Oregon Department of ENERGY

Radioactive Materials Enforcement Rulemaking

Virtual Workshop

December 7, 2020
5:00 – 7:00 PM
Agenda

5:00 pm: Welcome

5:05 pm: Overview of Rulemaking

5:35 pm: Public Comment

7:00 pm: Adjourn
Welcome

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

Click here for meeting materials

Click here to get email updates
Rulemaking Background

• In May 2020, EFSC initiated review of the administrative rules related to the enforcement of laws and rules governing in the transport and disposal of radioactive materials and wastes.

• Objective is to protect public health and safety, and the environment by:
  • Incentivizing preventative measures
  • Ensure that radioactive materials or wastes are not improperly transported or disposed of in Oregon, and
  • Require appropriate mitigation or penalties when a violation does occur.

• Rulemaking is in addition to a potential legislative concept for the 2021 legislative session.
Overview of Rulemaking process

Initiation of rulemaking → Development of draft proposed rules → Notice of Proposed Rulemaking → Formal public comment period → Adoption of permanent rules
Procedures for Energy Facilities Enforcement/Current Rules
OAR 345-029-0003 to 345-029-0100

1. Report by Responsible Party
2. Investigation and Fact Finding
3. Notice of Violation
4. Written Response
5. Enforcement Conference
6. Amended Notice of Violation
7. Notice of Civil Penalty Assessment
8. Contested Case Hearing (If Requested)
9. Final Order
Procedures for Radioactive Materials Enforcement
OAR 345-029-0503 to 345-029-0560

1. Report by Responsible Party
2. Investigation and Fact Finding
3. Pre-Enforcement Notice
4. Written Response

- Enforcement Conference (If Requested)
- Notice of Enforcement Action
- Contested Case Hearing (If Requested)
- Director’s Final Order
# Notice of Violation/Pre-Enforcement Notice

**OAR 345-029-0020/0520**

<table>
<thead>
<tr>
<th>Classifications of Violations</th>
<th>Energy Facilities/Current Rules (Notice of Violation)</th>
<th>Radioactive Materials/Proposed Rules (Pre-Enforcement Notice)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class II is default Violations may be escalated</td>
<td>Violations classified by type No escalation</td>
<td></td>
</tr>
<tr>
<td>Response to Notice</td>
<td>Requires admission or denial</td>
<td>Requires statement of facts</td>
</tr>
<tr>
<td>Enforcement Conference</td>
<td>Opportunity Provided</td>
<td>Opportunity Provided</td>
</tr>
</tbody>
</table>
## Amended Notice of Violation/ Notice of Enforcement Action
OAR 345-029-0050/0555

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Contested Cases</td>
<td>Conducted by Council</td>
<td>Conducted by Director/OAH</td>
</tr>
<tr>
<td>Final Order by Default</td>
<td>Allowed</td>
<td>Allowed</td>
</tr>
</tbody>
</table>

Civil Penalties
- Available for Class I violations
- Available for all violations

Contested Cases
- Conducted by Council
- Conducted by Director/OAH

Final Order by Default
- Allowed
• **Step 1:** Determine Base Penalty Amount based on class/severity of violation

• **Step 2:** Apply aggravating/mitigating multipliers
  - 5 if willful
  - 2.5 is repeated
  - 2.5 if irreversible
  - 0.75 if the responsible party was responsive
  - 0.8 if the violation was voluntarily reported

• **Step 3:** Multiply by total days of violation/number of occurrences
  - $5 million maximum for a moderate violation; or
  - $25,000 maximum for a minor violation

• Add amount for Economic Benefit
### Classification of Violations
**OAR 345-029-0530, pg. 12**

<table>
<thead>
<tr>
<th>Class I</th>
<th>Class II</th>
<th>Class III</th>
</tr>
</thead>
</table>
| • Illegal disposal of radioactive waste  
• Failure to obtain an Oregon Radioactive Waste Material Transport Permit  
• Failure to report an incident involving radioactive materials  
• Failure to comply with an order of the Director or Council | • Failure to properly route shipments of spent nuclear fuel or radioactive materials  
• General violation of OAR 345-060 or terms of an Oregon Radioactive Materials Transport Permit | • Failure to give notice for inspection or schedule change of a radioactive materials shipment  
• Failure to maintain packaging, placarding, labeling, or shipment documentation for a radioactive materials shipment. |
• **Major violations** include any violation determined to have caused, or having the potential to cause, a significant adverse impact on public health and safety, or the environment.

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

• **Minor violations** include any violation having caused, or having the potential to cause, no more than a minimal adverse impact on public health and safety or the environment.
<table>
<thead>
<tr>
<th>Class</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$1,000</td>
<td>$5,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$500</td>
<td>$2,500</td>
<td>$5,000</td>
</tr>
<tr>
<td>Class III</td>
<td>$500</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: All amounts are per occurrence or per day of violation.
Penalty Scenario 1

• **Step 1: Determine Base Penalty**
  • Radioactive Waste disposed illegally (Class I)
  • Minimal potential for exposure due to conditions of disposal (Moderate Severity)
  • Base Penalty = $5,000

• **Step 2: Apply Multipliers**
  • Irreversible – waste cannot be safely removed (x2.5)
  • Responsible Party voluntarily reported violation (x0.8)
  • Modified Penalty Amount = $10,000

• **Step 3: Multiply by Days of Violation**
  • Multiple disposals occurred over past 6 months (x 180 days of violation)
  • Total Penalty Amount = $1.8M

• **Step 4: Add amount for Economic Benefit**
  • Make reasonable estimate using EPA BEN Model
  • Up to $2.7M available under statute
Penalty Scenario 2

• **Step 1: Determine Base Penalty**
  - Radioactive Materials transported on unauthorized route (Class II)
  - Minimal Potential for Impact (Minor Severity)
  - Base Penalty = $500

• **Step 2: Apply Multipliers**
  - Responsible Party had reason to know action was illegal (x5)
  - Responsible Party has history of similar violation (x2.5)
  - Modified Penalty Amount = $6,250

• **Step 3: Multiply by Days of Violation**
  - 3 shipments occurred (3 occurrences)
  - Total Penalty Amount = $18,750

• **Step 4: Add amount for Economic Benefit**
  - Make reasonable estimate using EPA BEN Model
  - Up to $6,250 available under statute
Public Comments

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

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