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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 345
DEPARTMENT OF ENERGY
ENERGY FACILITY SITING COUNCIL

FILED
10/25/2019 2:30 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Permanent adoption of rules governing site certificate amendment review processes.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/27/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Christopher Clark
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/21/2019

TIME: 5:30 PM

OFFICER: Christopher Clark

ADDRESS: Columbia Gorge Discovery
Center

5000 Discovery Drive

The Dalles, OR 97301

NEED FOR THE RULE(S):

The rules are needed to replace rules governing the site certificate amendment review process that were declared invalid by the Oregon Supreme Court. Additional changes are needed to clarify procedures for issuance of contested case notices, requirements for property owner notification, and reduction of printed materials that must be submitted by persons requesting to terminate a site certificate or construct a natural-gas testing pipeline. The rules contain additional grammatical, formatting, and wording changes needed to improve the clarity and consistency of rules in OAR chapter 345.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Administrative Orders EFSC 4-2019; EFSC 5-2019; EFSC 9-2019.

Friends of the Columbia Gorge v. Energy Facility Siting Council, 365 Or 371.

Staff Report for Agenda Item C of the October 25, 2019 Energy Facility Siting Council meeting, and attachments. This document also contains advice from stakeholders received during development of proposed rules.

All documents relied upon are available from the Oregon Department of Energy's website:

<https://www.oregon.gov/energy/facilities-safety/facilities/Pages/default.aspx>.

An audio recording and minutes for the October 25, 2019 Energy Facility Siting Council meeting will also be made available from the Oregon Department of Energy's website.

FISCAL AND ECONOMIC IMPACT:

Because the proposed rules largely continue current processes and administrative procedures established by the 2017 and 2019 amendment rules, they are not likely to have a significant fiscal impact on the Department, applicants or certificate holders, or other stakeholders. The proposed changes to the noticing requirements in OAR 345-015-0014, 345-015-0230, and 345-027-371, may reduce mailing costs to applicants and certificate holders associated with issuing notices. During review of the last five amendment requests processed by the Council, the Department sent 358 public notices of the opportunity to request a contested case by certified mail on average. The proposed rule changes would allow these notices to be sent by regular mail. Based on these five requests, the proposed rule change would reduce average costs to certificate holders during review of a request for amendment by approximately \$2,400, at current postal rates. The proposed changes to OAR 345-027-0110(4) and 345-027-0220(3) may slightly reduce reporting and administrative costs by reducing the printed copies associated with certain requests. The changes to OAR 345-027-0360(1)(f) and 345-027-0110(5) may increase or decrease costs associated with issuing notices to property owners, depending on the location of the project and nature of the action for which notice must be issued.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Because the proposed rules largely continue current processes and administrative procedures established by the 2017 and 2019 Amendment Rules, they are not likely to have a significant fiscal or economic impact on the Department, applicants or certificate holders, or other stakeholders.

(2) These rules apply to developers and owners of energy facilities. While energy facility owners and developers do not generally qualify as a small business as defined by ORS 183.310(10), it is possible that a small number (e.g. less than five) small businesses could be directly impacted by the rules. Overall the rules are not expected to increase reporting, recordkeeping, or administrative costs, and are not expected to increase costs of professional services, equipment, or labor.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

On August 30, 2019, the Department solicited input from over 3,200 subscribers to the Council's rulemaking mailing list. While small businesses were not specifically contacted, the Department did request advice on what options it should consider for permanent amendment rules, including, but not limited to, options that may achieve the rules' substantive goals while reducing the rules' negative economic impact on business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The rules proposed for adoption in OAR 345-027 are substantively similar to rules included in Administrative Order EFSC 5-2017. Due to a procedural error, those rules, which were developed in consultation with a Rules Advisory Committee, were deemed invalid. Because the substantive changes to these rules are limited, the Council did not believe it was necessary to reconvene a Rules Advisory Committee at this time.

RULES PROPOSED:

345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 345-015-0230, 345-025-0006, 345-025-0010, 345-025-0016, 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, 345-027-0071, 345-027-0072, 345-027-0075, 345-027-0080, 345-027-0085, 345-027-0090, 345-027-0100, 345-027-0110, 345-027-0210, 345-027-0220, 345-027-0230, 345-027-0240, 345-027-0211, 345-027-0212, 345-027-0250, 345-027-

0351, 345-027-0353, 345-027-0355, 345-027-0357, 345-027-0359, 345-027-0360, 345-027-0363, 345-027-0365, 345-027-0367, 345-027-0368, 345-027-0371, 345-027-0372, 345-027-0375, 345-027-0380, 345-027-0385, 345-027-0390, 345-027-0400

AMEND: 345-015-0014

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017. Clarifies requirements for issuance of a contested case notice under ORS 183.415 and OAR 137-003-0001. Specifies that contested case notice must contain notice of active duty service member's right to stay proceedings. Moves requirements related to other public notices required by ORS chapter 469 to OAR 345-015-0230 and 345-015-0371. Adopts additional rule grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-015-0014

Contested Case Notices ¶¶

(1) The Department ~~shall issue~~must issue contested case 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~~The notices, at a minimum, must 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~~caption with the name of the person or agency to whom the notice is issued;¶¶

~~(b) A short and plain statement of the issues to be considered under~~ OAR 345-027-15-0071.¶¶

~~(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~~16, and a reference to the particular sections of the statute and rules involved;¶¶

~~(c) A statement of the party's right to be represented by counsel and that legal 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 appl~~organizations may be able to assist a party with limited financial resources;¶¶

~~(d) A statement of the party's rights to participate in the hearing as a party or limited party;~~¶¶

~~(e) A statement of the agency's authority and jurisdiction 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.~~to hold a hearing on the issues; and¶¶

~~(f) A statement of the time and place of the hearing; and~~¶¶

~~(eg) 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 proceeding~~A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act as described under OAR 345-029-0070, 345-029-

~~0100 or 345-060-0004, to persons who have an interest or repren in ORS 183.415(3)(g); and ¶~~

~~(2) The Department must send a public interest in the outcome of the proceeding. ¶~~

~~(4) The Department shall request that the applicant notify the hearing office contested case notice by registered or certified mail to the applicant or certificate holder, 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) o each party or limited party to the contested case.~~

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 SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017. Amends section (1) to establish separate procedural requirements for contested case notices and public notices on a proposed order. Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-015-0016

Requests for Party or Limited Party Status in Contested Cases on Applications for a Site Certificate ¶¶

- (1) Notwithstanding OAR 137-003-0005(2), a person requesting to participate as a party or limited party in a contested case proceeding ~~shall~~must submit a petition to the hearing officer by the date specified in the ~~Department of Energy's contested case's~~ notice issued under OAR 345-015-0014230.¶¶
- (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) of this rule, 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~~may 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 OAR 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~~may 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~~must 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; and¶¶
- (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 SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017. Amends section (1) to establish separate procedural requirements for contested case notices and public notices on a proposed order. Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-015-0080

Participation by Government Agencies ¶¶

(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~~must submit the request to the hearing officer in writing by the date specified in the Department of Energy's ~~contested case's~~ public notice issued under ~~OAR 345-015-0014~~230(3). For a contested case on a site certificate amendment, the agency ~~shall~~must submit the request to the Department by the date specified in the notice of the opportunity to request a contested case issued under OAR 345-027-00371(4). ¶

(2) The Department of Energy ~~shall~~must participate in all contested case proceedings conducted by the Council ~~and shall have~~with 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 SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017, including changes clarifying that failure to raise an issue in a prehearing conference on an application for a site certificate constitutes a waiver for that issue. Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-015-0083

Prehearing Conference and Prehearing Order ¶¶

(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~~must 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~~may 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: 345-015-0230

RULE SUMMARY: Amends section (3) and created new section (4) to establish separate procedural requirements for contested case notices and public notices on a proposed order. Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-015-0230

Council Review and the Office of Energys Proposed Order ¶

(1) Following the close of the record of the public hearing conducted under OAR 345-015-0220, the Council ~~shall~~ must review the draft proposed order. In accordance with ORS 469.370(3), when the Council meets to review a draft proposed order, the Council ~~does~~ may not permit the applicant, reviewing agencies or the public to comment on any issue that may be the basis for a contested case.¶

(2) Following the Council's meeting to review the draft proposed order, the Department of Energy ~~shall~~ must issue a proposed order in accordance with ORS 469.370(4), taking into consideration the comments of the Council, any public comments made at a public hearing, written comments received before the close of the record of the public hearing, and agency consultation. In the proposed order, the Department ~~shall~~ must recommend either granting a site certificate with conditions or denying a site certificate for the proposed facility.¶

(3) Following issuance of the proposed order, the Department ~~shall~~ must issue a ~~contested case notice, as described in OAR 345-015-0014. In addition, as requir~~ public notice of the proposed order, subject to the following:¶

(a) The public notice of the proposed order must include:¶

(A) A description of the facility and the facility's general location;¶

(B) A summary of the recommendations included in the Proposed unOrder-ORS 469.370(4), the Department shall issue a public notice of the proposed order and shall;¶

(C) A description of the process and deadline for requests to participate as a party or limited party in the contested case under OAR 345-015-0016;¶

(D) The date of the prehearing conference, if any; and¶

(E) The date of the hearing; and¶

(b) The Department must send the notice by mail or email to:¶

(A) All persons on the Council's general mailing list as defined in OAR 345-011-0020 and to;¶

(B) All persons on any special mailing list set up for the proposed project, including a mailing list made up of those person;¶

(C) All persons who commented in person or in writing on the record of the public hearing conducted under OAR 345-015-0220; and¶

(D) The property owners listed in Exhibit F of the site certificate application, as updated by the applicant upon the request of the Department.¶

(4) On the same date as notice is issued under section (3) of this rule, the Department must notify the applicant that the applicant must notify the hearing officer and the Department of any issues the applicant intends to raise in the contested case proceedings by the date established in paragraph (3)(a)(C) of this rule.¶

(5) After the conclusion of the contested case proceeding, the Council will take final action on the site certificate application, as described in OAR 345-015-0085.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370

AMEND: 345-025-0006

RULE SUMMARY: Adopting renumbering included in Administrative Order EFSC 4-2017. Making additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-025-0006

Mandatory Conditions in Site Certificates ¶¶

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

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

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

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

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

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

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

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

(5) Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the certificate holder ~~shall~~may not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, "construction rights" means the legal right to engage in construction activities. For wind energy facilities, transmission lines or pipelines, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and:¶¶

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

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

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

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

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

(9) The certificate holder ~~shall~~must retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder ~~shall~~must retire the facility according to a final retirement plan

approved by the Council, as described in OAR 345-027-01410. The certificate holder ~~shall~~must pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.¶

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

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

(12) The certificate holder ~~shall~~must design, engineer and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction triggering and consequences (including flow failure, settlement buoyancy, and lateral spreading), cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure interaction. For coastal sites, this also includes tsunami hazards and seismically-induced coastal subsidence.¶

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

(14) The certificate holder ~~shall~~must notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the Department receives notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions.¶

(15) Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder ~~shall~~must inform the Department of the proposed new owners. The requirements of OAR 345-027-01400 apply to any transfer of ownership that requires a transfer of the site certificate.¶

(16) If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-01410, the Council ~~shall~~must notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Office within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in section (8) of this rule to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR chapter 345, division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder ~~shall~~must pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council ~~shall~~must issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.501

AMEND: 345-025-0010

RULE SUMMARY: Adopting renumbering included in Administrative Order EFSC 4-2017. Adopting additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-025-0010

Site-Specific Conditions ¶¶

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

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

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

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

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

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

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

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

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

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

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

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

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.501, 469.503

AMEND: 345-025-0016

RULE SUMMARY: Adopting renumbering included in Administrative Order EFSC 4-2017. Adopting additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-025-0016

Monitoring and Mitigation Conditions ¶

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

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.501, 469.503, 469.507

REPEAL: 345-027-0011

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0011~~

~~Applicability ¶~~

~~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~~

REPEAL: 345-027-0013

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0013~~

~~Certificate Expiration ¶~~

~~If the certificate holder does not begin construction of the facility by the construction beginning date specified in the site certificate or amended site certificate, the site certificate expires on the construction beginning date specified, unless expiration of the site certificate is suspended pending final action by the Council 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~~

REPEAL: 345-027-0050

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0050~~

~~Changes Requiring an Amendment ¶¶~~

~~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~~

REPEAL: 345-027-0051

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0051~~

~~Review Processes for Requests for Amendment~~

~~(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~~

REPEAL: 345-027-0053

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0053~~

~~Changes Exempt from Requiring an Amendment~~

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

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

REPEAL: 345-027-0055

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0055~~

~~Written Evaluations for Changes Not Requiring Amendment~~

~~(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~~

REPEAL: 345-027-0057

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0057~~

~~Amendment Determination Request~~

- ~~(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~~

REPEAL: 345-027-0059

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0059~~

~~Pre-Amendment Conference~~

~~(1) Prior to submitting a preliminary request for amendment to the site certificate as described in OAR 345-027-0060, the certificate holder may request a pre-amendment conference with the Department of Energy to discuss the scope, timing, and applicable laws and Council standards associated with the request for amendment.¶~~

~~(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~~

REPEAL: 345-027-0060

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0060~~

~~Preliminary Request for Amendment ¶¶~~

~~(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~~

REPEAL: 345-027-0063

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0063~~

~~Determination of Completeness for a Request for Amendment~~

- ~~(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~~

REPEAL: 345-027-0065

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0065~~

~~Draft Proposed Order for a Request for Amendment~~

~~(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~~

REPEAL: 345-027-0067

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0067~~

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

~~(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

REPEAL: 345-027-0068

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0068~~

~~Public Written Comment on the Draft Proposed Order for Requests for Amendment Under Type B Review~~

~~(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: 345-027-0071

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0071~~

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

~~(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 found 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 found sufficient to justify a contested case, except that the certificate holder may participate on any issue the Council found 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

REPEAL: 345-027-0072

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0072~~

~~Proposed Order and Councils Final Decision on Requests for Amendment Under Type B Review~~

~~(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~~

REPEAL: 345-027-0075

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0075~~

~~Scope of Council's Review~~

~~(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

REPEAL: 345-027-0080

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0080~~

~~Type C Review Process for Pre-Operational Requests for Amendment ¶¶~~

~~(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

REPEAL: 345-027-0085

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0085~~

~~Request for Amendment to Extend Construction Deadlines~~ ¶¶

~~(1) The certificate holder may request an amendment to the site certificate to extend the deadlines for beginning or completing construction of the facility, 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

REPEAL: 345-027-0090

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0090~~

~~Request by Any Person for Amendment to Apply Later-Adopted Laws~~ ¶

~~(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

REPEAL: 345-027-0100

RULE SUMMARY: Repealing amendment rules adopted under Administrative Order EFSC 5-2017.

CHANGES TO RULE:

~~345-027-0100~~

~~Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the Certificate Holder~~

~~(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~~

AMEND: 345-027-0110

RULE SUMMARY: Amends section (4) to reduce the number of printed copies of an application for termination and final retirement plan a certificate holder must provide. Amends section (5)(d) to be consistent with changes to property owner notification requirements adopted in Administrative Order EFSC 10-2019. Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-027-0110

Termination of a Site Certificate ¶¶

- (1) A certificate holder may apply to the Council to terminate a site certificate at any time, subject to the requirements of this rule.¶¶
- (2) A certificate holder must apply to the Council to terminate a site certificate within two years following cessation of construction or operation of the facility.¶¶
- (3) If the certificate holder fails to apply to the Council to terminate the site certificate and the Council finds that the certificate holder has permanently ceased construction or operation of the facility, then the Council may terminate the site certificate according to the procedure described in OAR 345-0275-00206(16).¶¶
- (4) In an application for termination of the site certificate, the certificate holder ~~shall~~must include a proposed final retirement plan for the facility and site. The certificate holder ~~shall~~must submit ~~an original and two printed copies of the application for termination and the proposed final retirement plan to the Department. Upon a request by the Department, the certificate holder must submit printed copies, and an electronic version of the application for termination and the proposed final retirement plan for members of the Council. In addition to the printed copies, t~~ in a non-copy-protected electronic format acceptable to the Department. The certificate holder ~~shall~~must submit ~~the full~~additional printed copies of the application for termination and the proposed final retirement plan ~~in a non-copy-protected electronic format acceptable to the Department upon request.~~¶¶
- (5) In the proposed final retirement plan, the certificate holder ~~shall~~must include:¶¶
 - (a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment.;¶¶
 - (b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process.;¶¶
 - (c) A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement.; ~~and~~¶¶
 - (d) An updated list of ~~the owners of property located within or adjacent to the site of the facility~~property owners, as described in OAR 345-021-0010(1)(f).¶¶
- (6) Within 15 days after receiving an application for termination of a site certificate, the Department ~~of Energy~~ ~~shall~~must:¶¶
 - (a) Send a notice of the application, specifying a date by which comments on the application are due, by mail or email to a:¶¶
 - (A) All persons on the Council's general mailing list, as defined in OAR 345-011-0020, ~~to~~;¶¶
 - (B) All persons on any special list established for the facility; ~~and to the updated property owner~~¶¶
 - (C) The property owners on the updated list submitted by the certificate holder under ~~subsection (5) specifying a date by which comments on the application are due.~~ of this rule;¶¶
 - (b) Send copies of the application for termination by mail or email to the reviewing agencies ~~as defined in OAR 345-001-0010 and shall~~ for the facility, ~~and~~ ask those agencies to comment by a specified date.; ~~and~~¶¶
 - (c) Post an announcement of the application for termination on the Department's website.¶¶
- (7) The Council ~~shall~~must review the proposed final retirement plan and ~~shall~~must consider any comments received from the public and the reviewing agencies. The Council may approve the proposed final retirement plan or modify the plan to comply with the rules of this chapter and applicable conditions in the site certificate. ~~If the~~

plan is approved, the Council shall ~~shall~~ must issue an order authorizing retirement according to the approved or modified final retirement plan and subject to any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480.¶

(8) When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council ~~shall~~ must issue an order terminating the site certificate.¶

(9) When the Council finds that the site certificate has expired as described in OAR 345-027-0000313, the Council shall issue an order terminating the site certificate.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405, 469.501

AMEND: 345-027-0210

RULE SUMMARY: Adopting grammatical and wording changes to approve clarity and consistency of rules.

CHANGES TO RULE:

345-027-0210

General ¶

(1) A person ~~shall~~may not construct a gas storage testing pipeline unless the certificate holder of the Council certified facility to which the pipeline would connect obtains, before construction, the approval of the Department ~~of Energy~~ for the construction, operation and retirement of the proposed pipeline as required under ORS 469.405(3).¶

(2) For the purposes of OAR 345-027-02510 through 345-027-02540:¶

(a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less than 16 inches in diameter and less than five miles in length, that is used to test or maintain an underground gas storage reservoir, and that would connect to a Council certified facility if the storage reservoir proves feasible for operational use;¶

(b) "Temporary pipeline" means a pipeline that has no potential for operational use;¶

(c) "Council certified facility" means an energy facility for which the Council has issued a site certificate that is either a surface facility related to an underground gas storage reservoir or a gas pipeline;¶

(d) "Connect" means join for the purpose of operational use;¶

(e) "Test or maintain" means transporting gas to an underground gas storage reservoir for the purposes of determining whether the reservoir is feasible for operational use or maintaining the gas storage capacity of the reservoir but does not include operational use;¶

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

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

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

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

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

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

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

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

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

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

(I) Recreation, OAR 345-022-0100;¶

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

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

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

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

Statutory/Other Authority: ORS 469.405

Statutes/Other Implemented: ORS 469.405

AMEND: 345-027-0220

RULE SUMMARY: Amending section (3) to reduce the number of printed copies of a request a person must submit to the Department. Amending section (4) to make property owner listing requirements. Adopting additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0220

Request for Approval ¶

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

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

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

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

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

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

(c) The time requirements for the approval process, if different from the time requirements described in OAR 345-027-02530.¶

(3) The certificate holder ~~shall~~must submit to the Department a written request for approval to construct, operate and retire a gas storage testing pipeline with the fee required by the fee schedule established under ORS 469.441. The certificate holder ~~shall~~must submit ~~the original and two paper copies~~two printed copies of the request, and an electronic version of the full request in a non-copy-protected electronic format acceptable to the Department. The certificate holder ~~shall~~must provide additional printed copies to the Department upon request and copies or access to copies to any person requesting copies. ~~In addition to the printed copies of the request for approval, the certificate holder shall submit the full request in a non-copy-protected electronic format acceptable to the Department.~~¶

(4) In a request for approval, the certificate holder ~~shall~~must include:¶

(a) The name and mailing address of the certificate holder and the name, mailing address, email address and phone number of the individual responsible for submitting the request;¶

(b) A description of the purpose and operation of the proposed pipeline and a discussion of whether the use of the gas storage testing pipeline for reservoir testing or maintenance will require an increase in the compression available in the Council certified facility to which the proposed pipeline would connect in addition to the compression that is permitted under the site certificate;¶

(c) Identification of the Council certified facility to which the proposed pipeline would connect;¶

(d) A description of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure;¶

(e) A map showing the location of the proposed pipeline;¶

(f) A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment role, of property where the proposed pipeline is located and within 500 feet of the ~~location of the proposed pipeline~~at property;¶

(g) The information that the Department has identified in the letter described in section (2) of this rule; and¶

(h) Any other information that the Department requests as needed to make the findings described in the

applicable standards.

Statutory/Other Authority: ORS 469.405

Statutes/Other Implemented: ORS 469.405, 469.421, 469.441

AMEND: 345-027-0230

RULE SUMMARY: Adopting grammatical and wording changes to improve the clarity and consistency of rules.

CHANGES TO RULE:

345-027-0230

Review of a Request for Approval ¶

(1) Within 7 days after receiving a request for approval to construct, operate and retire a gas storage testing pipeline, the Department of Energy ~~shall~~ must. ¶

(a) Send copies of the request by mail, email or any other form of electronic delivery to the following agencies with a notice asking the agencies to submit written comments on the request within 14 days from the date of the notice. ¶

(A) Oregon Department of Fish and Wildlife; ¶

(B) Oregon Department of Geology and Mineral Industries; ¶

(C) Oregon Public Utility Commission; ¶

(D) Oregon Department of Agriculture; ¶

(E) Division of State Lands; and ¶

(F) State Historic Preservation Office. ¶

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

(A) Oregon Department of Forestry; ¶

(B) Oregon Department of Environmental Quality; and ¶

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

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

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

(2) Within 21 days from the deadline for comments described in section (1) of this rule or such longer period as the Department has specified in the letter described in OAR 345-027-02520(2), the Department ~~shall~~ must issue a final order stating its findings on the applicable Council substantive standards and its approval or disapproval of the request. In an order approving a request, the Department ~~shall~~ must include conditions that the Department finds necessary to ensure compliance with the applicable standards and conditions required by OAR 345-027-02540. ¶

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

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

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

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

Statutory/Other Authority: ORS 469.405

Statutes/Other Implemented: ORS 469.405, 469.992

AMEND: 345-027-0240

RULE SUMMARY: Adopting grammatical and wording changes to improve the clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0240

Conditions ¶

In an order approving the construction, operation and retirement of a gas storage testing pipeline, the Department may impose conditions it finds necessary to ensure compliance with the Council substantive standards it identified as applicable in the letter described in OAR 345-027-02520(2). In addition, the Department shall impose the following conditions:¶

- (1) The certificate holder ~~shall~~must design, construct, operate and retire the gas storage testing pipeline in compliance with applicable Council rules and applicable federal, state and local laws, rules and ordinances in effect at the time the Department issues the order;¶
- (2) The certificate ~~shall~~holder must design, construct, operate and retire the gas storage testing pipeline substantially as described in representations in the request for approval and supporting record that the Department finds to be binding commitments made by the certificate holder;¶
- (3) The certificate holder ~~shall~~must prevent the development of any conditions in the area of the gas storage testing pipeline that would preclude restoration of the area to a useful, non-hazardous condition to the extent that prevention of such conditions is within the control of the certificate holder;¶
- (4) Upon completion of construction of the pipeline, the certificate holder ~~shall~~must dispose of all refuse and remove all temporary structures not needed to test or maintain an underground gas storage reservoir;¶
- (5) The certificate holder ~~shall~~must notify the Department of Energy, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if investigations or trenching in the area of the pipeline reveal soil or geological conditions that differ significantly from those described in the request for approval;¶
- (6) The certificate holder ~~shall~~must submit to the Department copies of all incident reports involving the gas storage testing pipeline required under 49 CFR ¶191.15;¶
- (7) The certificate holder ~~shall~~must allow properly identified representatives of the Council or Department of Energy to inspect the pipeline at any time, including all materials, activities, premises and records pertaining to design, construction, operation or retirement of the pipeline;¶
- (8) The certificate holder ~~shall~~must notify the Department when it begins construction, ~~shall~~must keep the Department informed of construction progress and any unusual events or circumstances, and ~~shall~~must notify the Department when it begins to use the pipeline for reservoir testing or maintenance;¶
- (9) The certificate holder ~~shall~~must notify the Department if it terminates use of the gas storage testing pipeline; and¶
- (10) If the certificate holder decides to convert the gas storage testing pipeline to operational use, the certificate holder ~~shall~~must notify the Department and, if required under OAR 345-027-00350, submit a request to amend the site certificate.

Statutory/Other Authority: ORS 469.405

Statutes/Other Implemented: ORS 469.405, 469.992

ADOPT: 345-027-0311

RULE SUMMARY: Adopts provisions of Administrative Order EFSC 9-2019. Specifies applicability of amendment rules to review of a request for amendment that was submitted on or after October 24, 2017 and is currently pending Council decision. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0311

Applicability

(1) The rules in this division apply to all requests for amendment to a site certificate and amendment determination requests for facilities under the Council's jurisdiction that are submitted to, or were already under review by, the Council on or after the effective date of the rules. The Department and Council will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the effective date of these rules, without requiring the certificate holder to resubmit the request or to repeat any steps taken as part of the request prior to the effective date of these rules.

(2) Notwithstanding section (1) of this rule, these rules do not apply to facilities described in ORS 469.410(1).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.501

ADOPT: 345-027-0313

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 providing that a site certificates will expire when deadlines to begin construction are not met, unless expiration is suspended pending Council review. Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-027-0313

Certificate Expiration

If the certificate holder does not begin construction of the facility by the construction beginning date specified in the site certificate or amended site certificate, the site certificate expires on the construction beginning date specified, unless expiration of the site certificate is suspended pending final action by the Council on a request for amendment to a site certificate under OAR 345-027-0385(2).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370, 469.501

ADOPT: 345-027-0350

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 providing what types of changes that require a certificate holder to submit a request for amendment to a site certificate. Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-027-0350

Changes Requiring an Amendment

Except for changes allowed under OAR 345-027-0353, an amendment to a site certificate is required to:

- (1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-0400;
- (2) Apply later-adopted laws as described in OAR 345-027-0390;
- (3) Extend the construction beginning or completion deadline as described in OAR 345-027-0385;
- (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: 345-027-0351

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which provide the review processes for requests for amendment. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0351

Review Processes for Requests for Amendment

(1) The transfer review process, described in OAR 345-027-0400, applies 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 OAR 345-027-0359, 345-027-0360, 345-027-0363, 345-027-0365, 345-027-0367, 345-027-0371 and 345-027-0375, is the default review process and applies to the Council's review of a request for amendment proposing a change described in OAR 345-027-0350(2), (3), or (4).¶¶

(3) The type B review process, consisting of OAR 345-027-0359, 345-027-0360, 345-027-0363, 345-027-0365, 345-027-0368, 345-027-0372, and 345-027-0375, applies to the Council's review of a request for amendment that the Department or the Council approves for type B review under OAR 345-027-0357.¶¶

(4) The type C review process, described in OAR 345-027-0380, applies to the Council's review of a request for amendment that the Department or the Council approves for type C review under OAR 345-027-0380.¶¶

(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 must 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: 345-027-0353

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 providing which types of changes to a facility are exempt from requiring an amendment to the site certificate. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0353

Changes Exempt from Requiring an Amendment

An amendment to a site certificate is not required for a proposed change in the design, construction or operation of a facility that 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 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 345-027-0510 through 345-027-0540.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0355

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 requiring a certificate holder to submit a written evaluation for changes that it determines do not require an amendment. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0355

Written Evaluations for Changes Not Requiring Amendment

(1) For a proposed change that would add area to the site boundary, see OAR 345-027-0357(1). For a proposed change to the facility that does not include adding area to the site boundary, the certificate holder may evaluate OAR 345-027-0350 and 345-027-0353 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 OAR 345-027-0350; or

(b) Is exempt from requiring an amendment under OAR 345-027-0353.

(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 OAR 345-026-0080. The written evaluation must be retained for the life of the facility.

(3) The Department 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: 345-027-0357

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 that provide the requirements and review process for amendment determination requests. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0357

Amendment Determination Request

(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; or

(b) Submit an amendment determination request to the Department for a written determination of whether the proposed change requires an amendment under OAR 345-027-0350, and is not exempt under OAR 345-027-0353.

(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 whether:

(a) The proposed change requires an amendment under OAR 345-027-0350; or

(b) The proposed change is exempt from requiring an amendment under OAR 345-027-0353.

(3) For any request for amendment described under OAR 345-027-0350(3) or (4), 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 OAR 345-027-0351(3).

(4) A request described in section (1), (2), or (3) of this rule 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 determinations it is requesting under sections (1), (2), or (3) of this rule; and

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

(5) After receiving an amendment determination request, the Department must post an announcement on the Department's website to notify the public that an amendment determination request has been received. The announcement must include a copy of the amendment determination request.

(6) Upon receiving a request for a written determination described in section (1) or (2) of this rule, the Department must, as promptly as possible, issue a written determination to the certificate holder. After the Department issues its written determination, the Department must, 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 must 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) of this rule, the Department must, 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 OAR 345-027-0351(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: 345-027-0359

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 providing for a certificate holder to elect to participate in a pre-amendment conference with the Department. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0359

Pre-Amendment Conference

(1) Prior to submitting a preliminary request for amendment to the site certificate as described in OAR 345-027-0360, the certificate holder may request a pre-amendment conference with the Department 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) of this rule, 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

ADOPT: 345-027-0360

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 that provide requirements for a preliminary request for amendment and review for completeness. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0360

Preliminary Request for Amendment

(1) To request an amendment to the site certificate required by OAR 345-027-0350(3) or (4), the certificate holder must submit a written preliminary request for amendment to the Department 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 all Council standards and 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 345-027-0375(2); and¶

(f) A list of the names and mailing addresses of property owners, as described in this rule:¶

(A) The list must include all owners of record, as shown on the most recent property tax assessment roll, of property located:¶

(i) Within 100 feet of property which the subject of the request for amendment, where the subject property is wholly or in part within an urban growth boundary;¶

(ii) Within 250 feet of property which is the subject of the request for amendment, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or¶

(iii) Within 500 feet of property which is the subject of the request for amendment, where the subject property is within a farm or forest zone; and¶

(B) In addition to incorporating the list in the request for amendment, the applicant must submit the list to the Department in an electronic format acceptable to the Department.¶

(2) After receiving a preliminary request for amendment, the Department must post an announcement on its website to notify the public that a preliminary request for amendment has been received. The announcement must 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 is the larger of either the study areas, as defined in OAR 345-001-0010(59), or the analysis areas 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: 345-027-0363

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 describing the requirements for the Department to determine that a request for amendment is complete. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0363

Determination of Completeness for a Request for Amendment

(1) Until the Department determines a 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 must notify the certificate holder whether the request for amendment is complete. In the notification, the Department must:¶

(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) of this rule; 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) of this rule, 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) of this rule.¶

(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 must 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 must submit printed 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: 345-027-0365

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which provide the requirements for the Department to issue a Draft Proposed Order. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0365

Draft Proposed Order for a Request for Amendment

(1) Within 7 days after a request for amendment to the site certificate described in OAR 345-027-0350(3) or (4), or a request for amendment to apply later-adopted laws described in OAR 345-027-0390, is determined to be complete, the Department must:

(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 must 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 must 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 must 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) of this rule; 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) of this rule, the Department must 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 must, no later than the date the Department has specified in the notice required by subsection (1)(a) of this rule, 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: 345-027-0367

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which require the Council to conduct a public hearing on a request for amendment and the Department's draft proposed order, and provide the requirements for public notice of the complete request for amendment, draft proposed order and public hearing under Type A Review. Adopts additional grammatical and wording changes to improve the clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0367

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

(1) After issuance of the draft proposed order as described in OAR 345-027-0365, the Council must 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 345-027-0365, the Department must:

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

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

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

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

(D) The property owners on the list provided under OAR 345-027-0360(1)(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

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

(3) The notice of the complete request for amendment, draft proposed order and public hearing must 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 section (1) of 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 locations 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; and

(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;

(E) A person's 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; and

(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 must 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 must 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; and¶¶

(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 must 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 must review the draft proposed order, must 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 may 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: 345-027-0368

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which require the Council to solicit and receive written public comments on the draft proposed order, and provide requirements for public notice of a complete request for amendment, draft proposed order and written comment deadline for a request for amendment under type B review. Provides that judicial review of the Council's final order either granting or denying an amended site certificate shall be as provided in ORS 469.403. Adopts additional grammatical and wording changes to improve clarity and consistency of the rule.

CHANGES TO RULE:

345-027-0368

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

(1) After issuance of the draft proposed order as described in OAR 345-027-0365, the Council must solicit and receive written public comments on the draft proposed order. The Department must 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 345-027-0365, the Department must:¶

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

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

(B) All persons on any special mailing list established for the facility;¶

(C) The reviewing agencies for the facility, as defined in OAR 345-001-0010(52); and¶

(D) The property owners on the list provided under OAR 345-027-360(1)(f);¶

(b) Post the complete request for amendment, draft proposed order, and the notice of the draft proposed order and written comment deadline on the Department's website; and¶

(c) 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 must 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 locations 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; and¶

(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; and¶

(E) 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: 345-027-0371

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which describe 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. Adopts additional grammatical and wording changes to improve the clarity and consistency of the rule.

CHANGES TO RULE:

345-027-0371

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

(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 345-027-0367, the Department must issue a proposed order recommending approval, modification or denial of the request 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 must, 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 must issue public notice of the proposed order by:

(a) Sending public notice of the proposed order by mail or email to:

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

(B) All persons on any special list established for the facility;

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

(D) The property owners on the updated list provided under OAR 345-027-0360(1)(f); and

(b) Posting an announcement of the proposed order on the Department's website.

(3) Notice of the proposed order must 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 address and website where the public may review copies of the proposed order; and

(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 must send a notice of the opportunity to request a contested case by mail or email 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 345-027-0367. The notice must include the deadline for requesting a contested case and restatements of sections (5) through (9) of this rule.

(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 345-027-0367 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 did not follow the requirements of OAR 345-027-0367, 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 may 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) of this rule. 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) of this rule, 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) of this rule;¶

(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) of this section.¶

(7) Before considering whether an issue justifies a contested case proceeding under section (9) of this rule, 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:¶

(a) The person making the contested case request raised the issue on the record of the public hearing described in OAR 345-027-0367 with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue;¶

(b) The Department did not follow the requirements of OAR 345-027-0367; or¶

(c) 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) of this rule, 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) of this rule, must be limited to those issues the Council finds were properly raised.¶

(9) After identifying the issues properly raised the Council must 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 must conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0014 and 345-015-0018 to 345-015-0085. The Council must identify the contested case parties and shall identify the issues each contested case party may participate on. The parties to a contested case proceeding must 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 found 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 must be limited to those issues that party properly raised in its contested case request that the Council found sufficient to justify a contested case, except that the certificate holder may participate on any issue the Council found 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) of this rule. 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) of this rule, the Council must 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 must 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) of this rule; and¶

(c) If the Council finds that the request does not identify a properly raised issue that justifies a contested case proceeding, the Council must deny the request. In a written order denying the request, the Council must state the basis for the denial. The Council must then adopt, modify or reject the proposed order based on the considerations described in OAR-345-027-0375. In a written order the Council must either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council must 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) of this rule, the Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0375. In a written order, the Council must either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council must 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 is as provided in ORS 469.403.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0372

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which provide the process by which the Proposed Order is issued, and the process for how the Council makes its Final Decision on Requests for Amendment Under Type B Review. Provides that judicial review of the Council's final order either granting or denying an amended site certificate shall be as provided in ORS 469.403. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0372

Proposed Order and Councils Final Decision on Requests for Amendment Under Type B Review

- (1) No later than 21 days after the written comment deadline that closes the record on the draft proposed order, the Department must issue a proposed order recommending approval, modification or denial of the request 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 must, 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 must 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) All persons on the Council's general mailing list as defined in OAR 345-011-0020;¶¶
- (b) All persons on any special list established for the facility;¶¶
- (c) The reviewing agencies for the facility, as defined in OAR 345-001-0010(52); and¶¶
- (d) The property owners on the updated list provided under OAR 345-027-0360(1)(f).¶¶
- (3) Notice of the proposed order must 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; and¶¶
- (d) A statement that judicial review of the Council's final order either granting or denying an amended site certificate is as provided in ORS 469.403.¶¶
- (4) The Council, may adopt, modify or reject the proposed order based on the considerations described in OAR 345-027-0375. In a written order, the Council must either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council must 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 is as provided in ORS 469.403.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405

ADOPT: 345-027-0375

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which provide 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. Clarifies that applicable laws in effect on the date amended site certificate is executed, not issued, as provided in ORS 469.401(2). Adopts additional grammatical and wording changes to improve clarity and consistency of rules.

CHANGES TO RULE:

345-027-0375

Scope of Council's Review

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

(2) To issue an amended site certificate, the Council must 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; and¶

(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 must 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 request for amendment was submitted; and¶

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

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.405, 469.504

ADOPT: 345-027-0380

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which provide when and how the type C review process may be approved, and the procedural steps of the type C review process. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0380

Type C Review Process for Pre-Operational Requests for Amendment

(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 may not request type C review of a request for amendment proposing to extend construction deadlines.¶

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

(a) A complete request for amendment, including the information described in OAR 345-027-0360(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) of this rule, the Department must 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) of this rule, the Department must issue a written determination either granting or denying type C review. Upon issuance, the Department must 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 must convene a Council meeting as promptly as possible as described in OAR 345-011-0015.¶

(6) To grant a request under section (1) of this rule, 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) of this rule is granted, the Department must:¶

(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 must, 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 must adopt, modify, or reject the draft temporary order based on the considerations described in OAR 345-027-0375, and the Council must decide

whether review should be completed through the type A or type B review process. In a written temporary order, the Council must 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 OAR 345-027-0367, 345-027-0371, and 345-027-0375, 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 OAR 345-027-0368, 345-027-0372, and 345-027-0375, 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

ADOPT: 345-027-0385

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017, provides the process by which certificate holders can make a request for amendment to extend construction deadlines. Adopts additional grammatical and wording changes to improve clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0385

Request for Amendment to Extend Construction Deadlines

(1) The certificate holder may request an amendment to the site certificate to extend the deadlines for beginning or completing construction of the facility, 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 OAR 345-027-0360. The preliminary request for amendment must include an explanation of the need for an extension and must be submitted to the Department 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) of this rule 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 must 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 345-027-0371, 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 must 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 must 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

ADOPT: 345-027-0390

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which provide 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.

CHANGES TO RULE:

345-027-0390

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

(1) Any person, including the Department, may request an amendment of a site certificate to apply laws, 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 laws results in a significant threat to the public health or safety or to the environment.

(2) To request an amendment to apply later-adopted laws under this rule, the person must submit a preliminary request for amendment to the Department with the information described in OAR 345-027-0360(1)(a), (c), (d), and the following:

(a) Identification of the laws 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 laws.

(3) If the Department receives a preliminary request for amendment to apply later-adopted laws as described in this rule from any person other than the certificate holder, the Department must send a copy of the request to the certificate holder. The transmittal must include a deadline by which the certificate holder must submit a response to the Department. In its response, the certificate holder must 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 laws.

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

(b) If the certificate holder concludes that the laws should not be applied to the facility, or if the certificate holder does not respond with its conclusion before the specified deadline, the Department must 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 laws.

(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 laws, the Council shall deny the request to apply later-adopted laws.

(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 laws, the Council shall review the request to apply later-adopted laws as a complete request for amendment in accordance with section (5) of this rule.

(4) For the purposes of OAR 345-027-0363, a preliminary request for amendment to apply later-adopted laws under this rule is considered a complete request for amendment on:

(a) The date the request is received by the Department, if the request to apply later-adopted laws is made by the certificate holder;

(b) The date the response described in subsection (3)(a) of this rule is received by the Department, if the request to apply later-adopted laws is made by a person other than the certificate holder, and if the certificate holder responds as described in subsection (3)(a); or

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

(5) After receiving a complete request for amendment under section (4) of this rule, the Council must review the

request for amendment as described in OAR 345-027-0365, 345-027-0367, 345-027-0371 and 345-027-0375, except that:

(a) If the Department recommends approval or modified approval of the requested amendment, the Department must include in the proposed order described in OAR 345-027-0371 any new or modified site certificate conditions necessary to assure compliance with the laws 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 must 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 must conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to 345-015-0014, and 345-015-0018 to 345-015-0085 limited to the issues stated by the certificate holder; and

(c) The Council may only include new conditions in a site certificate amended under this rule 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

ADOPT: 345-027-0400

RULE SUMMARY: Adopts provisions included in Administrative Order EFSC 5-2017 which provide the requirements for a request for amendment to transfer the site certificate and the process for review of such a request. Adopts additional grammatical and wording changes to improve the clarity and consistency of the rules.

CHANGES TO RULE:

345-027-0400

Request for Amendment to Transfer Ownership, Possession or Control of the Facility or the Certificate Holder ¶

(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) of this rule is or may be pending, the certificate holder must notify the Department. In the notice, the certificate holder must include the name and contact information of the new owner, and the date of the transfer of ownership. If possible, the certificate holder must 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) of this rule 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 may not construct or operate the facility until an amended site certificate as described in section (10) of this rule or a temporary amended site certificate as described in section (11) of this rule becomes effective.¶

(4) To request an amendment to transfer the site certificate, the new owner must 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 must 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 must send a notice of the request that describes the request for amendment to transfer the site certificate, specifies a date by which comments are due, and states that the date of the Council's transfer hearing will be announced on the Department's website, by mail or email to:¶

(a) All persons on the Council's general mailing list; as defined in OAR 345-011-0020; ¶

(b) All persons on any special list established for the facility;¶

(c) The reviewing agencies for the facility, as defined in OAR 345-001-0010(52); and¶

(d) The property owners on the updated list submitted under section (4) of this rule.¶

(7) Before acting on the request for amendment to transfer the site certificate, the Council must hold a transfer hearing. The Council must hold the transfer hearing during a Council meeting and must 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) of this rule.¶

(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 345-027-0351(5), the Council may 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) of this rule, the Council must 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 must 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) of this rule, 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) of this rule becomes effective or as the Council otherwise orders.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.405