

DIVISION 27

~~SITE CERTIFICATE CONDITIONS, EXPIRATION, AMENDMENT, TRANSFER~~ AND TERMINATION
OF SITE CERTIFICATES, AND DEPARTMENT OF ENERGY APPROVAL OF GAS STORAGE TESTING
PIPELINES

345-027-00000013(amend and renumber)

Certificate Expiration

If the certificate holder does not begin construction of the facility by the construction beginning date specified in the site certificate or amended site certificate, the site certificate expires on the construction beginning date specified, unless expiration of the site certificate is suspended pending final action by the Council ~~in the site certificate or in an~~ on a request for amendment of the site certificate granted according to the rules of this division, a site certificate pursuant to OAR 345-027-0085(2).

345-027-0011(amend)

Applicability

The rules in this division ~~do not~~ apply to all facilities covered by under the Council's jurisdiction except those facilities described in ORS 469.410(1), including the Trojan energy facility-, and except that rules 345-027-0050, -0060, -0070, -0080, -0090 and -0100 that were in effect prior to Month XX, 2017 apply to proposed changes that have been included in requests for amendment to site certificates and change requests that have been received by the Department prior to Month XX, 2017.

345-027-0020 (renumber to 345-025-0006)

~~Mandatory Conditions in Site Certificates~~

~~The Council shall impose the following conditions in every site certificate. The Council may impose additional conditions.~~

~~(1) The Council shall not change the conditions of the site certificate except as provided for in OAR Chapter 345, Division 27.~~

~~(2) The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identify the outer boundaries that contain all parts of the facility.~~

~~(3) The certificate holder shall design, construct, operate and retire the facility:~~

~~(a) Substantially as described in the site certificate;~~

~~(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and~~

~~(c) In compliance with all applicable permit requirements of other state agencies.~~

~~(4) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.~~

~~(5) Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder shall not begin~~

1 ~~construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until~~
2 ~~the certificate holder has construction rights on all parts of the site. For the purpose of this rule,~~
3 ~~“construction rights” means the legal right to engage in construction activities. For wind energy~~
4 ~~facilities, transmission lines or pipelines, if the certificate holder does not have construction~~
5 ~~rights on all parts of the site, the certificate holder may nevertheless begin construction, as~~
6 ~~defined in 345-001-0010, or create a clearing on a part of the site if the certificate holder has~~
7 ~~construction rights on that part of the site and:~~

8 ~~(a) The certificate holder would construct and operate part of the facility on that part of the~~
9 ~~site even if a change in the planned route of a transmission line or pipeline occurs during the~~
10 ~~certificate holder’s negotiations to acquire construction rights on another part of the site; or~~

11 ~~(b) The certificate holder would construct and operate part of a wind energy facility on that~~
12 ~~part of the site even if other parts of the facility were modified by amendment of the site~~
13 ~~certificate or were not built.~~

14 ~~(6) If the certificate holder becomes aware of a significant environmental change or impact~~
15 ~~attributable to the facility, the certificate holder shall, as soon as possible, submit a written~~
16 ~~report to the Department describing the impact on the facility and any affected site certificate~~
17 ~~conditions.~~

18 ~~(7) The certificate holder shall prevent the development of any conditions on the site that~~
19 ~~would preclude restoration of the site to a useful, non-hazardous condition to the extent that~~
20 ~~prevention of such site conditions is within the control of the certificate holder.~~

21 ~~(8) Before beginning construction of the facility, the certificate holder shall submit to the State~~
22 ~~of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to~~
23 ~~the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall~~
24 ~~maintain a bond or letter of credit in effect at all times until the facility has been retired. The~~
25 ~~Council may specify different amounts for the bond or letter of credit during construction and~~
26 ~~during operation of the facility.~~

27 ~~(9) The certificate holder shall retire the facility if the certificate holder permanently ceases~~
28 ~~construction or operation of the facility. The certificate holder shall retire the facility according~~
29 ~~to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The~~
30 ~~certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous~~
31 ~~condition at the time of retirement, notwithstanding the Council’s approval in the site~~
32 ~~certificate of an estimated amount required to restore the site.~~

33 ~~(10) The Council shall include as conditions in the site certificate all representations in the site~~
34 ~~certificate application and supporting record the Council deems to be binding commitments~~
35 ~~made by the applicant.~~

36 ~~(11) Upon completion of construction, the certificate holder shall restore vegetation to the~~
37 ~~extent practicable and shall landscape all areas disturbed by construction in a manner~~
38 ~~compatible with the surroundings and proposed use. Upon completion of construction, the~~
39 ~~certificate holder shall remove all temporary structures not required for facility operation and~~
40 ~~dispose of all timber, brush, refuse and flammable or combustible material resulting from~~
41 ~~clearing of land and construction of the facility.~~

42 ~~(12) The certificate holder shall design, engineer and construct the facility to avoid dangers to~~
43 ~~human safety presented by seismic hazards affecting the site that are expected to result from~~
44 ~~all maximum probable seismic events. As used in this rule “seismic hazard” includes ground~~

1 shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement and
2 subsidence.

3 ~~(13) The certificate holder shall notify the Department, the State Building Codes Division and
4 the Department of Geology and Mineral Industries promptly if site investigations or trenching
5 reveal that conditions in the foundation rocks differ significantly from those described in the
6 application for a site certificate. After the Department receives the notice, the Council may
7 require the certificate holder to consult with the Department of Geology and Mineral Industries
8 and the Building Codes Division and to propose mitigation actions.~~

9 ~~(14) The certificate holder shall notify the Department, the State Building Codes Division and
10 the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers,
11 deformations or clastic dikes are found at or in the vicinity of the site.~~

12 ~~(15) Before any transfer of ownership of the facility or ownership of the site certificate holder,
13 the certificate holder shall inform the Department of the proposed new owners. The
14 requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer
15 of the site certificate.~~

16 ~~(16) If the Council finds that the certificate holder has permanently ceased construction or
17 operation of the facility without retiring the facility according to a final retirement plan
18 approved by the Council, as described in OAR 345-027-0110, the Council shall notify the
19 certificate holder and request that the certificate holder submit a proposed final retirement
20 plan to the Office within a reasonable time not to exceed 90 days. If the certificate holder does
21 not submit a proposed final retirement plan by the specified date, the Council may direct the
22 Department to prepare a proposed final retirement plan for the Council's approval. Upon the
23 Council's approval of the final retirement plan, the Council may draw on the bond or letter of
24 credit described in section (8) to restore the site to a useful, non-hazardous condition according
25 to the final retirement plan, in addition to any penalties the Council may impose under OAR
26 Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the
27 actual cost of retirement, the certificate holder shall pay any additional cost necessary to
28 restore the site to a useful, non-hazardous condition. After completion of site restoration, the
29 Council shall issue an order to terminate the site certificate if the Council finds that the facility
30 has been retired according to the approved final retirement plan.~~

31 32 **345-027-0023(renumber to 345-025-0010)**

33 **Site Specific Conditions**

34 The Council may include the following conditions, as appropriate, in the site certificate:

35 (1) If the facility uses coal, the certificate holder shall take all necessary steps to ensure that
36 surface and groundwater are not contaminated by run-off or seepage associated with coal or
37 ash storage, transport or disposal. The certificate holder shall handle coal and ash so as to
38 minimize the likelihood of coal dust and ash being windblown and causing an environmental or
39 public health problem. If the certificate holder permanently disposes of ash on the facility site,
40 the certificate holder shall cover the ash with a layer of topsoil and revegetate the area.

41 (2) If the energy facility or related or supporting facility is a natural gas pipeline, the certificate
42 holder shall submit to the Department copies of all incident reports involving the pipeline
43 required under 49 CFR Sec. 191.15.

44 (3) If the facility includes any pipeline under Council jurisdiction:

~~(a) The certificate holder shall design, construct and operate the pipeline in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192, in effect on August 15, 2011; and~~

~~(b) The certificate holder shall develop and implement a program using the best available practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.~~

~~(4) If the facility includes any transmission line under Council jurisdiction:~~

~~(a) The certificate holder shall design, construct and operate the transmission line in accordance with the requirements of the 2012 Edition of the National Electrical Safety Code approved on June 3, 2011, by the American National Standards Institute; and~~

~~(b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line.~~

~~(5) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor.~~

~~(6) If the facility is a surface facility related to an underground gas storage reservoir, the Council shall, in the site certificate, specify the site boundary and total permitted daily throughput of the facility.~~

~~(7) If the facility is subject to a carbon dioxide emissions standard adopted by the Council or enacted by statute, the Council shall include in the site certificate appropriate conditions as described in OAR 345-024-0550, 345-024-0560, 345-024-0590, 345-024-0600, 345-024-0620, 345-024-0630 and 345-024-0710.~~

345-027-0028(renumber to 345-025-0016)

Monitoring and Mitigation Conditions

~~In the site certificate, the Council shall include conditions that address monitoring and mitigation to ensure compliance with the standards contained in OAR Chapter 345, Division 22 and Division 24. The site certificate applicant, or for an amendment, the certificate holder, shall develop proposed monitoring and mitigation plans in consultation with the Department and, as appropriate, other state agencies, local governments and tribes. Monitoring and mitigation plans are subject to Council approval. The Council shall incorporate approved monitoring and mitigation plans in applicable site certificate conditions.~~

345-027-00300085(amend and renumber)

Request for Amendment to Extend Construction Beginning and Completion Deadlines

(1) The certificate holder may request an amendment to the site certificate to extend the deadlines for beginning or completing construction of the facility that the Council has specified in a site certificate or an amended site certificate. ~~The certificate holder shall submit~~ by submitting a preliminary request that includes for amendment in accordance

1 with 345-027-0060. The preliminary request for amendment must include an explanation of
 2 the need for an extension and ~~that conforms~~must be submitted to the
 3 ~~requirements~~Department of 345-027-0060Energy before the applicable construction
 4 deadline, but no later~~earlier~~ than six~~the date twelve~~ months before the ~~date of the~~
 5 ~~applicable deadline, or, if the certificate holder demonstrates good cause for the delay in~~
 6 ~~submitting the request, no later than the~~ applicable construction deadline.

7 (2) A ~~request~~preliminary request for amendment received by the Department within the time
 8 allowed ~~in~~under section (1) to extend the deadlines for beginning ~~or~~and completing
 9 construction suspends ~~those deadlines~~expiration of the site certificate or amended site
 10 certificate until the Council acts on the request, ~~for amendment~~. If the Council ~~denies the~~
 11 extension request after the applicable construction deadline, the site certificate is deemed
 12 expired as of the applicable construction deadline specified in the site certificate or amended
 13 site certificate.

14 ~~(3) The Council shall review the request for amendment as described in OAR 345-027-0070.~~

15 (4) If the Council grants an amendment under this rule, the Council shall specify new deadlines
 16 for beginning or completing construction that are ~~not more than two years from the~~
 17 ~~deadlines in effect before the Council grants the amendment.~~the later of:

18 (a) Three years from the deadlines in effect before the Council grants the amendment, or

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

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

23 ~~(5) To grant an amendment extending the deadline for beginning or completing construction of~~
 24 ~~an energy facility subject to OAR 345-024-0550, 345-024-0590, or 345-024-0620, the~~
 25 ~~Council must find that the facility complies with the carbon dioxide standard in effect at the~~
 26 ~~time of the Council's order on the amendment.~~

28 **345-027-0050(amend)**

29 **When Changes Requiring an Amendment is Required**

30 ~~(1) Except as for changes~~ allowed under ~~sections (2) and (6),~~OAR 345-027-0053 of this rule, an
 31 amendment to a site certificate is required to:

32 (1) Transfer ownership of the facility or the certificate holder must submit a request to amend
 33 the site certificate to design as described in OAR 345-027-0100;

34 (2) Apply later-adopted law(s) as described in OAR 345-027-0090;

35 (3) Extend the construction beginning or completion deadline as described in OAR 345-027-
 36 0085;

37 (4) Add area to the site boundary; and

38 (5) Design, construct or operate a facility in a manner different from the description in the site
 39 certificate if the proposed change:

40 (a) ~~(a)~~ Could result in a significant adverse impact that the Council has not addressed in an
 41 earlier order and the impact affects a resource or interest protected by a Council
 42 standardsstandard;

43 (b) ~~(b)~~ Could impair the certificate holder's ability to comply with a site certificate
 44 condition; or

1 ~~(c) (e)~~ Could require a new condition or a change to a condition in the site certificate.

2 ~~(2) A site certificate amendment is not required if a proposed change in the design,~~
3 ~~construction or operation of a facility is in substantial compliance with the terms and conditions~~
4 ~~of the site certificate and is a change:~~

5 ~~(a) To an electrical generation facility that would increase the electrical generating capacity and~~
6 ~~would not increase the number of electric generators at the site, change fuel type, increase fuel~~
7 ~~consumption by more than 10 percent or enlarge the facility site;~~

8 ~~(b) To the number or location of pipelines for a surface facility related to an underground gas~~
9 ~~storage reservoir that would not result in the facility exceeding permitted daily throughput or~~
10 ~~enlarge the facility site;~~

11 ~~(c) To the number, size or location of pipelines for a geothermal energy facility that would not~~
12 ~~enlarge the facility site;~~

13 ~~(d) To a pipeline or transmission line that is a related or supporting facility that would extend~~
14 ~~or modify the pipeline or transmission line or expand the right-of-way, when the change is to~~
15 ~~serve customers other than the energy facility; or~~

16 ~~(e) To an aspect or feature of the facility, operating procedures or management structures not~~
17 ~~addressed in the site certificate.~~

18 ~~(3) If the certificate holder concludes that a proposed change does not require a site certificate~~
19 ~~amendment under section (1), the certificate holder shall, nevertheless, complete an~~
20 ~~investigation sufficient to demonstrate that the proposed change in the design, construction or~~
21 ~~operation of the facility would comply with applicable Council standards. The certificate holder~~
22 ~~shall complete the investigation before implementing the proposed change. The certificate~~
23 ~~holder shall prepare a written evaluation describing the investigation and shall make the~~
24 ~~evaluation available to the Department for inspection at any time.~~

25 ~~(4) In the annual reports and semiannual construction progress reports required by OAR 345-~~
26 ~~026-0080, the certificate holder shall describe all significant changes made during the reporting~~
27 ~~period to the design, construction and operation of the facility without an amendment of the~~
28 ~~site certificate. The certificate holder shall keep a written record of the basis for concluding that~~
29 ~~an amendment of the site certificate was not required. The Department, at any time, may~~
30 ~~inspect the changes made to the facility and may inspect the certificate holder's written record~~
31 ~~of the basis for concluding that an amendment of the site certificate was not required.~~

32 ~~(5) A certificate holder may submit a change request in writing to the Department for a~~
33 ~~determination whether a proposed change requires a site certificate amendment. In the change~~
34 ~~request, the certificate holder must describe the proposed change, explain the basis for the~~
35 ~~certificate holder's conclusion that an amendment is not required under section (1), and~~
36 ~~provide the written evaluation described in section (3). The Department shall respond in writing~~
37 ~~as promptly as possible. The Department may refer its determination to the Council for~~
38 ~~concurrence, modification or rejection. At the request of the certificate holder or a Council~~
39 ~~member, the Department must refer its determination to the Council for concurrence,~~
40 ~~modification or rejection.~~

41 ~~(6) A site certificate amendment is not required for the construction of a pipeline less than 16~~
42 ~~inches in diameter and less than five miles in length that is proposed to be constructed to test~~
43 ~~or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a~~
44 ~~surface facility related to an underground gas storage reservoir for which the Council has issued~~

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

345-027-0051(adopt)

Requests for Amendment Process

- (1) The transfer process, described in 345-027-0100, shall apply to the Council's review of a request for amendment to a site certificate to transfer a site certificate.
- (2) The standard process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0067, -0069 and -0071, shall apply to the Council's review of a request for amendment proposing a change described in 345-027-0050(2), (3), (4) and (5).
- (3) The Council may act concurrently on any combination of proposed changes included in a request for amendment. Concurrent proposed changes are subject to the substantive requirements applicable to each respective proposed change and the Council shall review all proposed changes through the process with the more procedural steps applicable to any one of the proposed changes.

345-027-0053(adopt)

Changes Exempt from Requiring an Amendment

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

- (1) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;
- (2) To the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or a change to the site boundary;
- (3) To the number, size or location of pipelines for a geothermal energy facility that would not result in a change to the site boundary;
- (4) To a pipeline that is a related or supporting facility that delivers natural gas to the energy facility if the change would extend or modify the pipeline or expand the right-of-way, when the change is exclusively to serve gas users other than the energy facility;
- (5) To a transmission line that is a related or supporting facility if the change would extend or modify the transmission line or expand the right-of-way, when the change is exclusively to serve the transmission needs of a separate energy facility or energy user; or
- (6) To construct a pipeline less than 16 inches in diameter and less than five miles in length to test or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a surface facility related to an underground gas storage reservoir for which the Council has issued a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the Department of Energy for the construction, operation and retirement of the proposed

1 pipeline. To obtain Department approval, the certificate holder must submit a request as
 2 described in OAR 345-027-0210 through OAR 345-027-0240.

4 **345-027-0055(adopt)**

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

6 (1) If the certificate holder concludes that a proposed change to the facility does not require an
 7 amendment to the site certificate, the certificate holder must complete a written evaluation
 8 if the change:

9 (a) Could be included in and governed by the site certificate, but the certificate holder has
 10 concluded the change is not described in 345-027-0050; or

11 (b) Is exempt from requiring an amendment under 345-027-0053.

12 (2) The written evaluation must explain why an amendment is not required, must be
 13 completed before implementing any change, and must be included in the next semiannual
 14 construction progress report or the Facility Modification Report required under 345-026-
 15 0080. The written evaluation must be retained for the life of the facility.

16 (3) The Department of Energy may, at any time, inspect the changes made to the facility and
 17 may inspect the certificate holder's written evaluation concluding that the change did not
 18 require an amendment.

19 (4) When the certificate holder implements a change without an amendment, the Department
 20 may initiate an enforcement action as described in Division 29 if the Department
 21 determines the change required an amendment to the site certificate.

23 **345-027-0057(adopt)**

24 **Amendment Determination Request**

25 (1) The certificate holder may request a written determination of whether an amendment to
 26 the site certificate is required by OAR 345-027-0050 by submitting the following information
 27 in a written request to the Department of Energy:

28 (a) A narrative description of the proposed change(s);

29 (b) Maps and/or geospatial data layers representing the effects and/or location of the
 30 proposed change;

31 (c) The certificate holder's evaluation of whether the proposed change requires an
 32 amendment as described in OAR 345-027-0050 or OAR 345-027-0053; and

33 (d) Any additional information the certificate holder believes will assist the Department's
 34 evaluation.

35 (2) Upon receiving a request for a written determination described in section (1), the
 36 Department shall, as promptly as possible, issue a written determination indicating whether
 37 the proposed change requires an amendment or refer the request to the Council for a
 38 written Council determination.

39 (3) At the request of the certificate holder, the Department must refer its determination to the
 40 Council for concurrence, modification or rejection.

345-027-0059(adopt)**Pre-Amendment Conference**

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

345-027-0060(amend)**Preliminary Request to Amend Certificate for Amendment**

- (1) To request an amendment of a site certificate, required by OAR 345-027-0050(3) – (5), the certificate holder shall submit a written preliminary request for amendment to the Department of Energy that includes the information described in section (2) and the following:
- (a) The name of the facility, the name and mailing address of the certificate holder, and the name, mailing address, email address and phone number of the individual responsible for submitting the request.
- ~~(b) A description of the facility including its location and other information relevant to the proposed change.~~
- ~~(b) (c) A detailed description of the proposed change and the certificate holder's analysis, including:~~
- ~~(A) a description of how the proposed change affects the facility,~~
- ~~(B) a description of how the proposed change under the criteria of OAR 345-027-0050(4) affects those resources or interests protected by applicable laws and Council standards, and~~
- ~~(C) (d) the specific location of the proposed change, and any updated maps and/or geospatial data layers relevant to the proposed change.~~
- ~~(c) References to any specific Division 21 information that may be required for the Department to make its findings.~~
- ~~(d) The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an through the amendment.~~
- ~~(e) A list of the Council standards relevant and all other laws - including statutes, rules and ordinances - applicable to the proposed change. (f) An, and an analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the those applicable laws and Council amends the site certificate as requested standards.~~ For the purpose of this rule, a law, rule or ordinance Council

1 standard is “applicable” if the Council would apply or consider the law, ~~rule~~ or
 2 ~~ordinance~~ Council standard under OAR 345-027-~~0070(10)~~-0071(2).

3 ~~(f)~~ ~~(g)~~ An updated list of the owners of property located within or adjacent to the site of
 4 the facility, as described in OAR 345-021-0010(1)(f).

5 ~~(2)~~ ~~(2)~~ ~~In a request to amend a~~ For any Council standard that requires evaluation of impacts
 6 within an analysis area, the analysis area shall be the larger of either the study area(s) as
 7 defined in OAR 345-001-0000(59) or the analysis area(s) described in the project order for
 8 the application for site certificate, the certificate holder shall provide the information
 9 described in applicable subsections of OAR 345-021-0000 and OAR 345-021-0010, unless
 10 otherwise approved in writing by the Department following a pre-amendment conference.

11 ~~(2)~~ ~~(3)~~ The certificate holder may incorporate, by specific reference ~~relevant information that the~~
 12 ~~certificate holder has,~~ evidence previously submitted to the Department ~~or in the~~
 13 application for site certificate or previous request for amendment, or evidence that is
 14 otherwise included in the Department’s ~~administrative~~ record on the facility.

15 ~~(3)~~ ~~Before submitting a request to amend a site certificate, the certificate holder may prepare a~~
 16 ~~draft request and may confer with the Department about the content of the request. Although~~
 17 ~~the Council does not require the certificate holder to prepare a draft request and confer with~~
 18 ~~the Department, the Council recommends that the certificate holder follow this procedure.~~

19 ~~(4)~~ ~~The certificate holder shall submit an original and two printed copies of the amendment~~
 20 ~~request to the Department. Upon a request by the Department, the certificate holder must~~
 21 ~~submit printed copies of the amendment request for members of the Council. In addition to the~~
 22 ~~printed copies, the certificate holder shall submit the full amendment request in a non-copy-~~
 23 ~~protected electronic format acceptable to the Department. The certificate holder shall provide~~
 24 ~~additional copies of the amendment request to the Department upon request and copies or~~
 25 ~~access to copies to any person requesting copies. If requested by the Department, the~~
 26 ~~certificate holder shall send copies of the request to persons on a mailing list provided by the~~
 27 ~~Department.~~

29 345-027-0063(adopt)

30 Determination of Completeness for a Request for Amendment

31 (1) Until the Department of Energy determines the request for amendment to the site
 32 certificate is complete, it is a preliminary request for amendment. After receiving a
 33 preliminary request for amendment, the Department may seek comments from reviewing
 34 agencies to determine whether that request is complete.

35 (2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a
 36 preliminary request for amendment, the Department shall notify the certificate holder
 37 whether the request for amendment is complete. In the notification, the Department shall:

38 (a) State that the request for amendment is complete; or

39 (b) State that the request for amendment is incomplete and:

40 (A) Describe any additional information needed to complete the request for
 41 amendment to the extent known to the Department at the time of the notification,
 42 including identification of applicable laws and Council standards not addressed in
 43 the preliminary request for amendment,

1 (B) Ask the certificate holder to submit the additional information by the due dates
 2 described in section (4), and

3 (C) Estimate the additional time the Department will need to make a determination of
 4 completeness following the submittal of the additional information by the certificate
 5 holder.

6 (3) If the Department does not notify the certificate holder as described in section (2), the
 7 request for amendment is deemed complete 60 days after receipt of a preliminary request
 8 for amendment. Otherwise, the request for amendment is complete as determined under
 9 section (5).

10 (4) The Department may specify a date by which the certificate holder must submit additional
 11 information needed to complete the request for amendment. If follow-up requests for
 12 additional information are needed, the Department may specify dates by which the
 13 certificate holder must submit the information. At the request of the certificate holder, the
 14 Department may allow additional time for submission of the information. If the certificate
 15 holder does not submit the information by the deadline specified by the Department,
 16 including any allowed extension, the Council may reject the preliminary request for
 17 amendment. The rejection of a preliminary request for amendment is subject to appeal
 18 under ORS 469.403(3).

19 (5) A request for amendment is complete when the Department finds that the certificate holder
 20 has submitted information adequate for the Council to make findings or impose conditions
 21 on all applicable laws and Council standards. The Department shall notify the certificate
 22 holder when the Department finds that the request for amendment is complete.

23 (6) After receiving notification from the Department that the preliminary request for
 24 amendment is complete, the Department may require the certificate holder to prepare a
 25 consolidated request for amendment that includes all revisions to the preliminary request
 26 for amendment and all additional information requested by the Department before the
 27 determination of completeness. Upon a request by the Department, the certificate holder
 28 shall submit paper and non-copy-protected electronic copies of the consolidated request
 29 for amendment to the Department as specified by the Department.

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

34 **345-027-0065(adopt)**

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

36 (1) Within 15 days after a request for amendment to the site certificate described in OAR 345-
 37 027-0050(3) – (5) or a request for amendment to apply later-adopted laws described in OAR
 38 345-027-0090 is determined to be complete, the Department of Energy shall:

39 (a) Send notice to the certificate holder specifying a date for issuance of a draft proposed
 40 order that is no later than 120 days after the date of the notice.

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

43 (A) A copy of the complete request for amendment;

1 (B) The date the draft proposed order will be issued, as specified in the notice required
 2 by subsection (1)(a); and

3 (C) A statement that the public comment period begins upon issuance of the draft
 4 proposed order.

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

13
 14 **345-027-0067(adopt)**

15 **Public Comment and Hearing on the Draft Proposed Order for a Request for Amendment**

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

20 (2) Concurrent with the issuance of the draft proposed order as described in OAR 345-027-
 21 0065, the Department of Energy shall:

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

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

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

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

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

27 (b) Post the complete request for amendment, draft proposed order, and the notice of the
 28 draft proposed order and public hearing on the Department website, and

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

30 (3) Notice of the complete request for amendment, draft proposed order and public hearing
 31 shall include:

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

33 (b) The date, time and location of the public hearing described in this rule.

34 (c) The name, address, email address and telephone number of the Department
 35 representative to contact for additional information.

36 (d) Addresses of the physical location(s) and the website where the public may review
 37 copies of the complete request for amendment and draft proposed order.

38 (e) The deadline for the public to submit written comments to be included in the record of
 39 the public hearing and how such comments should be submitted.

40 (f) A statement that:

41 (A) A complete request for amendment has been received and reviewed by the
 42 Department.

43 (B) The Department has issued a draft proposed order.

1 (C) To raise an issue on the record of the public hearing, a person must raise the issue in
2 person at the public hearing or in a written comment submitted after the date of the
3 notice of the public hearing and received by the Department before the close of the
4 record of the public hearing.

5 (D) A person's failure to raise an issue in person or in writing on the record of the public
6 hearing precludes the Council's consideration of whether to grant that person's
7 subsequent contested case request.

8 (E) Failure to raise an issue with sufficient specificity to afford the Council, the
9 Department, and the certificate holder an opportunity to respond to the issue
10 precludes the Council from considering whether that issue justifies a contested case
11 proceeding.

12 (F) To raise an issue with sufficient specificity, a person must present facts, on the
13 record of the public hearing, that support the person's position on the issue.

14 (G) The Council will not accept or consider any further public comment on the request
15 for amendment or on the draft proposed order after the close of the record of the
16 public hearing.

17 (4) During the public hearing, the Department shall explain the amendment process, including
18 the means and opportunities for the general public to participate in the process. The
19 Department may provide this explanation by a written handout.

20 (5) At the commencement of the public hearing, the presiding officer shall read aloud the
21 following:

22 (a) A person who intends to request a contested case on the proposed order for a site
23 certificate amendment must comment in person or in writing on the record of the public
24 hearing.

25 (b) A person who intends to raise an issue that may be the basis for granting a contested
26 case proceeding must raise that issue on the record of the public hearing with sufficient
27 specificity to afford the Council, the department and the certificate holder an adequate
28 opportunity to respond to the issue. To raise an issue with sufficient specificity, a person
29 must present facts, on the record of the public hearing, that support the person's
30 position on the issue.

31 (6) At the public hearing, any person may present information regarding the pending request
32 for amendment without administration of an oath. The presiding officer shall record all
33 presentations made during the public hearing. The presentations are part of the decision
34 record for the request for amendment.

35 (7) Following the close of the record of the public hearing on the draft proposed order, the
36 Council shall review the draft proposed order, shall consider all comments received on the
37 record of the hearing, and may provide comments to the Department regarding the draft
38 proposed order. When the Council meets to review a draft proposed order, the Council
39 does not permit the certificate holder, reviewing agencies or the public to comment on any
40 issue that may be the basis for a contested case request.

41
42

1 **345-027-0069(adopt)**

2 **Proposed Order, Requests for Contested Case and Council's Final Decision**

- 3 (1) No later than 30 days after the Council has reviewed the draft proposed order and
4 considered all comments received on the record of the public hearing under 345-027-0067,
5 the Department of Energy shall issue a proposed order recommending approval,
6 modification or denial of the request(s) for amendment to the site certificate. The
7 Department must consider any oral comments made at the public hearing, written
8 comments received before the close of the record of the public hearing, agency
9 consultation, and any Council comments. The Department may issue the proposed order at
10 a later date, but the Department shall, no later than 30 days after the Council has reviewed
11 the draft proposed order and considered all comments received on the record of the public
12 hearing, notify the certificate holder in writing of the reasons for the delay.
- 13 (2) Concurrent with issuing the proposed order, the Department shall issue public notice of the
14 proposed order by posting public notice as an announcement on its website and by sending
15 public notice by mail or email to:
16 (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
17 (b) Persons on any special list established for the facility,
18 (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
19 (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.
- 20 (3) Notice of the proposed order shall include:
21 (a) A description of the facility and the facility's general location.
22 (b) A description of the process for requesting a contested case.
23 (c) The physical and website addresses of where the public may review copies of the
24 proposed order.
25 (d) The name, address, email address and telephone number of the Department
26 representative to contact for more information.
- 27 (4) On the same date the notice of proposed order as described in section (2) is issued, the
28 Department shall send a notice of the opportunity to request a contested case to the
29 certificate holder and to all persons who commented in person or in writing on the record
30 of the public hearing as described in OAR 345-027-0067. The notice shall include the
31 deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and
32 (9).
- 33 (5) Only those persons, including the site certificate holder, who commented in person or in
34 writing on the record of the public hearing described in OAR 345-027-0067 may request a
35 contested case proceeding on the proposed order for an amendment to the site certificate.
36 To properly raise an issue in a request for a contested case proceeding on the proposed
37 order for an amendment, the issue must be within the jurisdiction of the Council, and the
38 person must have raised the issue in person or in writing on the record of the public
39 hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-
40 0067, or unless the action recommended in the proposed order differs materially from the
41 draft proposed order, including any recommended conditions of approval, in which case the
42 person may raise only new issues within the jurisdiction of the Council that are related to
43 such differences. If a person has not raised an issue at the public hearing with sufficient
44 specificity to afford the decision maker an opportunity to respond to the issue, the Council

1 shall not grant a contested case proceeding for that issue. To have raised an issue with
2 sufficient specificity, the person must have presented facts at the public hearing that
3 support that person's position on the issue.

4 (6) Contested case requests must be submitted in writing and must be received by the
5 Department by a specified deadline that is at least 30 days from the date of notice in
6 section (4). Contested case requests must include:

7 (a) The person's name, mailing address and email address and any organization the
8 person represents;

9 (b) A short and plain statement of the issue or issues the person desires to raise in a
10 contested case proceeding;

11 (c) A statement that describes why the Council should find that the requester properly
12 raised each issue, as described in section (7), including a specific reference to the
13 person's prior comments to demonstrate that the person raised the specific issue or
14 issues on the record of the public hearing, if applicable;

15 (d) A statement that describes why the Council should determine that each identified
16 issue justifies a contested case, under the evaluation described in section (9).

17 (e) A detailed description of the person's interest in the proceeding and how that interest
18 may be affected by the outcome of the proceeding.

19 (f) Name and address of the person's attorney, if any;

20 (g) A statement of whether the person's request to participate in a contested case is as a
21 party or a limited party, and if as a limited party, the precise area or areas in which
22 participation is sought;

23 (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a
24 detailed statement of the person's interest, economic or otherwise, and how such
25 interest may be affected by the results of the proceeding;

26 (i) If the person seeks to represent a public interest in the results of the proceeding, a
27 detailed statement of such public interest, the manner in which such public interest
28 will be affected by the results of the proceeding, and the person's qualifications to
29 represent such public interest; and

30 (j) A statement of the reasons why others who commented on the record of the public
31 hearing cannot adequately represent the interest identified in subsections (h) or (i).

32 (7) Before considering whether an issue justifies a contested case proceeding under section (9),
33 the Council must determine that the person requesting a contested case commented in
34 person or in writing on the record of the public hearing and properly raised each issue
35 included in the request. To determine that a person properly raised each issue included in
36 the request, the Council must find that:

37 (a) The person making the contested case request raised the issue on the record of the
38 public hearing described in OAR 345-027-0067 with sufficient specificity to afford the
39 Council, the Department and the certificate holder an adequate opportunity to respond
40 to the issue;

41 (b) The Department did not follow the requirements of OAR 345-027-0067; or

42 (c) If the action recommended in the proposed order, including any recommended
43 conditions of approval, differs materially from the action recommended in the draft

1 proposed order, the contested case request identified new issues that are related to
2 such material differences.

3 (8) If the Council finds that the person requesting a contested case failed to comment in person
4 or in writing on the record of the public hearing or failed to properly raise any issue, as
5 described in section (7), the Council must deny that person's contested case request. If the
6 Council finds that the person requesting a contested case commented in person or in
7 writing on the record of the public hearing and properly raised one or more issues, the
8 Council's determination of whether an issue justifies a contested case, as described in
9 section (9), shall be limited to those issues the Council finds were properly raised.

10 (9) After identifying the issues properly raised the Council shall determine whether any properly
11 raised issue justifies a contested case proceeding on that issue. To determine that an issue
12 justifies a contested case proceeding, the Council must find that the request raises a
13 significant issue of fact or law that may affect the Council's determination that the facility,
14 with the change proposed by the amendment, meets the applicable laws and Council
15 standards included in chapter 345 divisions 22, 23 and 24. If the Council does not have
16 jurisdiction over the issue raised in the request, the Council must deny the request.

17 (10) The Council must take one of the following actions when determining if a request
18 identifying one or more properly raised issues justifies a contested case proceeding:
19 (a) If the Council finds that the request identifies one or more properly raised issues that
20 justify a contested case proceeding, the Council shall conduct a contested case
21 proceeding according to the applicable provisions of OAR 345-015-0012 to -0014 and
22 345-015-0018 to -0085. The Council shall identify the contested case parties and shall
23 identify the issues each contested case party may participate on. The parties to a
24 contested case proceeding shall be limited to those persons who commented on the
25 record of the public hearing and who properly raised issues in their contested case
26 request that the Council found sufficient to justify a contested case, except that the
27 certificate holder is an automatic party to a contested case. The issues a party to a
28 contested case proceeding may participate on shall be limited to those issues that party
29 properly raised in its contested case request that the Council found sufficient to justify a
30 contested case, except that the certificate holder may participate on any issue the
31 Council found sufficient to justify a contested case proceeding.

32 (b) If the Council finds that the request identifies one or more properly raised issues that an
33 amendment to the proposed order, including modification to conditions, would settle in
34 a manner satisfactory to the Council, the Council may deny the request as to those
35 issues and direct the Department to amend the proposed order and send a notice of the
36 amended proposed order to the persons described in section (4). Only the certificate
37 holder and those persons who commented on the record of the hearing may, in a
38 writing received by the Department within 30 days after the Department issues the
39 notice of the amended proposed order, request a contested case proceeding limited to
40 issues related to the amendment to the proposed order. As described in section (9), the
41 Council shall determine whether any issue identified in the request for a contested case
42 proceeding justifies a contested case proceeding. A person's contested case request
43 under this subsection shall include:

44 (A) The person's name, mailing address and email address;

1 (B) A statement of the contested issues related to the amendment to the proposed
 2 order, including facts believed to be at issue; and

3 (C) A statement that describes why the Council should find an issue justifies a contested
 4 case, as described in section (8).

5 (c) If the Council finds that the request does not identify a properly raised issue that
 6 justifies a contested case proceeding, the Council shall deny the request. In a written
 7 order denying the request, the Council shall state the basis for the denial. The Council
 8 shall then adopt, modify or reject the proposed order based on the considerations
 9 described in OAR-345-027-0071. In a written order the Council shall either grant or deny
 10 issuance of an amended site certificate. If the Council grants issuance of an amended
 11 site certificate, the Council shall issue an amended site certificate, which is effective
 12 upon execution by the Council Chair and by the certificate holder.

13 (11) If there is no request for a contested case proceeding as described in section (6) or
 14 subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on
 15 the considerations described in OAR 345-027-0071. In a written order, the Council shall
 16 either grant or deny issuance of an amended site certificate. If the Council grants issuance
 17 of an amended site certificate, the Council shall issue an amended site certificate, which is
 18 effective upon execution by the Council Chair and by the certificate holder.

19 (12) Judicial review of the Council's final order either granting or denying an amended site
 20 certificate shall be as provided in ORS 469.403.

21
 22 **OAR 345-027-0071 Scope of Council's Review(adopt)**

23 (1) In making a decision to grant or deny issuance of an amended site certificate, the Council
 24 shall apply the applicable laws and Council standards required under section (2) and in
 25 effect on the dates described in section (3).

26 (2) To issue an amended site certificate, the Council shall determine that the preponderance of
 27 evidence on the record supports the following conclusions:

28 (a) For a request for amendment proposing to add new area to the site boundary, the
 29 portion of the facility within the area added to the site by the amendment complies with
 30 all laws and Council standards applicable to an original site certificate application.

31 (b) For a request for amendment to extend the deadlines for beginning or completing
 32 construction, after considering any changes in facts or law since the date the current
 33 site certificate was executed, the facility complies with all laws and Council standards
 34 applicable to an original site certificate application. However, for requests to extend
 35 completion deadlines, the Council need not find compliance with an applicable law or
 36 Council standard if the Council finds that:

37 (A) The certificate holder has spent more than 50 percent of the budgeted costs on
 38 construction of the facility;

39 (B) The inability of the certificate holder to complete the construction of the facility by
 40 the deadline in effect before the amendment is the result of unforeseen
 41 circumstances that are outside the control of the certificate holder;

42 (C) The standard, if applied, would result in an unreasonable financial burden on the
 43 certificate holder; and

1 (D) The Council does not need to apply the standard to avoid a significant threat to the
 2 public health, safety or the environment;

3 (c) For any other requests for amendment not described above, the facility, with the
 4 proposed changes, complies with the applicable laws or Council standards that protect a
 5 resource or interest that could be affected by the proposed changes.

6 (d) For all requests for amendment, the amount of the bond or letter of credit required
 7 under OAR 345-022-0050 is adequate.

8 (3) In making the findings required to grant an amendment under section (2), the Council shall
 9 apply the applicable law and Council standards in effect on the following dates:

10 (a) For the applicable substantive criteria under the Council's land use standard, as
 11 described in OAR 345-022-0030, the date the certificate holder submitted the request
 12 for amendment, and

13 (b) For all other applicable laws and Council standards, the date the Council issues the
 14 amended site certificate.

15
 16 **345-027-0070(repeal)**

17 **Review of a Request for Amendment**

18 ~~Except as specified in OAR 345-027-0080, the Council shall review a request for amendment of~~
 19 ~~a site certificate as follows:~~

20 ~~—(1) Within 15 days after receiving a request to amend a site certificate, the Department of~~
 21 ~~Energy shall determine whether the amendment requires extended review based on the~~
 22 ~~criteria in section (2) and:~~

23 ~~—(a) Distribute copies of the request, or instruct the certificate holder to distribute copies~~
 24 ~~of the request, to the persons on a distribution list that includes the reviewing agencies as~~
 25 ~~defined in OAR 345-001-0010 and that may include additional persons, with a request for~~
 26 ~~comments on the request by a specified date. The distribution may be done by courier delivery~~
 27 ~~or mailing of printed copies or, with the approval of the Department, any form of electronic~~
 28 ~~delivery.~~

29 ~~—(b) Send a notice of the amendment request by mail or email to all persons on the~~
 30 ~~Council's general mailing list as defined in OAR 345-011-0020, to any special list established for~~
 31 ~~the facility and to the updated property owner list supplied by the certificate holder under 345-~~
 32 ~~027-0060(1)(g) and specify a date by which comments on the request are due.~~

33 ~~—(c) Post an announcement on the Department's website to notify the public that an~~
 34 ~~amendment request has been received.~~

35 ~~—(d) Send a notice by mail or email to the certificate holder specifying a date for issuance~~
 36 ~~of a proposed order. The Department shall specify a date that is no later than 60 days after the~~
 37 ~~date of the notice unless the Department has determined that the amendment requires~~
 38 ~~extended review. For extended review, the Department shall explain the basis of its~~
 39 ~~determination and specify a date that is not more than 180 days after the date of the notice.~~
 40 ~~Within 10 days after the Department sends notification that an amendment requires extended~~
 41 ~~review, the certificate holder may request Council review of the determination. Upon a request~~
 42 ~~for Council review, the Department shall refer its determination to the Council for concurrence,~~
 43 ~~modification or rejection.~~

44 ~~—(2) The Department may determine that an amendment requires extended review if:~~

~~1 (a) The certificate holder requests extended review;~~
~~2 (b) The Department finds that the amendment request does not contain the information~~
~~3 required by OAR 345-027-0060 or does not contain information sufficient for the Department~~
~~4 to prepare a proposed order;~~
~~5 (c) The Department needs to hire a consultant to assist in reviewing the request;~~
~~6 (d) The amendment:~~
~~7 (A) Would require construction on land zoned residential or exclusive farm use;~~
~~8 (B) Would require construction in a zone for which the use is not permitted;~~
~~9 (C) Would require construction on land that may qualify as Habitat Category 1 or 2~~
~~10 land as described in OAR 635-415-0025;~~
~~11 (D) Would result in incremental carbon dioxide emissions that the certificate holder~~
~~12 elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a~~
~~13 means other than by payments described under OAR 345-024-0560(3), 345-024-0600(3) and (4)~~
~~14 or 345-024-0630(2), (4) and (5); or~~
~~15 (E) Could require the Council to determine, according to OAR 345-022-0000(2), that~~
~~16 the overall public benefits of the facility outweigh any adverse effects on a resource or interest~~
~~17 that is protected by an applicable standard the facility would not meet if the amendment is~~
~~18 approved; or~~
~~19 (e) The Department anticipates a high volume of public comment.~~
~~20 (3) The Office may hold one or more public meetings during the review of a request for~~
~~21 amendment of the site certificate.~~
~~22 (4) Except as otherwise provided in this section, no later than the date the Department has~~
~~23 specified in the notice described in subsection (1)(d), the Department shall issue a proposed~~
~~24 order, recommending approval, modification or disapproval of the requested amendment. If~~
~~25 the Department needs additional time to prepare the proposed order, the Department may~~
~~26 issue the proposed order at a later date, but the Department shall, no later than the date the~~
~~27 Department has specified in the notice, notify the certificate holder in writing of the~~
~~28 circumstances that justify the delay.~~
~~29 (5) After issuing the proposed order, the Department shall send a notice of the proposed~~
~~30 order by mail or email to the persons on the Council's general mailing list as defined in OAR~~
~~31 345-011-0020, to any special list established for the facility, to the updated property owner list~~
~~32 supplied by the certificate holder under 345-027-0060(1)(g) and to the distribution list~~
~~33 described in subsection (1)(a). In the notice, the Department shall state that all comments must~~
~~34 be submitted in writing and must be received by the Department by a specified deadline that is~~
~~35 at least 30 days from the date of the notice. The Department shall post an announcement on its~~
~~36 website to notify the public of the issuance of the proposed order.~~
~~37 (6) Any person may, by written request submitted to the Department no later than the~~
~~38 deadline described in section (5), ask the Council to hold a contested case proceeding on the~~
~~39 proposed order. For the purpose of this rule, the request is submitted when it is received by the~~
~~40 Department. In the request, the person shall provide a description of the issues to be~~
~~41 contested, a statement of the facts believed to be at issue and the person's mailing address and~~
~~42 email address.~~
~~43 (7) To determine that an issue justifies a contested case proceeding under section (8), the~~
~~44 Council must find that the request raises a significant issue of fact or law that may affect the~~

1 ~~Council's determination that the facility, with the change proposed by the amendment, meets~~
2 ~~an applicable standard. If the Council finds that the request would not affect the Council's~~
3 ~~determination if the alleged facts were found to be true but that those facts could affect a site~~
4 ~~certificate condition, the Council may deny the request and may adopt appropriate conditions.~~
5 ~~If the Council does not have jurisdiction over the issue raised in the request, the Council must~~
6 ~~deny the request.~~

7 ~~—(8) The Council shall determine whether any issue identified in a request for a contested~~
8 ~~case proceeding justifies a contested case proceeding, and:~~

9 ~~—(a) If the Council finds that the request identifies one or more issues that justify a~~
10 ~~contested case proceeding, the Council shall conduct a contested case proceeding according to~~
11 ~~the applicable provisions of OAR 345-015-0012 to 345-015-0085 limited to the issues that the~~
12 ~~Council found sufficient to justify the proceeding.~~

13 ~~—(b) If the Council finds that the request identifies one or more issues that an~~
14 ~~amendment of the proposed order would settle in a manner satisfactory to the Council, the~~
15 ~~Council may deny the request as to those issues and direct the Department to amend the~~
16 ~~proposed order and send a notice of the amended proposed order to the persons described in~~
17 ~~section (5). Any person may, by written request submitted to the Department within 30 days~~
18 ~~after the Department issues the notice of the amended proposed order, ask the Council to hold~~
19 ~~a contested case proceeding limited to issues raised by the amendment to the proposed order.~~
20 ~~For the purpose of this rule, the request is submitted when it is received by the Department. In~~
21 ~~the request, the person shall provide a description of the issues to be contested, a statement of~~
22 ~~the facts believed to be at issue and the person's mailing address and email address. As~~
23 ~~described in this section, the Council shall determine whether any issue identified in the~~
24 ~~request for a contested case proceeding justifies a contested case proceeding.~~

25 ~~—(c) If the Council finds that the request does not identify any issue that justifies a~~
26 ~~contested case proceeding, the Council shall deny the request. In a written order denying the~~
27 ~~request, the Council shall state the basis for the denial. The Council shall then adopt, modify or~~
28 ~~reject the proposed order based on the considerations described in section (10). In a written~~
29 ~~order, the Council shall either grant or deny issuance of an amended site certificate. If the~~
30 ~~Council grants issuance of an amended site certificate, the Council shall issue an amended site~~
31 ~~certificate, which is effective upon execution by the Council Chair and by the applicant.~~

32 ~~—(9) If there is no request for a contested case proceeding as described in section (6) or~~
33 ~~subsection (8)(b), the Council, may adopt, modify or reject the proposed order based on the~~
34 ~~considerations described in section (10). In a written order, the Council shall either grant or~~
35 ~~deny issuance of an amended site certificate. If the Council grants issuance of an amended site~~
36 ~~certificate, the Council shall issue an amended site certificate, which is effective upon execution~~
37 ~~by the Council Chair and by the applicant.~~

38 ~~—(10) In making a decision to grant or deny issuance of an amended site certificate, the~~
39 ~~Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in~~
40 ~~effect on the date the certificate holder submitted the request for amendment and all other~~
41 ~~state statutes, administrative rules, and local government ordinances in effect on the date the~~
42 ~~Council makes its decision. The Council shall consider the following:~~

~~1 (a) For an amendment that would change the site boundary or the legal description of
2 the site, the Council shall consider, for the area added to the site by the amendment, whether
3 the facility complies with all Council standards;~~

~~4 (b) For an amendment that extends the deadlines for beginning or completing
5 construction, the Council shall consider:~~

~~6 (A) Whether the Council has previously granted an extension of the deadline;~~

~~7 (B) Whether there has been any change of circumstances that affects a previous
8 Council finding that was required for issuance of a site certificate or amended site certificate;
9 and~~

~~10 (C) Whether the facility complies with all Council standards, except that the Council
11 may choose not to apply a standard if the Council finds that:~~

~~12 (i) The certificate holder has spent more than 50 percent of the budgeted costs
13 on construction of the facility;~~

~~14 (ii) The inability of the certificate holder to complete the construction of the
15 facility by the deadline in effect before the amendment is the result of unforeseen
16 circumstances that are outside the control of the certificate holder;~~

~~17 (iii) The standard, if applied, would result in an unreasonable financial burden on
18 the certificate holder; and~~

~~19 (iv) The Council does not need to apply the standard to avoid a significant threat
20 to the public health, safety or the environment;~~

~~21 (c) For any amendment not described above, the Council shall consider whether the
22 amendment would affect any finding made by the Council in an earlier order.~~

~~23 (d) For all amendments, the Council shall consider whether the amount of the bond or letter of
24 credit required under OAR 345-022-0050 is adequate.~~

345-027-0080(repeal)

Review of a Request by a Certificate Holder for Expedited Amendment

~~28 (1) A certificate holder may ask the Council Chair to grant expedited review of an
29 amendment request. The certificate holder shall submit a request for expedited review to the
30 Department of Energy in writing and, in addition, the certificate holder shall submit the full
31 amendment request in a non-copy-protected electronic format acceptable to the Department.
32 The certificate holder shall include in the request:~~

~~33 (a) The information listed in OAR 345-027-0060(1) and (2), and~~

~~34 (b) Reasons why the certificate holder needs expedited review of its request and an
35 explanation of why the need for expedited review arose and could not have reasonably been
36 foreseen by the certificate holder.~~

~~37 (2) The Chair may grant a request for expedited review if the Chair finds that a delay would
38 unduly harm the certificate holder and if the facility, with the proposed change, would not
39 likely result in a significant new adverse impact. If the Chair decides not to grant the request for
40 expedited review, the Chair shall issue a written decision as soon as is reasonably practicable. In
41 a written decision denying the request, the Chair shall give an explanation of the reasons for
42 the denial.~~

~~43 (3) Within 7 days after the Chair grants expedited review, the Department shall:~~

1 ~~—— (a) Send copies of the amendment request by mail or email to the reviewing agencies as~~
2 ~~defined in OAR 345-001-0010 and ask those agencies to comment on the request within not~~
3 ~~more than 21 days after the date of the notice.~~

4 ~~—— (b) Send a notice of the amendment request by mail or email to all persons on the~~
5 ~~Council's general mailing list as defined in OAR 345-011-0020, to any special list established for~~
6 ~~the facility and to the updated property owner list supplied by the certificate holder under 345-~~
7 ~~027-0060(1)(g) specifying a date, not more than 21 days after the date of the notice, by which~~
8 ~~comments are due.~~

9 ~~—— (c) Post an announcement of the amendment request on its website.~~

10 ~~—— (4) Within 60 days after the Chair grants expedited review, the Department shall issue a~~
11 ~~proposed order, recommending approval, modification or disapproval of the requested~~
12 ~~amendment. If the Department recommends approval, the Department shall include in the~~
13 ~~proposed order any new or modified conditions it recommends and shall explain why expedited~~
14 ~~Council action was warranted.~~

15 ~~—— (5) The Department shall send a notice of the proposed order by mail or email to the~~
16 ~~persons on the Council's general mailing list, to any special list established for the facility and to~~
17 ~~the updated property owner list supplied by the certificate holder under OAR 345-027-~~
18 ~~0060(1)(g). In addition, the Department shall post the notice on its website. In the notice, the~~
19 ~~Department shall include information on the availability of the proposed order, the date of the~~
20 ~~Council meeting when the Council will consider the proposed order and issue a temporary~~
21 ~~order as described in section (5), a date by which comments on the proposed order are due and~~
22 ~~the deadline for any person to request a contested case proceeding on the Council's temporary~~
23 ~~order.~~

24 ~~—— (6) After considering the proposed order, the Council may issue an order temporarily~~
25 ~~amending the site certificate. In making a decision whether to issue a temporary order under~~
26 ~~this rule, the Council shall consider the factors listed in OAR 345-027-0070(10). The Council shall~~
27 ~~apply the applicable substantive criteria, as described in 345-022-0030, in effect on the date the~~
28 ~~certificate holder submitted the request for amendment and all other state statutes,~~
29 ~~administrative rules, and local government ordinances in effect on the date the Council issues~~
30 ~~the temporary order.~~

31 ~~—— (7) Before implementing any change approved by the Council's temporary order, the~~
32 ~~certificate holder must submit an authorized acknowledgement that the certificate holder~~
33 ~~accepts all terms and conditions of the temporary order. The acknowledgement may be~~
34 ~~submitted to the Department by fax or email if the certificate holder promptly submits a signed~~
35 ~~original to the Department by mail or hand delivery.~~

36 ~~—— (8) Any person may, by written request submitted to the Department within 15 days after~~
37 ~~the date the Council issues the temporary order described in section (5), ask the Council to hold~~
38 ~~a contested case proceeding on the temporary order. For the purpose of this rule, the request~~
39 ~~is submitted when it is received by the Department. In the request, the person shall provide a~~
40 ~~description of the issues to be contested, a statement of the facts believed to be at issue and~~
41 ~~the person's mailing address and email address.~~

42 ~~—— (9) The Council shall determine whether any issue identified in a request for a contested~~
43 ~~case proceeding justifies a contested case proceeding.~~

~~1 (a) If the Council finds that the request identifies one or more issues that justify a
2 contested case proceeding, the Council shall conduct a contested case proceeding according to
3 the applicable provisions of OAR 345-015-0012 to 345-015-0085 limited to the issues that the
4 Council found sufficient to justify the proceeding.~~

~~5 (b) If the Council finds that the request does not identify any issue that justifies a
6 contested case proceeding, the Council shall deny the request. In a written order denying the
7 request, the Council shall state the basis for the denial. The Council shall adopt the temporary
8 order as a final order. In the final order, the Council may modify the language of the temporary
9 order, consistent with due process. In the final order, the Council shall either grant or deny
10 issuance of an amended site certificate. If the Council grants issuance of an amended site
11 certificate, the Council shall issue an amended site certificate, which is effective upon execution
12 by the Council Chair and by the applicant.~~

~~13 (10) If there is no request for a contested case proceeding as described in section (8), the
14 Council shall adopt the temporary order as a final order. In the final order, the Council may
15 modify the language of the temporary order, consistent with due process. In the final order, the
16 Council shall either grant or deny issuance of an amended site certificate. If the Council grants
17 issuance of an amended site certificate, the Council shall issue an amended site certificate,
18 which is effective upon execution by the Council Chair and by the applicant.~~

~~19 (11) The certificate holder shall not abuse this rule by failing to make timely application for an
20 amendment and thus creating the need for expedited review.~~

21 22 **345-027-0090(amend)**

23 **Request by Any Person for Amendment to Apply Subsequent Later-Adopted Laws or Rules**

24 (1) Any person may ~~submit to the Department of Energy a request for~~ an amendment of a site
25 certificate to apply a law(s), including local government ordinance, statute ordinances,
26 statutes, rules or Council rule standards, adopted after the date the site certificate was
27 executed, if the person contends failure to apply the law(s) results in a significant threat to
28 the public health or safety or to the environment. The Department of Energy itself may
29 initiate such a request.

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

33 ~~(a) The name, mailing address, email address and telephone number of the person submitting~~
34 ~~the request;~~

35 ~~(b) The name and address of the certificate holder;~~

36 ~~(c) Identification of the facility for which the site certificate in question was granted and its~~
37 ~~location;~~

38 ~~(d) (a) Identification of the local government ordinance, statute or Council rule~~ law(s) that
39 the person seeks to apply to the facility; and

40 ~~(e) The particular facts that the person believes demonstrate that failure to apply the~~
41 ~~ordinance, statute or rule identified in subsection (d) presents~~ clearly show a significant
42 threat to the public health ~~or,~~ safety or ~~to~~ the environment; and that requires
43 application of the later adopted law(s).

1 ~~(f) The specific language of the site certificate that the person proposes to change, delete or~~
 2 ~~add by an amendment.~~

3 (3) If the Department receives a preliminary request to amend a site certificate for amendment
 4 to apply later-adopted law(s) as described in this rule from any person other than the
 5 certificate holder, the Department shall send a copy of the request to the certificate holder
 6 ~~with. The transmittal shall include a notice stating the dated deadline~~ by which the certificate
 7 holder must submit a response ~~to the Department. In its response, the certificate holder~~
 8 shall state whether it agrees that there is a clear showing of a significant threat to the public
 9 health, safety or the environment that requires application of the later-adopted law(s).

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

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

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

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

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

27 (a) If the request to apply later-adopted law(s) is made by the certificate holder, the date
 28 the request is received by the Department.

29 (b) If the request to apply later-adopted law(s) is made by a person other than the
 30 certificate holder, and if the certificate holder responds as described in subsection
 31 (3)(a), the date the response described in subsection (3)(a) is received by the
 32 Department.

33 (c) If the request to apply later-adopted law(s) is made by a person other than the
 34 certificate holder, and if the certificate holder responds as described in subsection (3)(b)
 35 or does not respond before the specified deadline under section (3), the date of the
 36 Council's determination under paragraph (3)(b)(B).

37 ~~(4)-(5)~~ After receiving a complete request for amendment under section (4) of this rule, the
 38 Council shall review the request for amendment as described in OAR 345-027-00700065, 345-
 39 027-0067, 345-027-0069 and 345-027-0071, except that:

40 ~~(a) After receiving the certificate holder's response as requested under (3), the Department~~
 41 ~~may ask the Council to determine whether the request demonstrates that failure to~~
 42 ~~apply the ordinance, statute or rule identified in subsection (2)(d) presents a significant~~
 43 ~~threat to the public health or safety or to the environment. If the Council determines~~
 44 ~~that applying the ordinance, statute or rule is not justified by a significant threat to the~~

1 ~~public health or safety or to the environment, then the Council may deny the~~
2 ~~amendment request.~~

3 ~~(b) Within 15 days after receiving the certificate holder's response as requested under (3) or~~
4 ~~within 15 days after a Council determination under (a) that applying the ordinance,~~
5 ~~statute or rule is justified by a significant threat to the public health or safety or to the~~
6 ~~environment, the Department shall determine whether the amendment request~~
7 ~~requires expedited review, based on the criteria in OAR 345-027-0070(2), and shall send~~
8 ~~the notices described in 345-027-0070(1)(a), (b) and (d).~~

9 ~~(a) (c)~~ If the Department recommends approval or ~~modification~~modified approval of the
10 requested amendment, the Department shall include in the proposed order described in
11 OAR 345-027-~~0070(4)~~0069 any new or modified site certificate conditions necessary to
12 assure compliance with the ~~statutes, Council rules, and local government~~
13 ~~ordinances~~law(s) applied to the facility under the proposed order;

14 ~~(b) (d)~~ If the Department in its proposed order recommends approval or
15 ~~modification~~modified approval of the requested amendment, the certificate holder
16 may, by written request submitted to ~~and received by~~ the Department within 30 days
17 after the Department issues the proposed order, ask the Council to hold a contested
18 case proceeding on the proposed order. ~~For the purpose of this rule, the request is~~
19 ~~submitted when it is received by the Department.~~ In the request, the certificate holder
20 shall provide a description of the issues to be contested and a statement of the facts
21 believed to be at issue. If the ~~site~~ certificate holder requests a contested case
22 proceeding, the Council shall conduct a contested case proceeding according to the
23 applicable provisions of OAR 345-015-0012 to ~~0014, and 345-015-0018 to~~ 345-015-
24 0085 limited to the issues stated by the certificate holder; and

25 ~~(c) (e)~~ The Council shall include new conditions in a site certificate amended under this rule
26 only if ~~the certificate holder agrees to the new conditions or~~ the Council finds that the
27 conditions are necessary based upon a clear showing of a significant threat to the public
28 health, safety or the environment.
29

30 **345-027-0100(amend)**

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

33 (1) For the purpose of this rule:

34 (a) A ~~request for amendment to a site certificate to transfer of the site certificate is required~~
35 ~~for a transaction that results in a change in the ownership requires a transfer of the site~~
36 ~~certificate when the person who will have the legal right to, possession and/or control of~~
37 ~~the site or the facility does not have authority under the site certificate to construct,~~
38 ~~operate or retire the facility;~~certificate holder.

39 (b) "~~Transferee~~New owner" means the person ~~who or entity that will become gain~~
40 ~~ownership, possession or control of the new applicant and site facility or the~~ certificate
41 holder.

42 (2) When ~~at~~the certificate holder has knowledge that ~~any transfer of ownership of the facility a~~
43 ~~transaction~~ that requires a transfer of the site certificate ~~as described in section (1)(a)~~ is or
44 may be pending, the certificate holder shall notify the Department of Energy. In the notice,

1 the certificate holder shall include, ~~if known,~~ the name, ~~mailing address~~ and ~~telephone~~
 2 ~~number~~ contact information of the ~~transferee~~ new owner, and the date of the transfer of
 3 ownership. If possible, the certificate holder shall notify the Department at least 60 days
 4 before the date of the transfer of ownership.

5 ~~(3) The transferee~~ (3) A transaction that would require a transfer of the site certificate as
 6 described in subsection (1)(a) does not terminate the transferor's duties and obligations
 7 under the site certificate until the Council approves a transfer request and issues an
 8 amended site certificate. The new owner is not allowed to construct or operate the facility
 9 until an amended site certificate as described in section (10) or a temporary amended site
 10 certificate as described in section (11) becomes effective.

11 (4) To request ~~an amendment to~~ transfer ~~of~~ the site certificate, the ~~transferee~~ new owner shall
 12 submit a written request to the Department that includes the information described in OAR
 13 345-021-0010(1)(a), (d), (f) and (m), a certification that the ~~transferee~~ new owner agrees to
 14 abide by all terms and conditions of the site certificate currently in effect and, if known, the
 15 expected date of the ~~transfer of ownership~~ transaction. If applicable, the ~~transferee~~ new
 16 owner shall include in the request the information described in OAR 345-021-
 17 0010(1)(y)(O)(iv).

18 (5) The Department may require the ~~transferee~~ new owner to submit a written statement from
 19 the current certificate holder, or a certified copy of an order or judgment of a court of
 20 competent jurisdiction, verifying the ~~transferee's~~ new owner's right, subject to the
 21 provisions of ORS Chapter 469 and the rules of this chapter, to possession or control of the
 22 site or the facility.

23 (6) Within 15 days after receiving a request for amendment to transfer ~~at~~ the site certificate, the
 24 Department shall send a notice of the request by mail or email to the reviewing agencies as
 25 defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined
 26 in OAR 345-011-0020, to any special list established for the facility and to the updated
 27 property owner list submitted by the ~~transferee~~ new owner under ~~subsection~~ section (4). In
 28 the notice, the Department shall describe the transfer request, specify a date by which
 29 comments are due and state that the date of the ~~Council's informational~~ Council's transfer
 30 hearing will be announced on the Department's website.

31 (7) Before acting on the request for amendment to transfer ~~request~~ the site certificate, the
 32 Council shall hold ~~an informational~~ a transfer hearing. The Council shall hold the
 33 ~~informational~~ transfer hearing during a Council meeting and shall provide notice of the
 34 hearing on its meeting agenda, which will be sent by mail or email to the Council's general
 35 mailing list in advance of the meeting. The ~~informational~~ transfer hearing is not a contested
 36 case hearing. During the hearing the Council will accept comments from the public,
 37 reviewing agencies and new owner regarding the new owner's compliance with the Council
 38 standards described in section (8)(a).

39 (8) At the conclusion of the ~~informational~~ transfer hearing or at a later meeting, the Council may
 40 issue an order approving the transfer request if the Council finds that:

41 (a) The ~~transferee~~ new owner complies with the Council standards described in OAR 345-
 42 022-0010, 345-022-0050 and, if applicable, OAR 345-024-0710(1); and

43 (b) The ~~transferee~~ new owner is or will be lawfully entitled to possession or control of the
 44 site or the facility described in the site certificate.

- 1 (9) Except as described in section (12), the Council shall not otherwise change the terms and
 2 conditions of the site certificate in an order approving the transfer request.
- 3 (10) Upon issuing the order described in section (8), the Council shall issue an amended site
 4 certificate that names the transfereenew owner as the new certificate holder or as the new
 5 owner of the certificate holder. The amended site certificate is effective upon execution by
 6 the Council chair and the transfereenew owner. The Council shall issue the amended site
 7 certificate in duplicate counterpart originals and each counterpart, upon signing, will have
 8 the same effect.
- 9 (11) If the Council chair determines that special circumstances justify emergency action, the
 10 Council chair may, upon a written request from the transfereenew owner that includes a
 11 showing that the transfereenew owner can meet the requirements of section (8), issue a
 12 temporary amended site certificate that names the transfereenew owner as the new
 13 certificate holder or as the new owner of the certificate holder. The temporary amended
 14 site certificate is effective upon execution by the Council chair and the transfereenew
 15 owner. The temporary amended site certificate expires when an amended site certificate as
 16 described in section (10) becomes effective or as the Council otherwise orders.
- 17 ~~(12) The Council may act concurrently on a request to transfer a site certificate and any other~~
 18 ~~amendment request subject to the procedures described in this rule for the transfer request~~
 19 ~~and:~~
- 20 ~~(a) The procedures described in OAR 345-027-0030 for an amendment to extend construction~~
 21 ~~beginning and completion deadlines.~~
- 22 ~~(b) The procedures described in OAR 345-027-0090 for an amendment to apply subsequent~~
 23 ~~laws or rules.~~
- 24 ~~(c) The procedures described in OAR 345-027-0060 and 345-027-0070 for any amendment~~
 25 ~~request not described in (a) or (b).~~

26 **345-027-0110**

27 **Termination of a Site Certificate**

- 28 (1) A certificate holder may apply to the Council to terminate a site certificate at any time,
 29 subject to the requirements of this rule.
- 30 (2) A certificate holder must apply to the Council to terminate a site certificate within two years
 31 following cessation of construction or operation of the facility.
- 32 (3) If the certificate holder fails to apply to the Council to terminate the site certificate and the
 33 Council finds that the certificate holder has permanently ceased construction or operation
 34 of the facility, then the Council may terminate the site certificate according to the
 35 procedure described in OAR 345-~~027-0020-025-0006~~(16).
- 36 (4) In an application for termination of the site certificate, the certificate holder shall include a
 37 proposed final retirement plan for the facility and site. The certificate holder shall submit an
 38 original and two printed copies of the application for termination and the proposed final
 39 retirement plan to the Department. Upon a request by the Department, the certificate
 40 holder must submit printed copies of the application for termination and the proposed final
 41 retirement plan for members of the Council. In addition to the printed copies, the certificate
 42 holder shall submit the full copies of the application for termination and the proposed final
 43 retirement plan in a non-copy-protected electronic format acceptable to the Department.
 44

- 1 (5) In the proposed final retirement plan, the certificate holder shall include:
 2 (a) A plan for retirement that provides for completion of retirement without significant
 3 delay and that protects public health, safety and the environment.
 4 (b) A description of actions the certificate holder proposes to take to restore the site to a
 5 useful, non-hazardous condition, including information on how impacts to fish, wildlife
 6 and the environment would be minimized during the retirement process.
 7 (c) A current detailed cost estimate and a plan for ensuring the availability of adequate
 8 funds for completion of retirement.
 9 (d) An updated list of the owners of property located within or adjacent to the site of the
 10 facility, as described in OAR 345-021-0010(1)(f).
 11 (6) Within 15 days after receiving an application for termination of a site certificate, the
 12 Department of Energy shall:
 13 (a) Send a notice of the application by mail or email to all persons on the Council's general
 14 mailing list as defined in OAR 345-011-0020, to any special list established for the facility
 15 and to the updated property owner list submitted by the certificate holder under
 16 subsection (5) specifying a date by which comments on the application are due.
 17 (b) Send copies of the application for termination by mail or email to the reviewing agencies
 18 as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified
 19 date.
 20 (c) Post an announcement of the application for termination on the Department's website.
 21 (7) The Council shall review the proposed final retirement plan and shall consider any
 22 comments received from the public and the reviewing agencies. The Council may approve
 23 the proposed final retirement plan or modify the plan to comply with the rules of this
 24 chapter and applicable conditions in the site certificate. The Council shall issue an order
 25 authorizing retirement according to the approved or modified final retirement plan and
 26 subject to any conditions the Council finds appropriate. The Council's order may be
 27 appealed as described in ORS 183.480.
 28 (8) When the Council finds that the certificate holder has completed the retirement of the
 29 facility according to the Council's order authorizing retirement, the Council shall issue an
 30 order terminating the site certificate.
 31 (9) When the Council finds that the site certificate has expired as described in OAR 345-027-
 32 ~~00000013~~, the Council shall issue an order terminating the site certificate.

Department of Energy Approval of Gas Storage Testing Pipelines

345-027-0210

General

- 37 (1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the
 38 Council certified facility to which the pipeline would connect obtains, before construction,
 39 the approval of the Department of Energy for the construction, operation and retirement of
 40 the proposed pipeline as required under ORS 469.405(3).
 41 (2) For the purposes of OAR 345-027-0210 through 345-027-0240:
 42 (a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less
 43 than 16 inches in diameter and less than five miles in length, that is used to test or

- 1 maintain an underground gas storage reservoir and that would connect to a Council
2 certified facility if the storage reservoir proves feasible for operational use;
- 3 (b) "Temporary pipeline" means a pipeline that has no potential for operational use;
- 4 (c) "Council certified facility" means an energy facility for which the Council has issued a site
5 certificate that is either a surface facility related to an underground gas storage
6 reservoir or a gas pipeline;
- 7 (d) "Connect" means join for the purpose of operational use;
- 8 (e) "Test or maintain" means transporting gas to an underground gas storage reservoir for
9 the purposes of determining whether the reservoir is feasible for operational use or
10 maintaining the gas storage capacity of the reservoir but does not include operational
11 use;
- 12 (f) "Operational use" means transporting gas to an underground gas storage reservoir for
13 the purpose of storing gas until it is needed for sale or for withdrawing gas from an
14 underground gas storage reservoir for the purpose of sale;
- 15 (g) "Council substantive standards" means the following standards:
16 (A) Structural Standard, OAR 345-022-0020;
17 (B) Soil Protection, OAR 345-022-0022;
18 (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);
19 (D) Retirement and Financial Assurance, OAR 345-022-0050;
20 (E) Fish and Wildlife Habitat, OAR 345-022-0060;
21 (F) Threatened and Endangered Species, OAR 345-022-0070
22 (G) Scenic Resources, OAR 345-022-0080;
23 (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;
24 (I) Recreation, 345-022-0100;
25 (J) Public Services, OAR 345-022-0110;
26 (K) Waste Minimization, OAR 345-022-0120; and
27 (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);
- 28 (h) "Information requirements" means information that would support the findings
29 described in OAR 345-024-0030(2) and the information described in 345-021-0010(1)(h),
30 (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

32 **345-027-0220**

33 **Request for Approval**

- 34 (1) Before submitting a request for approval to construct, operate and retire a gas storage
35 testing pipeline, the certificate holder shall:
36 (a) Inform the Department of Energy of the proposed pipeline, including its diameter,
37 length, location, capacity and maximum operating pressure; and
38 (b) Provide to the Department a map showing the location of the proposed pipeline.
- 39 (2) After receiving the information described in section (1), the Department shall confer with
40 the certificate holder about the Council substantive standards and information
41 requirements that might apply to the proposed pipeline and any extraordinary
42 circumstances that might affect the time requirements for completing the approval process.
43 Within 7 days after conferring with the certificate holder, the Department shall send a letter
44 to the certificate holder that includes the following:

- 1 (a) Identification of the Council substantive standards that are applicable to the request for
2 approval of the proposed pipeline;
- 3 (b) Identification of the information requirements that are applicable to the request for
4 approval of the proposed pipeline;
- 5 (c) The time requirements for the approval process, if different from the time requirements
6 described in OAR 345-027-0230.
- 7 (3) The certificate holder shall submit to the Department a written request for approval to
8 construct, operate and retire a gas storage testing pipeline with the fee required by the fee
9 schedule established under ORS 469.441. The certificate holder shall submit the original and
10 two paper copies of the request to the Department. The certificate holder shall provide
11 additional copies to the Department upon request and copies or access to copies to any
12 person requesting copies. In addition to the printed copies of the request for approval, the
13 certificate holder shall submit the full request in a non-copy-protected electronic format
14 acceptable to the Department.
- 15 (4) In a request for approval, the certificate holder shall include:
- 16 (a) The name and mailing address of the certificate holder and the name, mailing address,
17 email address and phone number of the individual responsible for submitting the
18 request;
- 19 (b) A description of the purpose and operation of the proposed pipeline and a discussion of
20 whether the use of the gas storage testing pipeline for reservoir testing or maintenance
21 will require an increase in the compression available in the Council certified facility to
22 which the proposed pipeline would connect in addition to the compression that is
23 permitted under the site certificate;
- 24 (c) Identification of the Council certified facility to which the proposed pipeline would
25 connect;
- 26 (d) A description of the proposed pipeline, including its diameter, length, location, capacity
27 and maximum operating pressure;
- 28 (e) A map showing the location of the proposed pipeline;
- 29 (f) A list of the names and mailing addresses of all owners of record, as shown on the most
30 recent property tax assessment role, of property where the proposed pipeline is located
31 and within 500 feet of the location of the proposed pipeline;
- 32 (g) The information that the Department has identified in the letter described in section (2);
33 and
- 34 (h) Any other information that the Department requests as needed to make the findings
35 described in the applicable standards.

36

37 **345-027-0230**38 **Review of a Request for Approval**

- 39 (1) Within 7 days after receiving a request for approval to construct, operate and retire a gas
40 storage testing pipeline, the Department of Energy shall:
- 41 (a) Send copies of the request by mail, email or any other form of electronic delivery to the
42 following agencies with a notice asking the agencies to submit written comments on the
43 request within 14 days from the date of the notice:
- 44 (A) Oregon Department of Fish and Wildlife;

- 1 (B) Oregon Department of Geology and Mineral Industries;
- 2 (C) Oregon Public Utility Commission;
- 3 (D) Oregon Department of Agriculture;
- 4 (E) Division of State Lands; and
- 5 (F) State Historic Preservation Office.

6 (b) Send a notice of the request, including a map showing the location of the proposed
7 pipeline, by mail, email or any other form of electronic delivery to the following stating
8 that the agencies and planning authority may submit written comments on the request
9 within 14 days from the date of the notice:

- 10 (A) Oregon Department of Forestry;
- 11 (B) Oregon Department of Environmental Quality; and
- 12 (C) The planning authority of the county or counties where the proposed pipeline is
13 located.

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

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

- 19 (2) Within 21 days from the deadline for comments described in section (1) or such longer
20 period as the Department has specified in the letter described in OAR 345-027-0220(2), the
21 Department shall issue a final order stating its findings on the applicable Council substantive
22 standards and its approval or disapproval of the request. In an order approving a request,
23 the Department shall include conditions that the Department finds necessary to ensure
24 compliance with the applicable standards and conditions required by 345-027-0240.
- 25 (3) The Department shall send a notice of the final order to the certificate holder, to the
26 property owners the certificate holder listed in the request and to any person who
27 commented on the request. In the notice, the Department shall state that judicial review of
28 the order is as provided in ORS 469.403.
- 29 (4) The Department may amend an order approving the construction, operation and retirement
30 of a gas storage testing pipeline.
- 31 (5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for
32 compliance with other state standards.
- 33 (6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the
34 Department does not bind any state or local agency.

36 **345-027-0240**

37 **Conditions**

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

- 1 (1) The certificate holder shall design, construct, operate and retire the gas storage testing
2 pipeline in compliance with applicable Council rules and applicable federal, state and local
3 laws, rules and ordinances in effect at the time the Department issues the order;
- 4 (2) The certificate shall design, construct, operate and retire the gas storage testing pipeline
5 substantially as described in representations in the request for approval and supporting
6 record that the Department finds to be binding commitments made by the certificate
7 holder;
- 8 (3) The certificate holder shall prevent the development of any conditions in the area of the gas
9 storage testing pipeline that would preclude restoration of the area to a useful, non-
10 hazardous condition to the extent that prevention of such conditions is within the control of
11 the certificate holder;
- 12 (4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all
13 refuse and remove all temporary structures not needed to test or maintain an underground
14 gas storage reservoir;
- 15 (5) The certificate holder shall notify the Department of Energy, the State Building Codes
16 Division and the Department of Geology and Mineral Industries promptly if investigations or
17 trenching in the area of the pipeline reveal soil or geological conditions that differ
18 significantly from those described in the request for approval;
- 19 (6) The certificate holder shall submit to the Department copies of all incident reports involving
20 the gas storage testing pipeline required under 49 CFR Sec. 191.15;
- 21 (7) The certificate holder shall allow properly identified representatives of the Council or the
22 Department of Energy to inspect the pipeline at any time, including all materials, activities,
23 premises and records pertaining to design, construction, operation or retirement of the
24 pipeline;
- 25 (8) The certificate holder shall notify the Department when it begins construction, shall keep
26 the Department informed of construction progress and any unusual events or
27 circumstances and shall notify the Department when it begins to use the pipeline for
28 reservoir testing or maintenance;
- 29 (9) The certificate holder shall notify the Department if it terminates use of the gas storage
30 testing pipeline; and
- 31 (10) If the certificate holder decides to convert the gas storage testing pipeline to operational
32 use, the certificate holder shall notify the Department and, if required under OAR 345-027-
33 0050, submit a request to amend the site certificate.