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DEPARTMENT OF ENERGY
ENERGY FACILITY SITING COUNCIL

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RULES:

345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 345-027-0011, 345-027-0013, 345-027-0050, 345-027-0051, 345-027-0053, 345-027-0055, 345-027-0057, 345-027-0059, 345-027-0060, 345-027-0063, 345-027-0065, 345-027-0067, 345-027-0068, 345-027-0070, 345-027-0071, 345-027-0072, 345-027-0075, 345-027-0080, 345-027-0085, 345-027-0090, 345-027-0100

AMEND: 345-015-0014

RULE TITLE: Contested Case Notices

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States how and to whom the Department sends notice of a contested case to. 10/24/17 changes were necessary to state that the contents of a contested case notice and who the notice of contested case gets sent to, will both vary depending on whether the contested case is on an application for a site certificate or on a request for amendment.

RULE TEXT:

- (1) The Department shall issue notices for Council contested case proceedings as provided in OAR 137-003-0001.
 - (a) Contested case notices regarding proposed orders for site certificate applications shall include:
 - (A) A date by which persons must request party or limited party status.
 - (B) The date of the pre-hearing conference.
 - (C) The time and place of the hearing.
 - (b) Contested case notices regarding proposed orders for site certificate amendments shall include:
 - (A) The date of the pre-hearing conference.
 - (B) The time and place of the hearing.
 - (C) The issues and the parties the Council identified for the contested case as described in OAR 345-027-0071.
- (2) In addition to the requirements of section (1), for a contested case notice on a proposed order as described in OAR 345-015-0230 or following a Council decision to grant a contested case hearing under 345-015-0310, the Department shall include in the notice a statement that participation as a party or limited party in the contested case proceeding and

the opportunity to raise any issue are subject to the limitations described in OAR 345-015-0016.

(3) The Department shall send a contested case notice by registered or certified mail to the following persons:

(a) For a contested case notice on a proposed order as described in OAR 345-015-0230, to the applicant and to all persons who commented in person or in writing on the record of the public hearing described in 345-015-0220.

(b) Following the Council's decision to grant a contested case proceeding on a proposed order on an application for a site certificate for a special criteria facility, to the applicant and to all persons who commented in person or in writing on the record of the public hearing on the proposed order described in OAR 345-015-0320.

(c) Following a Council decision to grant a contested case proceeding on a proposed site certificate amendment under OAR 345-027-0071 or 345-027-0090, to the certificate holder and to the parties the Council granted contested case party status to.

(d) For Council contested case proceedings described under OAR 345-029-0070, 345-029-0100 or 345-060-0004, to persons who have an interest or represent a public interest in the outcome of the proceeding.

(4) The Department shall request that the applicant notify the hearing officer and the Department, by the date described in subsection (1)(a), of any issues the applicant desires to raise in the contested case proceedings described in subsections (3)(a) and (b).

STATUTORY/OTHER AUTHORITY: ORS 469.373, 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415, 469.085, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-015-0016

RULE TITLE: Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States who is eligible to request party status to a contested case on an application for a site certificate and the process by which those requests must be made.

RULE TEXT:

(1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding shall submit a petition to the hearing officer by the date specified in the Department of Energy's contested case notice issued under OAR 345-015-0014.

(2) Persons who have an interest in the outcome of the Council's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties.

(3) Except as described in section (4), only those persons who have commented in person or in writing on the record of the public hearing described in OAR 345-015-0220 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(4) Following a Council decision to grant a contested case hearing under OAR 345-015-0310, only those persons who have commented in person or in writing on the record of the public hearing described in 345-015-0320 may request to participate as a party or limited party in a contested case proceeding on an application for a site certificate. To raise an issue in a contested case proceeding, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the hearing officer shall not consider the issue in the contested case proceeding. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support the person's position on the issue.

(5) In a petition to request party or limited party status, the person requesting such status shall include:

(a) The information required under OAR 137-003-0005(3).

(b) A short and plain statement of the issue or issues that the person desires to raise in the contested case proceeding.

(c) A reference to the person's comments at the public hearing showing that the person raised the issue or issues at the public hearing.

(d) A detailed description of the person's interest in the contested case proceeding and how that interest may be affected by the outcome of the proceeding.

(6) The hearing officer's determination on a request to participate as a party or limited party is final unless the requesting person submits an appeal to the Council within seven days after the date of service of the hearing officer's determination.

STATUTORY/OTHER AUTHORITY: ORS 469.373, 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-015-0080

RULE TITLE: Participation by Government Agencies

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which any state or local government agency may request to participate in a contested case. 10/24/17 changes clarify how gov't agencies participate in contested cases on a site certificate amendment.

RULE TEXT:

(1) Any state or local government agency other than the Department of Energy may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0016. For a contested case on a site certificate application, the agency shall submit the request to the hearing officer in writing by the date specified in the Department of Energy's contested case notice issued under 345-015-0014. For a contested case on a site certificate amendment, the agency shall submit the request to the Department by the date specified in the notice of the opportunity to request a contested case issued under OAR 345-027-0071.

(2) The Department of Energy shall participate in all contested case proceedings conducted by the Council and shall have all the rights of a party.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-015-0083

RULE TITLE: Prehearing Conference and Prehearing Order

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the purpose and requirements of the prehearing conference and prehearing order related to contested cases. 10/24/17 changes clarified that failure to raise an issue in a prehearing conference "on an application for a site certificate" constitutes a waiver for that issue.

RULE TEXT:

(1) The hearing officer may cancel or reschedule any previously noticed prehearing conference.

(2) The hearing officer may conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0035. At the conclusion of the conference(s), the hearing officer shall issue a prehearing order stating the issues to be addressed in the contested case hearing and, in a contested case on an application for a site certificate, limiting parties to those issues they raised on the record of the public hearing described in OAR 345-015-0220. The hearing officer shall not receive evidence or hear legal argument on issues not identified in the prehearing order.

(3) Failure to raise an issue in the prehearing conference(s) for the contested case hearing on an application for a site certificate constitutes a waiver of that issue.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 183.415, 469.370, 469.405, 469.440, 469.605, 469.615, 469.992

AMEND: 345-027-0011

RULE TITLE: Applicability

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the applicability of the Division 27 rules. 10/24/17 changes allowed the procedural rules for how the Department and the Council review a request for amendment to be applicable to those requests for amendments already in process and submitted to the Department before the 10/24/17 effective date of the new procedural rules.

RULE TEXT:

The rules in this division apply to all facilities under the Council's jurisdiction except those facilities described in ORS 469.410(1), including the Trojan energy facility, and except that rules OAR 345-027-0050 through 345-027-0100 that were in effect prior to October 24, 2017 apply to requests for amendments to site certificates and change requests that have been received by the Department prior to October 24, 2017.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.501

AMEND: 345-027-0013

RULE TITLE: Certificate Expiration

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that site certificates expire when deadlines to begin construction are not met.

RULE TEXT:

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 on a request for amendment to a site certificate pursuant to OAR 345-027-0085(2).

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.370, 469.501

AMEND: 345-027-0050

RULE TITLE: Changes Requiring an Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States what types of changes require a certificate holder to submit a request for amendment (RFA) to the Department. 10/24/17 changes clarified all the different changes that trigger an amendment to the site certificate.

RULE TEXT:

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

- (1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-0100;
- (2) Apply later-adopted law(s) as described in OAR 345-027-0090;
- (3) Extend the construction beginning or completion deadline as described in OAR 345-027-0085;
- (4) Design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:
 - (a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by a Council standard;
 - (b) Could impair the certificate holder's ability to comply with a site certificate condition; or
 - (c) Could require a new condition or a change to a condition in the site certificate.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0051

RULE TITLE: Review Processes for Requests for Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the different review processes for different types of requests for amendments.

RULE TEXT:

(1) The transfer review 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 type A review process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0067, -0071 and -0075, is the default review process and shall apply to the Council's review of a request for amendment proposing a change described in 345-027-0050(2), (3), and (4).

(3) The type B review process, consisting of rules 345-027-0059, -0060, -0063, -0065, -0068, -0072, and -0075, shall apply to the Council's review of a request for amendment that the Department or the Council approves for type B review under 345-027-0057.

(4) The type C review process, described in 345-027-0080, shall apply to the Council's review of a request for amendment that the Department or the Council approves for type C review under 345-027-0080.

(5) 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.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0053

RULE TITLE: Changes Exempt from Requiring an Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States what types of changes are exempt from requiring an amendment to the site certificate.

RULE TEXT:

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0055

RULE TITLE: Written Evaluations for Changes Not Requiring Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that a certificate holder must perform a written evaluation for changes that it determines do not require an amendment, and states what the certificate holder must do with that evaluation. This new rule reflects much of the same concept and functionality as the rule language under 345-026-0060 in effect prior to 10/24/17.

RULE TEXT:

(1) For a proposed change that would add area to the site boundary, see OAR 345-027-0057(1). For a proposed change to the facility that does not include adding area to the site boundary, the certificate holder may evaluate OAR 345-027-0050 and 345-027-0053 and conclude that the proposed change does not require an amendment. If the certificate holder concludes that a proposed change to the facility does not require an amendment to the site certificate, the certificate holder must complete a written evaluation if the change:

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0057

RULE TITLE: Amendment Determination Request

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process a certificate holder must go through when submitting an Amendment Determination Request to the Department. This new rule reflects much of the same concept, purpose and function as the "change request" under rule 345-027-0060 in effect prior to 10/24/17.

RULE TEXT:

- (1) For a proposed change that would add area to the site boundary, the certificate holder must either:
 - (a) submit a request for amendment to the Department of Energy; or
 - (b) submit an amendment determination request to the Department for a written determination of whether the proposed change requires an amendment under OAR 345-027-0050 and is not exempt under 345-027-0053.
- (2) For a proposed change that would not add area to the site boundary, the certificate holder may submit an amendment determination request to the Department for a written determination of:
 - (a) whether the proposed change requires an amendment under OAR 345-027-0050; or
 - (b) whether the proposed change is exempt from requiring an amendment under 345-027-0053.
- (3) For any request for amendment, the certificate holder may submit an amendment determination request to the Department for a written determination of whether a request for amendment justifies review under the type B review process described in 345-027-0051(3).
- (4) Requests described in section (1), (2), and (3) must be submitted in writing to the Department and must include:
 - (a) A narrative description of the proposed change;
 - (b) Maps and/or geospatial data layers representing the effects and/or location of the proposed change;
 - (c) The certificate holder's evaluation of the determination(s) it is requesting under sections (1), (2), and (3); and
 - (d) Any additional information the certificate holder believes will assist the Department's evaluation.
- (5) After receiving an amendment determination request, the Department shall post an announcement on the Department's website to notify the public that an amendment determination request has been received. The announcement shall include a copy of the amendment determination request.
- (6) Upon receiving a request for a written determination described in section (1) and (2), the Department shall, as promptly as possible, issue a written determination to the certificate holder. After the Department issues its written determination, the Department shall, as promptly as possible, provide the request and the written determination to the Council and post the written determination to its website. At the first Council meeting after the Department issues its written determination, the Department shall provide verbal notice of the request and the written determination to the Council during the consent calendar agenda item. The Department may refer its determination to the Council for concurrence, modification, or rejection. At the request of the certificate holder or a Council member, the Department must refer its determination to the Council for concurrence, modification or rejection.
- (7) Upon receiving a request for a written determination described in section (3), the Department shall, as promptly as possible, issue a written determination to the certificate holder. At the request of the certificate holder, the Department must refer its determination to the Council for concurrence, modification, or rejection.
- (8) In determining whether a request for amendment justifies review under the type B review process described in 345-027-0051(3), the Department and the Council may consider factors including but not limited to:
 - (a) The complexity of the proposed change;
 - (b) The anticipated level of public interest in the proposed change;
 - (c) The anticipated level of interest by reviewing agencies;
 - (d) The likelihood of significant adverse impact; and
 - (e) The type and amount of mitigation, if any.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0059

RULE TITLE: Pre-Amendment Conference

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that a certificate holder may elect to participate in a pre-amendment conference with the Department.

RULE TEXT:

(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.

(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.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

AMEND: 345-027-0060

RULE TITLE: Preliminary Request for Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States what a certificate holder must submit to the Department when making a request for amendment, and that this submittal is considered a preliminary request for amendment until the Department determines the request is complete.

RULE TEXT:

- (1) To request an amendment to the site certificate required by OAR 345-027-0050(3) and (4), the certificate holder shall submit a written preliminary request for amendment to the Department of Energy that includes 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 detailed description of the proposed change, including:
 - (A) a description of how the proposed change affects the facility,
 - (B) a description of how the proposed change affects those resources or interests protected by applicable laws and Council standards, and
 - (C) 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 conditions, that the certificate holder proposes to change, add or delete through the amendment.
 - (e) A list of the Council standards and all other laws - including statutes, rules and ordinances - applicable to the proposed change, and an analysis of whether the facility, with the proposed change, would comply with those applicable laws and Council standards. For the purpose of this rule, a law or Council standard is "applicable" if the Council would apply or consider the law or Council standard under OAR 345-027-0075(2).
 - (f) An updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).
- (2) After receiving a preliminary request for amendment, the Department shall post an announcement on its website to notify the public that a preliminary request for amendment has been received. The announcement shall include a copy of the preliminary request for amendment.
- (3) For any Council standard that requires evaluation of impacts within an analysis area, the analysis area shall be the larger of either the study area(s) as defined in OAR 345-001-0000(59) or the analysis area(s) described in the project order for the application for site certificate, unless otherwise approved in writing by the Department following a pre-amendment conference.
- (4) The certificate holder may incorporate, by specific reference, evidence previously submitted to the Department in the application for site certificate or previous request for amendment, or evidence that is otherwise included in the Department's record on the facility.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0063

RULE TITLE: Determination of Completeness for a Request for Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States that the Department must first determine a request for amendment is complete (and how that completeness is determined) before it proceeds to writing and issuing a Draft Proposed Order.

RULE TEXT:

- (1) Until the Department of Energy determines the request for amendment to the site certificate is complete, it is a preliminary request for amendment. After receiving a preliminary request for amendment, the Department may seek comments from reviewing agencies to determine whether that request is complete.
- (2) Unless the certificate holder agrees to additional time, within 60 days after receipt of a preliminary request for amendment under type A review, and within 21 days after receipt of a preliminary request for amendment under type B review, the Department shall notify the certificate holder whether the request for amendment is complete. In the notification, the Department shall:
 - (a) State that the request for amendment is complete; or
 - (b) State that the request for amendment is incomplete and:
 - (A) Describe any additional information needed to complete the request for amendment to the extent known to the Department at the time of the notification, including identification of applicable laws and Council standards not addressed in the preliminary request for amendment,
 - (B) Ask the certificate holder to submit the additional information by the due dates described in section (4), and
 - (C) Estimate the additional time the Department will need to make a determination of completeness following the submittal of the additional information by the certificate holder.
- (3) If the Department does not notify the certificate holder as described in section (2), the request for amendment under type A review is deemed complete 60 days after receipt of a preliminary request for amendment, and the request for amendment under type B review is deemed complete 21 days after receipt of a preliminary request for amendment. Otherwise, the request for amendment is complete as determined under section (5).
- (4) The Department may specify a date by which the certificate holder must submit additional information needed to complete the request for amendment. If follow-up requests for additional information are needed, the Department may specify dates by which the certificate holder must submit the information. At the request of the certificate holder, the Department may allow additional time for submission of the information. If the certificate holder does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the preliminary request for amendment. The rejection of a preliminary request for amendment is subject to appeal under ORS 469.403(3).
- (5) A request for amendment is complete when the Department finds that the certificate holder has submitted information adequate for the Council to make findings or impose conditions on all applicable laws and Council standards. The Department shall notify the certificate holder when the Department finds that the request for amendment is complete.
- (6) After receiving notification from the Department that the preliminary request for amendment is complete, the Department may require the certificate holder to prepare a consolidated request for amendment that includes all revisions to the preliminary request for amendment and all additional information requested by the Department before the determination of completeness. Upon a request by the Department, the certificate holder shall submit paper and non-copy-protected electronic copies of the consolidated request for amendment to the Department as specified by the Department.
- (7) If, after a determination that a request for amendment is complete, the Department identifies a need for additional information during its review of the request for amendment, the Department may request additional information from the certificate holder.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0065

RULE TITLE: Draft Proposed Order for a Request for Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which the Department issues a Draft Proposed Order.

RULE TEXT:

(1) Within 7 days after a request for amendment to the site certificate described in OAR 345-027-0050(3) and(4), or a request for amendment to apply later-adopted laws described in OAR 345-027-0090, is determined to be complete, the Department of Energy shall:

(a) Send notice to the certificate holder specifying a date for issuance of a draft proposed order. The date of issuance of a draft proposed order for a type A request for amendment shall be no later than 120 days after the date of the notice. The date of issuance of a draft proposed order for a type B request for amendment shall be no later than 60 days after the date of the notice.

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0067

RULE TITLE: Public Comment and Hearing on the Draft Proposed Order for Requests for Amendment Under Type A Review

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which Public Notice and Comment occurs on Draft Proposed Orders for Request for Amendment under Type A Review.

RULE TEXT:

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

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

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

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

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

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

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

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

Make physical copies of the draft proposed order available to the public for inspection.

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

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

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

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

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

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

(f) A statement that:

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

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

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

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

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

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

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

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

written handout.

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0068

RULE TITLE: Public Written Comment on the Draft Proposed Order for Requests for Amendment Under Type B Review

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which Public Notice and Comment occurs on Draft Proposed Orders for Request for Amendment under Type B Review.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The deadline for the public to submit written comments to be included in the record of the draft proposed order and how such comments should be submitted.

(e) A statement that:

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

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

(C) To raise an issue on the record of the draft proposed order, a person must raise the issue in a written comment submitted after the date of the notice of the draft proposed order and written comment deadline, and received by the Department before the written comment deadline.

(D) The Council will not accept or consider any further public comment on the request for amendment or on the draft proposed order after the written comment deadline that closes the record on the draft proposed order.

(E) Only those persons, including the site certificate holder, who provided written comment by the written comment deadline may seek judicial review as provided in ORS 469.403 and issues eligible for judicial review are limited to the issues raised in that person's written comments.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

REPEAL: 345-027-0070

RULE TITLE: Review of a Request for Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which most requests for amendment were reviewed prior to the comprehensive rulemaking changes made effective on October 24, 2017.

RULE TEXT:

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

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

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

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

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

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

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

(a) The certificate holder requests extended review;

(b) The Department finds that the amendment request does not contain the information required by OAR 345-027-0060 or does not contain information sufficient for the Department to prepare a proposed order;

(c) The Department needs to hire a consultant to assist in reviewing the request;

(d) The amendment:

(A) Would require construction on land zoned residential or exclusive farm use;

(B) Would require construction in a zone for which the use is not permitted;

(C) Would require construction on land that may qualify as Habitat Category 1 or 2 land as described in OAR 635-415-0025;

(D) Would result in incremental carbon dioxide emissions that the certificate holder elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a means other than by payments described under OAR 345-024-0560(3), 345-024-0600(3) and (4) or 345-024-0630(2), (4) and (5); or

(E) Could require the Council to determine, according to OAR 345-022-0000(2), that the overall public benefits of the facility outweigh any adverse effects on a resource or interest that is protected by an applicable standard the facility would not meet if the amendment is approved; or

(e) The Department anticipates a high volume of public comment.

(3) The Office may hold one or more public meetings during the review of a request for amendment of the site certificate.

(4) Except as otherwise provided in this section, no later than the date the Department has specified in the notice described in subsection (1)(d), the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department needs additional time to prepare the proposed order, the Department may issue the proposed order at a later date, but the Department shall, no later than the date the Department has specified in the notice, notify the certificate holder in writing of the circumstances that justify the delay.

(5) After issuing the proposed order, the Department shall send a notice of the proposed order by mail or email to the persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility, to the updated property owner list supplied by the certificate holder under OAR 345-027-0060(1)(g) and to the distribution list described in subsection (1)(a). In the notice, the Department shall state that all comments must be submitted in writing and must be received by the Department by a specified deadline that is at least 30 days from the date of the notice. The Department shall post an announcement on its website to notify the public of the issuance of the proposed order.

(6) Any person may, by written request submitted to the Department no later than the deadline described in section (5), ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address and email address.

(7) To determine that an issue justifies a contested case proceeding under section (8), the Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets an applicable standard. If the Council finds that the request would not affect the Council's determination if the alleged facts were found to be true but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

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

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

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

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

(9) If there is no request for a contested case proceeding as described in section (6) or subsection (8)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended

site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

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

- (a) For an amendment that would change the site boundary or the legal description of the site, the Council shall consider, for the area added to the site by the amendment, whether the facility complies with all Council standards;
- (b) For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:
 - (A) Whether the Council has previously granted an extension of the deadline;
 - (B) Whether there has been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and
 - (C) Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:
 - (i) The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;
 - (ii) The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;
 - (iii) The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and
 - (iv) The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment;
- (c) For any amendment not described above, the Council shall consider whether the amendment would affect any finding made by the Council in an earlier order.
- (d) For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0071

RULE TITLE: Proposed Order, Requests for Contested Case and Council's Final Decision on Requests for Amendment Under Type A Review

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which the Proposed Order is issued, the process for requesting and granting a Contested Case, and the process for how the Council makes its Final Decision on Requests for Amendment Under Type A Review.

RULE TEXT:

(1) No later than 30 days after the Council has reviewed the draft proposed order and considered all comments received on the record of the public hearing under 345-027-0067, the Department of Energy shall issue a proposed order recommending approval, modification or denial of the request(s) for amendment to the site certificate. The Department must consider any oral comments made at the public hearing, written comments received before the close of the record of the public hearing, agency consultation, and any Council comments. The Department may issue the proposed order at a later date, but the Department shall, no later than 30 days after the Council has reviewed the draft proposed order and considered all comments received on the record of the public hearing, notify the certificate holder in writing of the reasons for the delay.

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

- (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
- (b) Persons on any special list established for the facility,
- (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
- (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.

(3) Notice of the proposed order shall include:

- (a) A description of the facility and the facility's general location.
- (b) A description of the process for requesting a contested case.
- (c) The physical and website addresses of where the public may review copies of the proposed order.
- (d) The name, address, email address and telephone number of the Department representative to contact for more information.

(4) On the same date the notice of proposed order as described in section (2) is issued, the Department shall send a notice of the opportunity to request a contested case to the certificate holder and to all persons who commented in person or in writing on the record of the public hearing as described in OAR 345-027-0067. The notice shall include the deadline for requesting a contested case and restatements of sections (5), (6), (7), (8) and (9).

(5) Only those persons, including the site certificate holder, who commented in person or in writing on the record of the public hearing described in OAR 345-027-0067 may request a contested case proceeding on the proposed order for an amendment to the site certificate. To properly raise an issue in a request for a contested case proceeding on the proposed order for an amendment, the issue must be within the jurisdiction of the Council, and the person must have raised the issue in person or in writing on the record of the public hearing, unless the Department of Energy did not follow the requirements of OAR 345-027-0067, or unless the action recommended in the proposed order differs materially from the draft proposed order, including any recommended conditions of approval, in which case the person may raise only new issues within the jurisdiction of the Council that are related to such differences. If a person has not raised an issue at the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue, the Council shall not grant a contested case proceeding for that issue. To have raised an issue with sufficient specificity, the person must have presented facts at the public hearing that support that person's position on the issue.

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

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

- (b) A short and plain statement of the issue or issues the person desires to raise in a contested case proceeding;
- (c) A statement that describes why the Council should find that the requester properly raised each issue, as described in section (7), including a specific reference to the person's prior comments to demonstrate that the person raised the specific issue or issues on the record of the public hearing, if applicable;
- (d) A statement that describes why the Council should determine that each identified issue justifies a contested case, under the evaluation described in section (9);
- (e) A detailed description of the person's interest in the proceeding and how that interest may be affected by the outcome of the proceeding;
- (f) Name and address of the person's attorney, if any;
- (g) A statement of whether the person's request to participate in a contested case is as a party or a limited party, and if as a limited party, the precise area or areas in which participation is sought;
- (h) If the person seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the person's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;
- (i) If the person seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the person's qualifications to represent such public interest; and
- (j) A statement of the reasons why others who commented on the record of the public hearing cannot adequately represent the interest identified in subsections (h) or (i).

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

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

The Department did not follow the requirements of OAR 345-027-0067; or

If the action recommended in the proposed order, including any recommended conditions of approval, differs materially from the action recommended in the draft proposed order, the contested case request identified new issues that are related to such material differences.

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

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

(10) The Council must take one of the following actions when determining if a request identifying one or more properly raised issues justifies a contested case proceeding:

(a) If the Council finds that the request identifies one or more properly raised issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to -0014 and 345-015-0018 to -0085. The Council shall identify the contested case parties and shall identify the issues each contested case party may participate on. The parties to a contested case proceeding shall be limited to

those persons who commented on the record of the public hearing and who properly raised issues in their contested case request that the Council find sufficient to justify a contested case, except that the certificate holder is an automatic party to a contested case. The issues a party to a contested case proceeding may participate on shall be limited to those issues that party properly raised in its contested case request that the Council find sufficient to justify a contested case, except that the certificate holder may participate on any issue the Council find sufficient to justify a contested case proceeding.

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

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

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

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

(c) If the Council finds that the request does not identify a properly raised issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then adopt, modify or reject the proposed order based on the considerations described in OAR-345-027-0075. In a written order the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.

(11) If there is no request for a contested case proceeding as described in section (6) or subsection (10)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0075. In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0072

RULE TITLE: Proposed Order and Council's Final Decision on Requests for Amendment Under Type B Review

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which the Proposed Order is issued, the process for requesting and granting a Contested Case, and the process for how the Council makes its Final Decision on Requests for Amendment Under Type B Review.

RULE TEXT:

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

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

- (a) Persons on the Council's general mailing list as defined in OAR 345-011-0020,
- (b) Persons on any special list established for the facility,
- (c) The reviewing agencies as defined in OAR 345-001-0010(52), and
- (d) The updated property owner list as described in OAR 345-021-0010(1)(f) Exhibit F.

(3) Notice of the proposed order shall include:

- (a) A description of the facility and the facility's general location.
- (b) The physical and website addresses of where the public may review copies of the proposed order.
- (c) The name, address, email address and telephone number of the Department representative to contact for more information.
- (d) A statement that only those persons, including the site certificate holder, who provided written comment by the written comment deadline may seek judicial review as provided in ORS 469.403 and issues eligible for judicial review are limited to the issues raised in that person's written comments.

(4) The Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0075. In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.

(5) Judicial review of the Council's final order either granting or denying an amended site certificate shall be as provided in ORS 469.403, provided that only those persons, including the site certificate holder, who provided written comment by the written comment deadline may seek judicial review as provided in ORS 469.403 and issues eligible for judicial review are limited to the issues raised in that person's written comments.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

ADOPT: 345-027-0075

RULE TITLE: Scope of Council's Review

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the scope of Council's review and what standards and laws apply to the Council's review of various types of changes proposed in a request for amendment.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

AMEND: 345-027-0080

RULE TITLE: Type C Review Process for Pre-Operational Requests for Amendment

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States when and how the Type C review process could be approved, and the procedural steps of the Type C review process.

RULE TEXT:

(1) A certificate holder may only request the type C review for a request for amendment when the change proposed in the request for amendment relates to the facility, or portion/phase of the facility, not yet in operation, but approved for construction in the site certificate or amended site certificate. A certificate holder cannot request type C review of a request for amendment proposing to extend construction deadlines.

(2) Requests under section (1) must be submitted in writing to the Department of Energy and must include:

(a) A complete request for amendment, including the information described in 345-027-0060(1);

(b) The reasons why the certificate holder needs type C review of its request for amendment;

(c) An explanation of why the proposed change could not have been reasonably foreseen by the certificate holder;

(d) An explanation of why the proposed change is unavoidable; and

(e) Reasons why the type C review is adequate to prevent significant adverse impacts to the resources and interests protected by Council standards.

(3) Upon receiving a request under sections (1) and (2), the Department shall post the request and the request for amendment on the Department's website.

(4) Within 3 business days after receiving a request under sections (1) and (2), the Department shall issue a written determination either granting or denying type C review. Upon issuance, the Department shall post the written determination on its website.

(5) If the Department denies type C review, the certificate holder may request the Department's determination to be referred to the Council. If requested, the Department must refer its determination to the Council for concurrence, modification or rejection. Upon a Department determination being referred to the Council, the Council chair shall convene a Council meeting as promptly as possible as described in OAR 345-011-0015.

(6) To grant a request under section (1), the Department or the Council must find:

(a) Construction of the certificated energy facility, or portion of the certificated energy facility, has not been deemed complete;

(b) The request for amendment is complete;

(c) Type C review is necessary;

(d) The proposed change could not have been reasonably foreseen by the certificate holder;

(e) The proposed change is unavoidable; and

(f) Type C review is adequate to prevent significant adverse impacts to the resources and interests protected by the Council's standards.

(7) Within 7 days after a request under section (1) is granted, the Department shall:

(a) Issue a draft temporary order approving or denying the request for amendment, including a recommendation to the Council on whether Council review should be completed through the type A or type B review process; and

(b) Post the draft temporary order on the Department's website.

(8) The Council shall, at its first meeting following the Department's issuance of a draft temporary order, consider the draft temporary order and consider whether review should be completed through the type A or type B review process. Upon issuance of a draft temporary order, the Council chair may call a special Council meeting, as described in OAR 345-011-0015, to be held as promptly as possible.

(9) After considering the draft temporary order and the Department's recommendation on whether review should be completed through the type A or type B review process, the Council shall adopt, modify, or reject the draft temporary order based on the considerations described in OAR 345-027-0075, and the Council shall decide whether review

should be completed through the type A or type B review process. In a written temporary order, the Council shall either temporarily grant issuance of an amended site certificate, or deny issuance of an amended site certificate.

(10) Before implementing any change approved by the Council's temporary order, the certificate holder must submit an authorized acknowledgement that the certificate holder accepts all terms and conditions of the temporary order.

(11) If review is to be completed through the type A review process, review proceeds as described in 345-027-0067, -0071, and -0075, where the temporary order replaces all references to the draft proposed order.

(12) If review is to be completed through the type B review process, review proceeds as described in 345-027-0068, -0072, and -0075, where the temporary order replaces all references to the draft proposed order.

(13) Action taken by the certificate holder under the authority of the temporary order that is inconsistent with the language and conditions of the final order is not a violation so long as the inconsistency is remedied by the certificate holder as specified by the Council in the final order.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.405

AMEND: 345-027-0085

RULE TITLE: Request for Amendment to Extend Construction Deadlines

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which certificate holders can make a request for amendment to extend construction deadlines.

RULE TEXT:

(1) The certificate holder may request an amendment to the site certificate to extend the deadlines for beginning or completing construction of the facility, or portion/phase of the facility, that the Council has approved in a site certificate or an amended site certificate by submitting a preliminary request for amendment in accordance with 345-027-0060. The preliminary request for amendment must include an explanation of the need for an extension and must be submitted to the Department of Energy before the applicable construction deadline, but no earlier than the date twelve months before the applicable construction deadline.

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

(3) If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are the later of:

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

(b) Following a contested case proceeding conducted pursuant to OAR 345-027-0071, two years from the date the Council grants the amendment.

(4) For requests for amendment to the site certificate received under this rule to extend construction deadlines for facilities or portions of the facility the Council shall not grant more than two amendments to extend the deadline for beginning construction of a facility or a phase of a facility.

(5) For requests for an amendment to the site certificate to extend construction deadlines for facilities, or portions/phases of facilities, not yet in construction, but already approved for construction in the site certificate or amended site certificate prior to October 24, 2017:

(a) Sections (1) and (2) of this rule apply;

(b) Sections (3) and (4) of this rule do not apply;

(c) When considering whether to grant a request for amendment for a deadline extension made under this section, the Council shall consider how many extensions it has previously granted; and

(d) If a request for amendment for a deadline extension made under this section is granted, the Council shall specify new deadlines for beginning or completing construction that are not more than two years from the deadlines in effect before the Council grants the amendment.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.370, 469.405, 469.503

AMEND: 345-027-0090

RULE TITLE: Request by Any Person for Amendment to Apply Later-Adopted Laws

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the process by which a person may request that subsequent laws or rules (laws that became effective after an approved site certificate or amended site certificate was issued) be made applicable to a facility and a site certificate holder.

RULE TEXT:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) After receiving a complete request for amendment under section (4) of this rule, the Council shall review the request for amendment as described in OAR 345-027-0065, 345-027-0067, 345-027-0071 and 345-027-0075, except that:

- (a) If the Department recommends approval or modified approval of the requested amendment, the Department shall include in the proposed order described in OAR 345-027-0071 any new or modified site certificate conditions necessary to assure compliance with the law(s) applied to the facility under the proposed order;
- (b) If the Department in its proposed order recommends approval or modified approval of the requested amendment, the certificate holder may, by written request submitted to and received by the Department within 30 days after the Department issues the proposed order, ask the Council to hold a contested case proceeding on the proposed order. In the request, the certificate holder shall provide a description of the issues to be contested and a statement of the facts believed to be at issue. If the certificate holder requests a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to -0014, and 345-015-0018 to 345-015-0085 limited to the issues stated by the certificate holder; and
- (c) The Council shall include new conditions in a site certificate amended under this rule only if the Council finds that the conditions are necessary based upon a clear showing of a significant threat to the public health, safety or the environment.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.401, 469.405

AMEND: 345-027-0100

RULE TITLE: Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the Certificate Holder

NOTICE FILED DATE: 06/13/2017

RULE SUMMARY: States the circumstances that require a request for amendment to transfer the site certificate and the process by which that review is completed. Changes that took effect on 10/24/17 were made to clarify that a transfer is a type of request for amendment, to clarify what constitutes a transfer, and to clarify that the transfer hearing is different than informational hearings held during the review of an application for a site certificate.

RULE TEXT:

(1) For the purpose of this rule:

(a) A request for amendment to a site certificate to transfer the site certificate is required for a transaction that results in a change in the ownership, possession or control of the facility or the certificate holder.

(b) "New owner" means the person or entity that will gain ownership, possession or control of the facility or the certificate holder.

(2) When the certificate holder has knowledge that a transaction that requires a transfer of the site certificate as described in section (1)(a) is or may be pending, the certificate holder shall notify the Department of Energy. In the notice, the certificate holder shall include the name and contact information of the new owner, and the date of the transfer of ownership. If possible, the certificate holder shall notify the Department at least 60 days before the date of the transfer of ownership.

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

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

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

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

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

(8) At the conclusion of the transfer hearing or at a later meeting, the Council may issue an order approving the request for amendment to transfer the site certificate if the Council finds that:

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

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

(9) Except as described in OAR 345-027-0051(5), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the request for amendment to transfer the site certificate.

(10) Upon issuing the order described in section (8), the Council shall issue an amended site certificate that names the new owner as the new certificate holder or as the new owner of the certificate holder. The amended site certificate is effective upon execution by the Council chair and the new owner. The Council shall issue the amended site certificate in duplicate counterpart originals and each counterpart, upon signing, will have the same effect.

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.401, 469.405