case requests must include:
- 31 (a) The person's name, mailing address and email address and any organization the person
- 32 represents;
- 33 (b) A short and plain statement of the issue or issues the person desires to raise in a
- 34 contested case proceeding;
- 35 (c) A statement that describes why the Council should find that the requester properly
- 36 raised each issue, as described in section (7), including a specific reference to the
- 37 person's prior comments to demonstrate that the person raised the specific issue or
- 38 issues on the record of the public hearing, if applicable;
- 39 (d) A statement that describes why the Council should determine that each identified issue
- 40 justifies a contested case, under the evaluation described in section (9).
- 41 (e) A detailed description of the person's interest in the proceeding and how that interest
- 42 may be affected by the outcome of the proceeding.
- 43 (f) Name and address of the person's attorney, if any;

- 1 (g) A statement of whether the person's request to participate in a contested case is as a
2 party or a limited party, and if as a limited party, the precise area or areas in which
3 participation is sought;
- 4 (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a
5 detailed statement of the person's interest, economic or otherwise, and how such
6 interest may be affected by the results of the proceeding;
- 7 (i) If the person seeks to represent a public interest in the results of the proceeding, a
8 detailed statement of such public interest, the manner in which such public interest will
9 be affected by the results of the proceeding, and the person's qualifications to
10 represent such public interest; and
- 11 (j) A statement of the reasons why others who commented on the record of the public
12 hearing cannot adequately represent the interest identified in subsections (h) or (i).
- 13 (7) Before considering whether an issue justifies a contested case proceeding under section (9),
14 the Council must determine that the person requesting a contested case commented in
15 person or in writing on the record of the public hearing and properly raised each issue
16 included in the request. To determine that a person properly raised each issue included in
17 the request, the Council must find that:
- 18 (a) The person making the contested case request raised the issue on the record of the
19 public hearing described in OAR 345-027-0067 with sufficient specificity to afford the
20 Council, the Department and the certificate holder an adequate opportunity to respond
21 to the issue;
- 22 (b) The Department did not follow the requirements of OAR 345-027-0067; or
- 23 (c) If the action recommended in the proposed order, including any recommended
24 conditions of approval, differs materially from the action recommended in the draft
25 proposed order, the contested case request identified new issues that are related to
26 such material differences.
- 27 (8) If the Council finds that the person requesting a contested case failed to comment in person
28 or in writing on the record of the public hearing or failed to properly raise any issue, as
29 described in section (7), the Council must deny that person's contested case request. If the
30 Council finds that the person requesting a contested case commented in person or in
31 writing on the record of the public hearing and properly raised one or more issues, the
32 Council's determination of whether an issue justifies a contested case, as described in
33 section (9), shall be limited to those issues the Council finds were properly raised.
- 34 (9) After identifying the issues properly raised the Council shall determine whether any properly
35 raised issue justifies a contested case proceeding on that issue. To determine that an issue
36 justifies a contested case proceeding, the Council must find that the request raises a
37 significant issue of fact or law that may affect the Council's determination that the facility,
38 with the change proposed by the amendment, meets the applicable laws and Council
39 standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have
40 jurisdiction over the issue raised in the request, the Council must deny the request.
- 41 (10) The Council must take one of the following actions when determining if a request
42 identifying one or more properly raised issues justifies a contested case proceeding:

- 1 (a) If the Council finds that the request identifies one or more properly raised issues that
2 justify a contested case proceeding, the Council shall conduct a contested case
3 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014 and
4 345-015-0018 to -0085. The Council shall identify the contested case parties and shall
5 identify the issues each contested case party may participate on. The parties to a
6 contested case proceeding shall be limited to those persons who commented on the
7 record of the public hearing and who properly raised issues in their contested case
8 request that the Council found sufficient to justify a contested case, except that the
9 certificate holder is an automatic party to a contested case. The issues a party to a
10 contested case proceeding may participate on shall be limited to those issues that party
11 properly raised in its contested case request that the Council found sufficient to justify a
12 contested case, except that the certificate holder may participate on any issue the
13 Council found sufficient to justify a contested case proceeding.
- 14 (b) If the Council finds that the request identifies one or more properly raised issues that an
15 amendment to the proposed order, including modification to conditions, would settle in
16 a manner satisfactory to the Council, the Council may deny the request as to those
17 issues and direct the Department to amend the proposed order and send a notice of the
18 amended proposed order to the persons described in section (4). Only the certificate
19 holder and those persons who commented on the record of the hearing may, in a
20 writing received by the Department within 30 days after the Department issues the
21 notice of the amended proposed order, request a contested case proceeding limited to
22 issues related to the amendment to the proposed order. As described in section (9), the
23 Council shall determine whether any issue identified in the request for a contested case
24 proceeding justifies a contested case proceeding. A person's contested case request
25 under this subsection shall include:
- 26 (A) The person's name, mailing address and email address;
27 (B) A statement of the contested issues related to the amendment to the proposed
28 order, including facts believed to be at issue; and
29 (C) A statement that describes why the Council should find an issue justifies a contested
30 case, as described in section (8).
- 31 (c) If the Council finds that the request does not identify a properly raised issue that
32 justifies a contested case proceeding, the Council shall deny the request. In a written
33 order denying the request, the Council shall state the basis for the denial. The Council
34 shall then adopt, modify or reject the proposed order based on the considerations
35 described in OAR-345-027-0071. In a written order the Council shall either grant or deny
36 issuance of an amended site certificate. If the Council grants issuance of an amended
37 site certificate, the Council shall issue an amended site certificate, which is effective
38 upon execution by the Council Chair and by the certificate holder.
- 39 (11) If there is no request for a contested case proceeding as described in section (6) or
40 subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on
41 the considerations described in OAR 345-027-0071. In a written order, the Council shall
42 either grant or deny issuance of an amended site certificate. If the Council grants issuance

1 of an amended site certificate, the Council shall issue an amended site certificate, which is
2 effective upon execution by the Council Chair and by the certificate holder.
3 (12) Judicial review of the Council's final order either granting or denying an amended site
4 certificate shall be as provided in ORS 469.403.

5
6 **345-027-0070**

7 **Proposed Order and Council's Final Decision on ~~an Expedited~~ Requests for Amendment Under**
8 **Type B Review**

9 (1) No later than 21 days after the written comment deadline that closes the record on the
10 draft proposed order, the Department of Energy shall issue a proposed order
11 recommending approval, modification or denial of the request(s) for amendment to the site
12 certificate. The Department must consider any written comments received before the close
13 of the record on the draft proposed order and any agency consultation. The Department
14 may issue the proposed order at a later date, but the Department shall, no later than 21
15 days after the close of the record on the draft proposed order, notify the certificate holder
16 in writing of the reasons for the delay.

17 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
18 proposed order by posting public notice as an announcement on its website and by sending
19 public notice by mail or email to:

20 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,

21 (b) Persons on any special list established for the facility,

22 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and

23 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.

24 (3) Notice of the proposed order shall include:

25 (a) A description of the facility and the facility's general location.

26 (b) The physical and website addresses of where the public may review copies of the
27 proposed order.

28 (c) The name, address, email address and telephone number of the Department
29 representative to contact for more information.

30 (a) A statement that only those persons, including the site certificate holder, who provided
31 written comment by the written comment deadline may seek judicial review as
32 provided in ORS 469.403 and issues eligible for judicial review are limited to the issues
33 raised in that person's written comments.

34 (4) The Council, may adopt, modify or reject the proposed order based on the considerations
35 described in OAR 345-027-0071. In a written order, the Council shall either grant or deny
36 issuance of an amended site certificate. If the Council grants issuance of an amended site
37 certificate, the Council shall issue an amended site certificate, which is effective upon
38 execution by the Council Chair and by the certificate holder.

39 (5) Judicial review of the Council's final order either granting or denying an amended site
40 certificate shall be as provided in ORS 469.403, provided that only those persons, including
41 the site certificate holder, who provided written comment by the written comment

1 deadline may seek judicial review as provided in ORS 469.403 and issues eligible for judicial
2 review are limited to the issues raised in that person's written comments.
3

4 **OAR 345-027-0071 Scope of Council's Review**

- 5 (1) In making a decision to grant or deny issuance of an amended site certificate, the Council
6 shall apply the applicable laws and Council standards required under section (2) and in
7 effect on the dates described in section (3).
- 8 (2) To issue an amended site certificate, the Council shall determine that the preponderance of
9 evidence on the record supports the following conclusions:
- 10 (a) For a request for amendment proposing to add new area to the site boundary, the
11 portion of the facility within the area added to the site by the amendment complies with
12 all laws and Council standards applicable to an original site certificate application.
- 13 (b) For a request for amendment to extend the deadlines for beginning or completing
14 construction, after considering any changes in facts or law since the date the current
15 site certificate was executed, the facility complies with all laws and Council standards
16 applicable to an original site certificate application. However, for requests to extend
17 completion deadlines, the Council need not find compliance with an applicable law or
18 Council standard if the Council finds that:
- 19 (A) The certificate holder has spent more than 50 percent of the budgeted costs on
20 construction of the facility;
- 21 (B) The inability of the certificate holder to complete the construction of the facility by
22 the deadline in effect before the amendment is the result of unforeseen
23 circumstances that are outside the control of the certificate holder;
- 24 (C) The standard, if applied, would result in an unreasonable financial burden on the
25 certificate holder; and
- 26 (D) The Council does not need to apply the standard to avoid a significant threat to the
27 public health, safety or the environment;
- 28 (c) For any other requests for amendment not described above, the facility, with the
29 proposed changes, complies with the applicable laws or Council standards that protect a
30 resource or interest that could be affected by the proposed changes.
- 31 (d) For all requests for amendment, the amount of the bond or letter of credit required
32 under OAR 345-022-0050 is adequate.
- 33 (3) In making the findings required to grant an amendment under section (2), the Council shall
34 apply the applicable law and Council standards in effect on the following dates:
- 35 (a) For the applicable substantive criteria under the Council's land use standard, as
36 described in OAR 345-022-0030, the date the certificate holder submitted the request
37 for amendment, and
- 38 (b) For all other applicable laws and Council standards, the date the Council issues the
39 amended site certificate.
40
41

1 **345-027-0080**

2 **Limited Type C Review Process for Pre-Operational Requests for Amendment**

- 3 1) A certificate holder may only request the limited type C review for a request for
4 amendment when the change proposed in the request for amendment relates to the
5 facility, or portion/phase of the facility, not yet in operation, but approved for construction
6 in the site certificate or amended site certificate. A certificate holder cannot request type C
7 review of a request for amendment proposing to extend construction deadlines.
- 8 2) Requests under section (1) must be submitted in writing to the Department of Energy and
9 must include:
- 10 (a) A complete request for amendment, including the information described in 345-027-
11 0060(1);
- 12 (b) The reasons why the certificate holder needs type C review of its request for
13 amendment;
- 14 (c) An explanation of why the proposed change could not have been reasonably foreseen
15 by the certificate holder;
- 16 (d) An explanation of why the proposed change is unavoidable; and
- 17 (e) Reasons why the type C review is adequate to prevent significant adverse impacts to the
18 resources and interests protected by Council standards.
- 19 3) Upon receiving a request under section (1), the Department shall post the request and the
20 request for amendment on the Department's website.
- 21 4) Within 3 days after receiving a request under section (1), the Department shall issue a
22 written determination either granting or denying type C review. Upon issuance, the
23 Department shall post the written determination on its website.
- 24 5) If the Department denies type C review, the certificate holder may request the
25 Department's determination to be referred to the Council. If requested, the Department
26 must refer its determination to the Council for concurrence, modification or rejection. Upon
27 a Department determination being referred to the Council, the Council chair shall convene a
28 Council meeting as promptly as possible as described in OAR 345-011-0015.
- 29 6) To grant a request under section (1), the Department or the Council must find:
- 30 (a) Construction of the certificated energy facility, or portion of the certificated energy
31 facility, has not been deemed complete;
- 32 (b) The request for amendment is complete;
- 33 (c) Type C review is necessary;
- 34 (d) The proposed change could not have been reasonably foreseen by the certificate
35 holder;
- 36 (e) The proposed change is unavoidable; and
- 37 (f) Type C review is adequate to prevent significant adverse impacts to the resources and
38 interests protected by the Council's standards.
- 39 7) Within 7 days after a request under section (1) is granted, the Department shall:
- 40 (a) Issue a draft temporary order approving or denying the request for amendment,
41 including a recommendation to the Council on whether Council review should be
42 completed through the type A or type B review process; and
- 43 (b) Post the draft temporary order on the Department's website.

- 1 8) The Council shall, at its first meeting following the Department's issuance of a draft
2 temporary order, consider the draft temporary order and consider whether review should
3 be completed through the type A or type B review process. Upon issuance of a draft
4 temporary order, the Council chair may call a special Council meeting, as described in OAR
5 345-011-0015, to be held as promptly as possible.
- 6 9) After considering the draft temporary order and the Department's recommendation on
7 whether review should be completed through the type A or type B review process, the
8 Council shall adopt, modify, or reject the draft temporary order based on the considerations
9 described in OAR 345-027-0071, and the Council shall decide whether review should be
10 completed through the type A or type B review process. In a written temporary order, the
11 Council shall either temporarily grant issuance of an amended site certificate, or deny
12 issuance of an amended site certificate.
- 13 10) Before implementing any change approved by the Council's temporary order, the certificate
14 holder must submit an authorized acknowledgement that the certificate holder accepts all
15 terms and conditions of the temporary order.
- 16 11) If review is to be completed through the type A review process, review proceeds as
17 described in 345-027-0067, -0069, and -0071, where the temporary order replaces all
18 references to the draft proposed order.
- 19 12) If review is to be completed through the type B review process, review proceeds as
20 described in 345-027-0068, -0070, and -0071, where the temporary order replaces all
21 references to the draft proposed order.
- 22 13) Any deviation between the language and conditions of a temporary order issued under this
23 rule and a final order issued under this rule must be remedied by the certificate holder.

24
25 **345-027-0085**

26 **Request for Amendment to Extend Construction Deadlines**

- 27 (1) The certificate holder may request an amendment to the site certificate to extend the
28 deadlines for beginning or completing construction of the facility, or portion/phase of the
29 facility, that the Council has approved~~specified~~ in a site certificate or an amended site
30 certificate by submitting a preliminary request for amendment in accordance with 345-027-
31 0060. The preliminary request for amendment must include an explanation of the need for
32 an extension and must be submitted to the Department of Energy before the applicable
33 construction deadline, but no earlier than the date twelve months before the applicable
34 construction deadline.
- 35 (2) A preliminary request for amendment received by the Department within the time allowed
36 under section (1) to extend the deadlines for beginning and completing construction
37 suspends expiration of the site certificate or amended site certificate until the Council acts
38 on the request for amendment. If the Council denies the extension request after the
39 applicable construction deadline, the site certificate is deemed expired as of the applicable
40 construction deadline specified in the site certificate or amended site certificate.
- 41 (3) If the Council grants an amendment under this rule, the Council shall specify new deadlines
42 for beginning or completing construction that are the later of:
43 (a) Three years from the deadlines in effect before the Council grants the amendment, or

1 (b) Following a contested case proceeding conducted pursuant to OAR 345-027-0069, two
2 years from the date the Council grants the amendment.

3 (4) The Council shall not grant more than two amendments to extend the deadline for
4 beginning construction of a facility or a phase of a facility.

5
6 **345-027-0090**

7 **Request by Any Person for Amendment to Apply Later-Adopted Laws**

8 (1) Any person may request an amendment of a site certificate to apply a law(s), including local
9 government ordinances, statutes, rules or Council standards, adopted after the date the site
10 certificate was executed, if the person contends failure to apply the law(s) results in a
11 significant threat to the public health or safety or to the environment. The Department of
12 Energy itself may initiate such a request.

13 (2) To request an amendment to apply later-adopted law(s) under this rule, the person shall
14 submit a preliminary request for amendment to the Department with the information
15 described in 345-027-0060(1)(a),(c),(d) and the following:

16 (a) Identification of the law(s) that the person seeks to apply to the facility; and

17 (b) The particular facts that the person believes clearly show a significant threat to the
18 public health, safety or the environment that requires application of the later adopted
19 law(s).

20 (3) If the Department receives a preliminary request for amendment to apply later-adopted
21 law(s) as described in this rule from any person other than the certificate holder, the
22 Department shall send a copy of the request to the certificate holder. The transmittal shall
23 include a deadline by which the certificate holder must submit a response to the
24 Department. In its response, the certificate holder shall state whether it agrees that there is
25 a clear showing of a significant threat to the public health, safety or the environment that
26 requires application of the later-adopted law(s).

27 (a) If the certificate holder concludes the later-adopted law(s) should be applied to the
28 facility, the Council shall review the request to apply later-adopted law(s) as a complete
29 request for amendment in accordance with section (5).

30 (b) If the certificate holder concludes that the law(s) should not be applied to the facility, or
31 if the certificate holder does not respond with its conclusion before the specified
32 deadline, the Department shall ask the Council to determine whether the request
33 clearly shows a significant threat to the public health, safety or the environment that
34 requires application of the later-adopted law(s).

35 (A) If the Council determines there is not a clear showing of a significant threat to the
36 public health, safety or the environment that requires application of the later
37 adopted law(s), the Council shall deny the request to apply later-adopted law(s).

38 (B) If the Council determines there is a clear showing of a significant threat to the public
39 health, safety or the environment that requires application of the later adopted
40 law(s), the Council shall review the request to apply later-adopted law(s) as a
41 complete request for amendment in accordance with section (5)

42 (4) A preliminary request for amendment to apply later-adopted law(s) under this rule is
43 considered a complete request for amendment for purposes of OAR 345-027-0063 on:

- 1 (a) If the request to apply later-adopted law(s) is made by the certificate holder, the date
2 the request is received by the Department.
- 3 (b) If the request to apply later-adopted law(s) is made by a person other than the
4 certificate holder, and if the certificate holder responds as described in subsection
5 (3)(a), the date the response described in subsection (3)(a) is received by the
6 Department.
- 7 (c) If the request to apply later-adopted law(s) is made by a person other than the
8 certificate holder, and if the certificate holder responds as described in subsection (3)(b)
9 or does not respond before the specified deadline under section (3), the date of the
10 Council's determination under paragraph (3)(b)(B).
- 11 (5) After receiving a complete request for amendment under section (4) of this rule, the Council
12 shall review the request for amendment as described in OAR 345-027-0065, 345-027-0067,
13 345-027-0069 and 345-027-0071, except that:
- 14 (a) If the Department recommends approval or modified approval of the requested
15 amendment, the Department shall include in the proposed order described in OAR 345-
16 027-0069 any new or modified site certificate conditions necessary to assure
17 compliance with the law(s) applied to the facility under the proposed order;
- 18 (b) If the Department in its proposed order recommends approval or modified approval of
19 the requested amendment, the certificate holder may, by written request submitted to
20 and received by the Department within 30 days after the Department issues the
21 proposed order, ask the Council to hold a contested case proceeding on the proposed
22 order. In the request, the certificate holder shall provide a description of the issues to
23 be contested and a statement of the facts believed to be at issue. If the certificate
24 holder requests a contested case proceeding, the Council shall conduct a contested case
25 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014, and
26 345-015-0018 to 345-015-0085 limited to the issues stated by the certificate holder; and
- 27 (c) The Council shall include new conditions in a site certificate amended under this rule
28 only if the Council finds that the conditions are necessary based upon a clear showing of
29 a significant threat to the public health, safety or the environment.

30
31 **345-027-0100**

32 **Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the**
33 **Certificate Holder**

- 34 (1) For the purpose of this rule:
- 35 (a) A request for amendment to a site certificate to transfer the site certificate is required
36 for a transaction that results in a change in the ownership, possession or control of the
37 facility or the certificate holder.
- 38 (b) "New owner" means the person or entity that will gain ownership, possession or control
39 of the facility or the certificate holder.
- 40 (2) When the certificate holder has knowledge that a transaction that requires a transfer of the
41 site certificate as described in section (1)(a) is or may be pending, the certificate holder shall
42 notify the Department of Energy. In the notice, the certificate holder shall include the name
43 and contact information of the new owner, and the date of the transfer of ownership. If

- 1 possible, the certificate holder shall notify the Department at least 60 days before the date
2 of the transfer of ownership.
- 3 (3) A transaction that would require a transfer of the site certificate as described in subsection
4 (1)(a) does not terminate the transferor's duties and obligations under the site certificate
5 until the Council approves a transfer request and issues an amended site certificate. The
6 new owner is not allowed to construct or operate the facility until an amended site
7 certificate as described in section (10) or a temporary amended site certificate as described
8 in section (11) becomes effective.
- 9 (4) To request an amendment to transfer the site certificate, the new owner shall submit a
10 written request to the Department that includes the information described in OAR 345-021-
11 0010(1)(a), (d), (f) and (m), a certification that the new owner agrees to abide by all terms
12 and conditions of the site certificate currently in effect and, if known, the expected date of
13 the transaction. If applicable, the new owner shall include in the request the information
14 described in OAR 345-021-0010(1)(y)(O)(iv).
- 15 (5) The Department may require the new owner to submit a written statement from the
16 current certificate holder, or a certified copy of an order or judgment of a court of
17 competent jurisdiction, verifying the new owner's right, subject to the provisions of ORS
18 Chapter 469 and the rules of this chapter, to possession or control of the site or the facility.
- 19 (6) Within 15 days after receiving a request for amendment to transfer the site certificate, the
20 Department shall send a notice of the request by mail or email to the reviewing agencies as
21 defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined
22 in OAR 345-011-0020, to any special list established for the facility and to the updated
23 property owner list submitted by the new owner under section (4). In the notice, the
24 Department shall describe the transfer request, specify a date by which comments are due
25 and state that the date of the Council's transfer hearing will be announced on the
26 Department's website.
- 27 (7) Before acting on the request for amendment to transfer the site certificate, the Council shall
28 hold a transfer hearing. The Council shall hold the transfer hearing during a Council meeting
29 and shall provide notice of the hearing on its meeting agenda, which will be sent by mail or
30 email to the Council's general mailing list in advance of the meeting. The transfer hearing is
31 not a contested case hearing. During the hearing the Council will accept comments from the
32 public, reviewing agencies and new owner regarding the new owner's compliance with the
33 Council standards described in section (8)(a).
- 34 (8) At the conclusion of the transfer hearing or at a later meeting, the Council may issue an
35 order approving the transfer request if the Council finds that:
- 36 (a) The new owner complies with the Council standards described in OAR 345-022-0010,
37 345-022-0050 and, if applicable, OAR 345-024-0710(1); and
- 38 (b) The new owner is or will be lawfully entitled to possession or control of the site or the
39 facility described in the site certificate.
- 40 (9) Except as described in section (12), the Council shall not otherwise change the terms and
41 conditions of the site certificate in an order approving the transfer request.
- 42 (10) Upon issuing the order described in section (8), the Council shall issue an amended site
43 certificate that names the new owner as the new certificate holder or as the new owner of

1 the certificate holder. The amended site certificate is effective upon execution by the
2 Council chair and the new owner. The Council shall issue the amended site certificate in
3 duplicate counterpart originals and each counterpart, upon signing, will have the same
4 effect.

- 5 (11) If the Council chair determines that special circumstances justify emergency action, the
6 Council chair may, upon a written request from the new owner that includes a showing that
7 the new owner can meet the requirements of section (8), issue a temporary amended site
8 certificate that names the new owner as the new certificate holder or as the new owner of
9 the certificate holder. The temporary amended site certificate is effective upon execution
10 by the Council chair and the new owner. The temporary amended site certificate expires
11 when an amended site certificate as described in section (10) becomes effective or as the
12 Council otherwise orders.

13
14 **345-027-0110**

15 **Termination of a Site Certificate**

- 16 (1) A certificate holder may apply to the Council to terminate a site certificate at any time,
17 subject to the requirements of this rule.
- 18 (2) A certificate holder must apply to the Council to terminate a site certificate within two years
19 following cessation of construction or operation of the facility.
- 20 (3) If the certificate holder fails to apply to the Council to terminate the site certificate and the
21 Council finds that the certificate holder has permanently ceased construction or operation
22 of the facility, then the Council may terminate the site certificate according to the
23 procedure described in OAR 345-025-0006(16).
- 24 (4) In an application for termination of the site certificate, the certificate holder shall include a
25 proposed final retirement plan for the facility and site. The certificate holder shall submit an
26 original and two printed copies of the application for termination and the proposed final
27 retirement plan to the Department of Energy. Upon a request by the Department, the
28 certificate holder must submit printed copies of the application for termination and the
29 proposed final retirement plan for members of the Council. In addition to the printed
30 copies, the certificate holder shall submit the full copies of the application for termination
31 and the proposed final retirement plan in a non-copy-protected electronic format
32 acceptable to the Department.
- 33 (5) In the proposed final retirement plan, the certificate holder shall include:
- 34 (a) A plan for retirement that provides for completion of retirement without significant
35 delay and that protects public health, safety and the environment.
- 36 (b) A description of actions the certificate holder proposes to take to restore the site to a
37 useful, non-hazardous condition, including information on how impacts to fish, wildlife
38 and the environment would be minimized during the retirement process.
- 39 (c) A current detailed cost estimate and a plan for ensuring the availability of adequate
40 funds for completion of retirement.
- 41 (d) An updated list of the owners of property located within or adjacent to the site of the
42 facility, as described in OAR 345-021-0010(1)(f).

- 1 (6) Within 15 days after receiving an application for termination of a site certificate, the
2 Department of Energy shall:
- 3 (a) Send a notice of the application by mail or email to all persons on the Council's general
4 mailing list as defined in OAR 345-011-0020, to any special list established for the facility
5 and to the updated property owner list submitted by the certificate holder under
6 subsection (5) specifying a date by which comments on the application are due.
- 7 (b) Send copies of the application for termination by mail or email to the reviewing agencies
8 as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified
9 date.
- 10 (c) Post an announcement of the application for termination on the Department's website.
- 11 (7) The Council shall review the proposed final retirement plan and shall consider any
12 comments received from the public and the reviewing agencies. The Council may approve
13 the proposed final retirement plan or modify the plan to comply with the rules of this
14 chapter and applicable conditions in the site certificate. The Council shall issue an order
15 authorizing retirement according to the approved or modified final retirement plan and
16 subject to any conditions the Council finds appropriate. The Council's order may be
17 appealed as described in ORS 183.480.
- 18 (8) When the Council finds that the certificate holder has completed the retirement of the
19 facility according to the Council's order authorizing retirement, the Council shall issue an
20 order terminating the site certificate.
- 21 (9) When the Council finds that the site certificate has expired as described in OAR 345-027-
22 0013, the Council shall issue an order terminating the site certificate.

Department of Energy Approval of Gas Storage Testing Pipelines

345-027-0210

General

- 27 (1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the
28 Council certified facility to which the pipeline would connect obtains, before construction,
29 the approval of the Department of Energy for the construction, operation and retirement of
30 the proposed pipeline as required under ORS 469.405(3).
- 31 (2) For the purposes of OAR 345-027-0210 through 345-027-0240:
- 32 (a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less
33 than 16 inches in diameter and less than five miles in length, that is used to test or
34 maintain an underground gas storage reservoir and that would connect to a Council
35 certified facility if the storage reservoir proves feasible for operational use;
- 36 (b) "Temporary pipeline" means a pipeline that has no potential for operational use;
- 37 (c) "Council certified facility" means an energy facility for which the Council has issued a site
38 certificate that is either a surface facility related to an underground gas storage
39 reservoir or a gas pipeline;
- 40 (d) "Connect" means join for the purpose of operational use;
- 41 (e) "Test or maintain" means transporting gas to an underground gas storage reservoir for
42 the purposes of determining whether the reservoir is feasible for operational use or

1 maintaining the gas storage capacity of the reservoir but does not include operational
2 use;

3 (f) "Operational use" means transporting gas to an underground gas storage reservoir for
4 the purpose of storing gas until it is needed for sale or for withdrawing gas from an
5 underground gas storage reservoir for the purpose of sale;

6 (g) "Council substantive standards" means the following standards:

7 (A) Structural Standard, OAR 345-022-0020;

8 (B) Soil Protection, OAR 345-022-0022;

9 (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);

10 (D) Retirement and Financial Assurance, OAR 345-022-0050;

11 (E) Fish and Wildlife Habitat, OAR 345-022-0060;

12 (F) Threatened and Endangered Species, OAR 345-022-0070

13 (G) Scenic Resources, OAR 345-022-0080;

14 (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;

15 (I) Recreation, 345-022-0100;

16 (J) Public Services, OAR 345-022-0110;

17 (K) Waste Minimization, OAR 345-022-0120; and

18 (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);

19 (h) "Information requirements" means information that would support the findings
20 described in OAR 345-024-0030(2) and the information described in 345-021-0010(1)(h),
21 (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

22
23 **345-027-0220**

24 **Request for Approval**

25 (1) Before submitting a request for approval to construct, operate and retire a gas storage
26 testing pipeline, the certificate holder shall:

27 (a) Inform the Department of Energy of the proposed pipeline, including its diameter,
28 length, location, capacity and maximum operating pressure; and

29 (b) Provide to the Department a map showing the location of the proposed pipeline.

30 (2) After receiving the information described in section (1), the Department shall confer with
31 the certificate holder about the Council substantive standards and information
32 requirements that might apply to the proposed pipeline and any extraordinary
33 circumstances that might affect the time requirements for completing the approval process.
34 Within 7 days after conferring with the certificate holder, the Department shall send a letter
35 to the certificate holder that includes the following:

36 (a) Identification of the Council substantive standards that are applicable to the request for
37 approval of the proposed pipeline;

38 (b) Identification of the information requirements that are applicable to the request for
39 approval of the proposed pipeline;

40 (c) The time requirements for the approval process, if different from the time requirements
41 described in OAR 345-027-0230.

42 (3) The certificate holder shall submit to the Department a written request for approval to
43 construct, operate and retire a gas storage testing pipeline with the fee required by the fee

1 schedule established under ORS 469.441. The certificate holder shall submit the original and
2 two paper copies of the request to the Department. The certificate holder shall provide
3 additional copies to the Department upon request and copies or access to copies to any
4 person requesting copies. In addition to the printed copies of the request for approval, the
5 certificate holder shall submit the full request in a non-copy-protected electronic format
6 acceptable to the Department.

7 (4) In a request for approval, the certificate holder shall include:

- 8 (a) The name and mailing address of the certificate holder and the name, mailing address,
9 email address and phone number of the individual responsible for submitting the
10 request;
- 11 (b) A description of the purpose and operation of the proposed pipeline and a discussion of
12 whether the use of the gas storage testing pipeline for reservoir testing or maintenance
13 will require an increase in the compression available in the Council certified facility to
14 which the proposed pipeline would connect in addition to the compression that is
15 permitted under the site certificate;
- 16 (c) Identification of the Council certified facility to which the proposed pipeline would
17 connect;
- 18 (d) A description of the proposed pipeline, including its diameter, length, location, capacity
19 and maximum operating pressure;
- 20 (e) A map showing the location of the proposed pipeline;
- 21 (f) A list of the names and mailing addresses of all owners of record, as shown on the most
22 recent property tax assessment role, of property where the proposed pipeline is located
23 and within 500 feet of the location of the proposed pipeline;
- 24 (g) The information that the Department has identified in the letter described in section (2);
25 and
- 26 (h) Any other information that the Department requests as needed to make the findings
27 described in the applicable standards.

28
29 **345-027-0230**

30 **Review of a Request for Approval**

31 (1) Within 7 days after receiving a request for approval to construct, operate and retire a gas
32 storage testing pipeline, the Department of Energy shall:

- 33 (a) Send copies of the request by mail, email or any other form of electronic delivery to the
34 following agencies with a notice asking the agencies to submit written comments on the
35 request within 14 days from the date of the notice:
 - 36 (A) Oregon Department of Fish and Wildlife;
 - 37 (B) Oregon Department of Geology and Mineral Industries;
 - 38 (C) Oregon Public Utility Commission;
 - 39 (D) Oregon Department of Agriculture;
 - 40 (E) Division of State Lands; and
 - 41 (F) State Historic Preservation Office.
- 42 (b) Send a notice of the request, including a map showing the location of the proposed
43 pipeline, by mail, email or any other form of electronic delivery to the following stating

1 that the agencies and planning authority may submit written comments on the request
2 within 14 days from the date of the notice:

3 (A) Oregon Department of Forestry;

4 (B) Oregon Department of Environmental Quality; and

5 (C) The planning authority of the county or counties where the proposed pipeline is
6 located.

7 (c) Send a notice of the request, including a map showing the location of the proposed
8 pipeline, by mail or email to the property owners the certificate holder has listed in the
9 request stating that property owners may submit written comments on the request
10 within 14 days from the date of the notice.

11 (d) Post an announcement of the request on the Department's website.

12 (2) Within 21 days from the deadline for comments described in section (1) or such longer
13 period as the Department has specified in the letter described in OAR 345-027-0220(2), the
14 Department shall issue a final order stating its findings on the applicable Council substantive
15 standards and its approval or disapproval of the request. In an order approving a request,
16 the Department shall include conditions that the Department finds necessary to ensure
17 compliance with the applicable standards and conditions required by 345-027-0240.

18 (3) The Department shall send a notice of the final order to the certificate holder, to the
19 property owners the certificate holder listed in the request and to any person who
20 commented on the request. In the notice, the Department shall state that judicial review of
21 the order is as provided in ORS 469.403.

22 (4) The Department may amend an order approving the construction, operation and retirement
23 of a gas storage testing pipeline.

24 (5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for
25 compliance with other state standards.

26 (6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the
27 Department does not bind any state or local agency.

28
29 **345-027-0240**

30 **Conditions**

31 In an order approving the construction, operation and retirement of a gas storage testing
32 pipeline, the Department of Energy may impose conditions it finds necessary to ensure
33 compliance with the Council substantive standards it identified as applicable in the letter
34 described in OAR 345-027-0220(2). In addition, the Department shall impose the following
35 conditions:

36 (1) The certificate holder shall design, construct, operate and retire the gas storage testing
37 pipeline in compliance with applicable Council rules and applicable federal, state and local
38 laws, rules and ordinances in effect at the time the Department issues the order;

39 (2) The certificate shall design, construct, operate and retire the gas storage testing pipeline
40 substantially as described in representations in the request for approval and supporting
41 record that the Department finds to be binding commitments made by the certificate
42 holder;

- 1 (3) The certificate holder shall prevent the development of any conditions in the area of the gas
2 storage testing pipeline that would preclude restoration of the area to a useful, non-
3 hazardous condition to the extent that prevention of such conditions is within the control of
4 the certificate holder;
- 5 (4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all
6 refuse and remove all temporary structures not needed to test or maintain an underground
7 gas storage reservoir;
- 8 (5) The certificate holder shall notify the Department of Energy, the State Building Codes
9 Division and the Department of Geology and Mineral Industries promptly if investigations or
10 trenching in the area of the pipeline reveal soil or geological conditions that differ
11 significantly from those described in the request for approval;
- 12 (6) The certificate holder shall submit to the Department copies of all incident reports involving
13 the gas storage testing pipeline required under 49 CFR Sec. 191.15;
- 14 (7) The certificate holder shall allow properly identified representatives of the Council or the
15 Department of Energy to inspect the pipeline at any time, including all materials, activities,
16 premises and records pertaining to design, construction, operation or retirement of the
17 pipeline;
- 18 (8) The certificate holder shall notify the Department when it begins construction, shall keep
19 the Department informed of construction progress and any unusual events or
20 circumstances and shall notify the Department when it begins to use the pipeline for
21 reservoir testing or maintenance;
- 22 (9) The certificate holder shall notify the Department if it terminates use of the gas storage
23 testing pipeline; and
- 24 (10) If the certificate holder decides to convert the gas storage testing pipeline to operational
25 use, the certificate holder shall notify the Department and, if required under OAR 345-027-
26 0050, submit a request to amend the site certificate.