Opening Items:

• Call to Order
• Roll Call
• Announcements
Announcements:

• Reminder that this meeting is being held in its entirety via teleconference and webinar.
• Reminder to Council and to anyone addressing the Council to please remember to state your full name clearly, and do not use the speakerphone feature, as it will create feedback.
• You may sign up for email notices by clicking the link on the agenda or the Council webpage.
• You are also welcome to access the online mapping tool and any documents by visiting our website.
Announcements continued:

- Please silence your cell phones
- Please use the “Raise Your Hand” feature in Webex to speak during the public comment period, or press *3 if you are on the telephone to raise our hand.
- Energy Facility Council meetings shall be conducted in a respectful and courteous manner where everyone is allowed to state their positions at the appropriate times consistent with Council rules and procedures. Willful accusatory, offensive, insulting, threatening, insolent, or slanderous comments which disrupt the Council meeting are not acceptable. Pursuant to Oregon Administrative Rule 345-011-0080, any person who engages in unacceptable conduct which disrupts the meeting may be expelled.
Agenda Item A

• Council Secretary Report
Radioactive Materials Enforcement Rulemaking
Council Consideration of Proposed Rules

December 18, 2020
Maxwell Woods, ODOE Assistant Director for Nuclear Safety & Emergency Preparedness
Jeff Burright, ODOE Nuclear Waste Remediation Specialist
Christopher Clark, Siting Policy Analyst & EFSC Rules Coordinator
Overview

- Rulemaking Background
- Overview of Draft Proposed Rules
- Rulemaking Timeline
- Council Decision
Rulemaking Background

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

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

• Rulemaking is in addition to a potential legislative concept for the 2021 legislative session.
Procedures for Energy Facilities Enforcement/Current Rules
OAR 345-029-0003 to 345-029-0100

Report by Responsible Party → Investigation and Fact Finding → Notice of Violation → Written Response → Enforcement Conference

Amended Notice of Violation → Notice of Civil Penalty Assessment → Contested Case Hearing (If Requested) → Final Order
Procedures for Radioactive Materials Enforcement
OAR 345-029-0503 to 345-029-0560

1. Report by Responsible Party
2. Investigation and Fact Finding
3. Pre-Enforcement Notice
4. Written Response
5. Enforcement Conference (If Requested)
6. Notice of Enforcement Action
7. Contested Case Hearing (If Requested)
8. Director’s Final Order
## Comparison of Procedures

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Procedural Steps</strong></td>
<td>Notice of Violation → Amended Notice of Violation</td>
<td>Pre-Enforcement Notice → Notice of Enforcement Action</td>
</tr>
<tr>
<td><strong>Classifications of Violations</strong></td>
<td>Class II is default Viations may be escalated</td>
<td>Violations classified by type No escalation</td>
</tr>
<tr>
<td><strong>Response to Notice</strong></td>
<td>Requires admission or denial</td>
<td>Requires statement of facts</td>
</tr>
<tr>
<td><strong>Civil Penalties</strong></td>
<td>Available for Class I violations</td>
<td>Available for all violations</td>
</tr>
<tr>
<td><strong>Contested Cases</strong></td>
<td>Conducted by Council</td>
<td>Conducted by Director/OAH</td>
</tr>
<tr>
<td><strong>Final Order by Default</strong></td>
<td>Allowed</td>
<td>Allowed</td>
</tr>
</tbody>
</table>
Calculation of Civil Penalty
345-029-0560, pg. 15

• **Step 1:** Determine Base Penalty Amount based on class/severity of violation

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

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

• Add amount for Economic Benefit
# Classification of Violations

OAR 345-029-0530, pg. 12

<table>
<thead>
<tr>
<th>Class I</th>
<th>Class II</th>
<th>Class III</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Illegal disposal of radioactive waste</td>
<td>• Failure to properly route shipments of spent nuclear fuel or radioactive materials</td>
<td>• Failure to give notice for inspection or schedule change of a radioactive materials shipment</td>
</tr>
<tr>
<td>• Failure to obtain an Oregon Radioactive Waste Material Transport Permit</td>
<td>• General violation of OAR 345-060 or terms of an Oregon Radioactive Materials Transport Permit</td>
<td>• Failure to maintain packaging, placarding, labeling, or shipment documentation for a radioactive materials shipment.</td>
</tr>
<tr>
<td>• Failure to report an incident involving radioactive materials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Failure to comply with an order of the Director or Council</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Severity Determinations
OAR 345-029-0560(1)(b), pg. 15

• **Major violations** include any violation determined to have caused, or having the potential to cause, a significant adverse impact on public health and safety, or the environment.

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

• **Minor violations** include any violation having caused, or having the potential to cause, no more than a minimal adverse impact on public health and safety or the environment.
### Civil Penalty Assessment - Base Penalty Amounts

OAR 345-029-0560(1)(c), pg. 15

<table>
<thead>
<tr>
<th>Class</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$1,000</td>
<td>$5,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$500</td>
<td>$2,500</td>
<td>$5,000</td>
</tr>
<tr>
<td>Class III</td>
<td>$500</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

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

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

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

- Initiation of rulemaking
- Development of draft proposed rules
- Notice of Proposed Rulemaking
- Formal public comment period
- Adoption of permanent rules
Draft Notice of Proposed Rulemaking

- Includes Statement of Need and Fiscal Impact
- Schedules Rulemaking Hearing for Jan 21, 2020
# Rulemaking Timeline

<table>
<thead>
<tr>
<th>Permanent Rulemaking Steps</th>
<th>Projected Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council initiates permanent rulemaking process</td>
<td>May 21, 2020</td>
</tr>
<tr>
<td>Staff convenes RAC and develops draft proposed rules</td>
<td>June – November 2020</td>
</tr>
<tr>
<td><strong>Council considers proposed rules and authorization of Notice of Proposed Rulemaking</strong></td>
<td><strong>December 18, 2020</strong></td>
</tr>
<tr>
<td>Staff issues Notice of Proposed Rulemaking</td>
<td>December 21, 2020</td>
</tr>
<tr>
<td>Council conducts rulemaking hearing</td>
<td>January 22, 2021</td>
</tr>
<tr>
<td>Last day to submit written comments</td>
<td>February 10, 2021</td>
</tr>
<tr>
<td>Council considers public comments and testimony and adoption of permanent rules</td>
<td>TBD</td>
</tr>
</tbody>
</table>
Council Decision on the Proposed Order

Option 1
Approve request to issue Notice of Proposed Rulemaking as presented

Option 2
Approve request to issue Notice of Proposed Rulemaking with modifications

Option 3
Deny request to issue Notice of Proposed Rulemaking
Agenda Item C
(Action Item)

Annual Election of Council Officers

December 18, 2020
Todd Cornett, Council Secretary

OAR 345-011-0010(1)
The Council shall annually elect a chair and a vice-chair. The chair and vice-chair shall serve for one year or until their successors are elected. A member may serve successive full terms as chair or vice-chair. The chair or vice-chair may be removed by a unanimous vote of the other Council members.
Agenda Item D
(Information Item)

2021 EFSC Meeting Dates

December 18, 2020
Todd Cornett, Division Administrator, ODOE
### 2021 Calendar

**EFSC Proposed Meeting Dates**

<table>
<thead>
<tr>
<th>Month</th>
<th>Proposed Meeting Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2021</td>
<td>January 21-22, 2021</td>
</tr>
<tr>
<td>February 2021</td>
<td>February 25-26, 2021</td>
</tr>
<tr>
<td>March 2021</td>
<td>March 25-26, 2021</td>
</tr>
<tr>
<td>April 2021</td>
<td>April 22-23, 2021</td>
</tr>
<tr>
<td>May 2021</td>
<td>May 20-21, 2021</td>
</tr>
<tr>
<td>June 2021</td>
<td>June 24-25, 2021</td>
</tr>
<tr>
<td>July 2021</td>
<td>July 22-23, 2021</td>
</tr>
<tr>
<td>August 2021</td>
<td>August 26-27, 2021</td>
</tr>
<tr>
<td>September 2021</td>
<td>September 23-24, 2021</td>
</tr>
<tr>
<td>October 2021</td>
<td>October 21-22, 2021</td>
</tr>
<tr>
<td>November 2021</td>
<td>November 18-19, 2021</td>
</tr>
<tr>
<td>December 2021</td>
<td>December 16-17, 2021</td>
</tr>
</tbody>
</table>
Agenda Item

PUBLIC COMMENT

Phone Commenters: Press *3 to raise your hand to make comment, and *3 to lower your hand after you’ve made your comment.

Webinar Commenters: Open the Participant list, hover over your name and click on the “Raise Your Hand icon”.

[Screen capture showing participants Cheryl McKearin and Thomas Okon]
How to Raise Your Hand in Webex:

**Webinar Participants**
The bottom right of the main window is a set of icons:
   Click on “Participants”
The bottom right of the participant window is a hand icon, click on the hand:
   Clicking on it again will lower your hand.

**Phone Participants**
Press *3 on your telephone keypad to raise your hand.
Press *3 again on your telephone keypad to lower your hand.
Agenda Item F
(Action Item)

Council’s Continued Review of Request for Amendment 5 to Transfer Summit Ridge Wind Farm Site Certificate

December 18, 2020
Sarah Esterson, Senior Policy Advisor, ODOE
Facility/Certificate Holder Overview

Facility Type: Wind (194.4 MW)
Facility Location: Wasco County
Certificate Holder: Summit Ridge Wind, LLC
Site Certificate History: Original: 2011
 AMD1 – AMD4: 2015 - 2019
## Transfer Procedural History

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Responsible Party</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification of Intent to Transfer Site Certificate</td>
<td>Certificate Holder</td>
<td>August 21, 2020</td>
</tr>
<tr>
<td>Submittal of Written Request</td>
<td>New Owner</td>
<td>Sept 14, 2020</td>
</tr>
<tr>
<td>Notice of Transfer Request</td>
<td>ODOE</td>
<td>Sept 30, 2020</td>
</tr>
<tr>
<td>Transfer Hearing</td>
<td>ODOE</td>
<td>Nov 19, 2020</td>
</tr>
<tr>
<td>Review of Transfer Request (cont’d to Dec 2020)</td>
<td>Council</td>
<td>Nov 19, 2020</td>
</tr>
<tr>
<td>Review/Decision on Transfer Request (potential)</td>
<td>Council</td>
<td>Dec 18, 2020</td>
</tr>
</tbody>
</table>
Review of Comments

Issues Raised
• Accuracy of information presented in staff report re: comment period
• Request for Amendment to Transfer Information
  • Date of transaction
  • Construction prior to approval of transfer
  • Royal Bank of Canada comfort letter
  • Limitations on changes to conditions through transfer process (Nov 16 staff report)
Transfer Review Process
OAR 345-027-0400

Council must find that the new owner complies with:

Organizational Expertise standard

• (OAR 345-022-0010)

Retirement and Financial Assurance standard

• (OAR 345-022-0050)

Standards for Facilities that Emit Carbon Dioxide – Monetary Path Payment Requirement (If applicable)

• (OAR 345-024-0710(1))
Organizational Expertise

• Experience in construction/operation of wind/other energy facilities
• Past Performance
  Regulatory compliance
  Mitigation experience
• Previously Imposed Conditions
Review of Nov 16 Staff Report

PLACEHOLDER SLIDE

(will screenshare staff report to allow Council review of previous recommendations)
Retirement and Financial Assurance

- Ability to Restore Site to Useful, Nonhazardous Condition
  - No changes in previously identified tasks/actions
- Ability to Obtain Bond/Letter of Credit ($12 million)
  - Commitment letter from RBC Royal Bank
- Legal Authority to Construct/Operate Facility
  - Legal opinion from Special Counsel, Stoel Rives LLP
Council Action – Approval or Denial
Council Review of Department’s Request to Use Consultant in Review of EFSC Facility Compliance with Cultural, Historic and Archeological Resources Std.

December 18, 2020
Sarah Esterson, Senior Policy Advisor, ODOE
BREAK
Council Deliberation
Adjourn