

**Item J: 2019 Housekeeping Rulemaking Project
Attachment 3: Stakeholder Advice
May 3, 2019**

To Whom it May Concern:

I represent a coalition of organizations which challenged the adoption of a number of rulemaking amendments to OAR Chapter 345, Division 27. The amendments pertained to rules governing EFSC approved energy facilities and site certificates. The rules were effective October 24, 2017. My clients are seeking an order declaring the rule changes invalid as they are inconsistent with the governing statutes. Oral argument took place before the Oregon Supreme Court on December 5, 2018. No decision has been issued yet.

EFSC and the Oregon Dept. of Energy are now proposing "housekeeping" changes to a number of rules. Some of the proposed changes affect rules that are part of the lawsuit, specifically OAR 345-027-0060, OAR 345-027-0063 and OAR 345-027-0071. We urge the agencies to delay any attempted amendments to these rules until the Supreme Court issues its' decision. If the proposed changes are adopted and the Supreme Court strikes down the package of challenged rules, there will be significant confusion as to which rules will still be valid and which rules will not. This confusion will have negative implications for applicants, affected individuals and organizations, as well as EFSC and DOE.

Since the argument was almost 5 months ago, we anticipate a decision in the near future. Accordingly we encourage EFSC and DOE to delay any action on the rules cited above until the Court issues its' decision.

Thank you for your attention to this matter.

Gary Kahn

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Sent: Thursday, May 2, 2019 5:33 PM

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Subject: "Housekeeping" updates problems

I believe today was the last day to comment on the proposed Housekeeping updates to multiple divisions.

I encourage you to delay any changes to the divisions impacted by the Amendment Rules until the Oregon Supreme Court decision is published.

In addition, the announcement regarding the changes is very misleading. The proposed changes are significant and after a very cursive overview of the material I can see that there are several areas that would result in strenuous objection from me and those I speak for. Failure to accurately describe the proposed changes in and of itself would invalidate any actions taken to implement these rules.

I encourage you to share this e-mail with the Energy Facility Siting Council Members.