

Radioactive Materials Enforcement Rulemaking Project

Issues Analysis Document

December 11, 2020

At its May 21, 2020 Council Meeting, the Energy Facility Siting Council initiated its Radioactive Materials Enforcement Rulemaking Project to review rules in OAR chapter 345, division 029 that provide for the enforcement of laws and rules governing the transport and disposal of radioactive materials and waste in Oregon.

This document provides a summary of the Department's analysis and recommendations for issues included in the project. The document and any associated draft rules are for information only and are not notice of rulemaking action by the Energy Facility Siting Council. The analysis within is subject to change based on input from the Council, staff, and stakeholders.

OAR 345-029 – Procedures for the enforcement of laws and rules related to the transportation or disposal of radioactive materials.

Issue Description: Procedures for the Council's enforcement of laws and rules related to energy facility siting and site certificate conditions may not be appropriate for the enforcement of laws and rules related to the transportation or disposal of radioactive materials.

Issue Summary: Currently, OAR 345-029 applies to certificate holders, radioactive materials transport permit holders, and any other persons who are otherwise subject to the requirements of ORS chapter 469 or OAR chapter 345. The rules also apply to a broad set of violations, including violations of the laws and rules related to energy facility siting, violations of site certificate conditions, and violations of laws and rules related to the transportation or disposal of radioactive materials.

ORS 469.990 provides the Council and the Director with the authority to assess civil penalties for violations of ORS 469.300 to 469.619 and 469.930. This statute applies to enforcement of provisions relating to siting (ORS 469.320 to 469.441), radioactive wastes and nuclear plant operations (ORS 469.525 to 469.562), and the transportation of radioactive material (i.e. ORS 469.603 to 469.619.)

There are some important differences between these areas. For example, while laws and rules related to siting and site certificates are largely implemented by the Council or and ODOE Siting Division Staff, the provisions related to the transportation or disposal of radioactive materials or wastes are largely implemented by the Director and ODOE's Nuclear Safety & Emergency Preparedness Division. While in some areas the statute specifies that either the Director or Council may enforce or implement rules, ORS 469.540(3) specifically authorizes the Director to order compliance or impose other safety conditions on the transport or disposal of radioactive materials or wastes if the director believes those laws or rules are being violated or are in danger of being violated.

Another difference is that persons subject to rules and laws related to the transport or disposal of radioactive materials or wastes may not have the same regular contact with compliance staff as site certificate holder, and while Oregon Radioactive Materials Transport Permits contain some requirements for reporting, there are generally not ongoing programs in place for monitoring or verifying compliance.

Finally, the nature of risks to public health or the environment associated with violations of the rules governing the transportation and disposal of radioactive materials differ significantly from risks associated with the construction and operation of energy facilities.

For all these reasons, a different framework may be needed to ensure radioactive materials or wastes are transported or disposed of in compliance with the law, and to require appropriate mitigation or corrective actions when a violation occurs.

Alternatives:

- Amend existing provisions in OAR chapter 345, division 029 related to the enforcement of laws and rules related to the transport and disposal of radioactive materials or wastes.
- Adopt new rules for enforcement of laws and rules related to the transport and disposal of radioactive materials or waste.

Discussion: The RAC discussed this issue at its July 15, 2020 meeting. The RAC generally agreed that differences between the regulations governing the transport and disposal of radioactive materials and wastes, the nature of the potential violations and impacts that may occur, and the responsible parties involved warrant the establishment of separate procedures. Several RAC members suggested looking at the DEQ rules in OAR chapter 340, division 012 as a model for new rules.

Staff Recommendation: Establish a new series of rules specific to the enforcement of rules and laws governing the transport and disposal of radioactive materials or wastes. Staff’s draft proposed rules are presented as OAR 345-029-0503 through 345-029-0560 in the draft proposed rules provided to the Council.

The new rules would utilize some aspects of DEQ’s rules in OAR chapter 340, division 012 while maintaining the basic structure of the current rules. For examples, instead of issuing a Notice of Violation at the outset of enforcement proceedings, the new rules would require the Department to issue a Pre-Enforcement Notice, followed by a Notice of Enforcement Action, similar to DEQ’s process but the rules retain the requirement for the responsible party to respond and the opportunity for an enforcement conference. In reviewing this recommendation at its November 2, 2020 meeting, some RAC members raised concerns that having separate procedures may cause some confusion; however, staff notes that new applicability rules have been proposed under OAR 345-029-0003 and 345-029-0503 to clarify the scope of each section of rules. Because the Council does not generally oversee matters related to radioactive materials and wastes on a day to day basis, staff recommends the new rules be implemented by the Director and ODOE’s Nuclear Safety and Emergency Preparedness Division.

If new rules are adopted, the Council will be required to conduct a review under ORS 183.405 within five years. If the rules are found to have the intended effect during this review, staff recommends the Council consider conducting rulemaking to align the existing provisions for enforcement of site certificates and energy facility siting requirements with the new rules.

OAR 345-029 – Convention for classifying violations.

Issue Description: Rules do not follow convention that lower numbers indicate more severe violation.

Issue Summary: The rules provide for two classes of violation, with Class II being more severe than Class I. It is more typical in Oregon law for Class I Violations to be the most severe, with subsequent classes reflecting less severe violations. Staff believes it may be appropriate to reverse the order of the classifications in rule to be consistent with other state statutes and rules. If a change were made, it would be applicable to all types of violations.

Alternatives:

- No Action

- Reverse order of violation numbering

Discussion: At the July 15, 2020 meeting, one RAC member commented that both regulators and the regulated community benefit from consistency between agencies and cited this issue as an example of how inconsistency between agencies can be confusing for regulated industry.

Staff Recommendation: Reverse the order of violation numbering in both sections of OAR chapter 345, division 029, so that Class I violations are those that generally present the greatest potential for impacts to public health and safety and are therefore subject to greater sanctions.

OAR 345-029-0530 – Classification of violations involving radioactive materials and wastes

Issue Description: The current rules only allow for the imposition of penalties for “Class II” violations.

Issue Summary: Under OAR 345-029-0030(1) any violation of ORS chapter 469 or OAR chapter 345-050 or 345-060 is considered to be a Class I violation. The department may consider a number of factors, including whether or not the responsible party reported the violation or took corrective actions, and the duration and impacts of the violation, when deciding whether or not to escalate to a Class II violation, but the violation may only be escalated if the Department finds that the violation meets one of the following criteria:

- It is a repeated violation that could reasonably have been prevented by the responsible party by taking appropriate corrective actions for a prior violation;
- It resulted from the same underlying cause or problem as a prior violation;
- It is a willful violation; or
- The violation results in a significant adverse impact on the health and safety of the public or on the environment.

Because violations involving radioactive materials or waste may result in long lasting risks to the health and safety of the public and the environment without creating an immediate significant adverse impact, staff believes that there may be some instances where a penalty for a first violation is warranted. It may also be appropriate to consider factors not listed in the current rule, such as whether or not a violation is reversible (e.g., whether disposed waste may be feasibly removed), when classifying violations involving radioactive materials or waste.

Alternatives:

- No Action
- Maintain current classifications, but allow any violation involving radioactive materials or wastes to be escalated based on a potential for significant adverse impact.
- Specify new classifications for violations involving radioactive materials or wastes based on the rule or law violated.

Discussion: The RAC discussed this issue at its July 15, 2020 meeting. Most RAC members agreed that the Department should have some discretion to assess a penalty for an initial violation involving radioactive materials, but some RAC members stated that a penalty would not always be appropriate, especially when the responsible party was not aware of the violation, or when the responsible party takes appropriate corrective actions.

Several RAC members recommended that, for violations involving the transport or disposal of radioactive materials or wastes, the criteria specifying that a penalty may be assessed when a violation results in a

significant adverse impact on the health and safety of the public or on the environment should be amended to allow a penalty when there is a potential for a significant adverse impact.

Several RAC members suggested that OAR 340-012-0053, and additional guidance provided in the DEQ's Enforcement Guidance Internal Management Directive (IMD), provided a good example for determining how to classify a penalty, when a penalty should be allowed, and how to address prior violations. The IMD provides a table for every program area and prescribes an enforcement action based on the factors of the case, such as the level of risk (e.g. location, amount, and type of waste) and history of noncompliance. If violation is low risk and first instance of noncompliance, DEQ issues Warning Letter. If not DEQ will issue a pre-enforcement notice which can be converted to a Notice of Violation and Civil Penalty Assessment.

Staff Recommendation: Adopt new classifications for violations involving the transport or disposal of radioactive materials or wastes, as presented in the draft proposed OAR 345-029-0530. The draft proposed rule categorizes violations based on the rule or statute violated and then classifies them based on the general potential for impacts to public health and safety and the environment. This approach would make a penalty available, but not required, for all violations.

In advice on the draft proposed rules, a RAC member raised concerns that OAR 345-029-0030 through 345-029-0060 do not allow a penalty if an entity violates the terms of a site certificate, Council order or applicable law unless one of the aggravating factors in OAR 345-029-0030(2) apply. The RAC member also suggested amending the existing OAR 345-029-0030(2)(d) to allow a penalty when a violation “results in a significant adverse impact or the potential for significant adverse impact on the health and safety of the public or on the environment.” These issues are outside of the scope the Council authorized for the current rulemaking project, but staff recommends Council consider them in future rulemaking proceedings.

OAR 345-029-0520 – Requirement for Response to Pre-Enforcement Notice

Issue Description: The current rule requires that a party receiving a Notice of Violation provide a response but does not specify how this requirement will be enforced.

Issue Summary: Under OAR 345-029-0020(2)(c), a Notice of Violation must include a requirement for the responsible party to provide a written response to the notice of violation within 30 days or other specified time. This requirement was included in Staff's draft proposed OAR 345-029-0520. During RAC meetings, several RAC members raised concerns that there is no clear enforcement mechanism for this requirement and asked why a response is not optional if the response is intended to be an opportunity for the responsible party to improve its case.

Alternatives:

- Maintain requirement for response
- Make response to a Pre-Enforcement Notice optional

Discussion: The RAC discussed this issue at its November 2, 2020 meeting. While one RAC member felt the response should be optional, another thought that it was reasonable for the Department to expect a response and needed a timeframe to know when it could proceed with its enforcement options. Staff notes that the deadline for response is, in some ways, an enforcement mechanism because if it is not met the responsible party loses the opportunity to propose corrective actions and mitigate penalty amounts based on their completion.

Staff Recommendation: Maintain requirement for responsible party to provide a written response to Pre-Enforcement Notice. Staff notes that a RAC member requested the response be made optional in both the existing and new proposed rules. If Council decides to modify the proposed rule to make the response optional in the proposed OAR 345-029-0520, staff recommends Council consider making a corresponding change in OAR 345-029-0020 in future rulemaking proceedings.

OAR 345-029-0520 – Admission or Denial of Responsibility

Issue Description: The current rule requires that a party receiving a Notice of Violation must either admit or deny a violation in its response.

Issue Summary: Under the current rule, a party receiving a Notice of Violation must either admit or deny that the violation has taken place in its response. In some situations, a party may not be willing to admit or deny responsibility for an alleged violation but may still be willing to take responsibility for corrective action.

Alternatives:

- Maintain requirement for admission or denial of violation
- Amend requirement to only require a statement of facts related to the alleged violation

Discussion: The RAC discussed this issue at its July 15, 2020 meeting. Most RAC members agreed that it was reasonable to allow the responsible party to propose or agree to corrective actions to resolve an alleged violation without admitting responsibility. RAC members commented that under DEQ rules, a responsible party must admit or deny any alleged violations and provide any affirmative defenses in a request for a contested case hearing on a penalty order, but may settle the matter without doing so and may stipulate that the responsible party does not admit to any of the alleged violations. Some RAC members thought that allowing more flexibility to reach a settlement would help facilitate the goal of addressing the impact of a violations through corrective actions. We note that providing additional guidance for settlement of enforcement orders is also discussed in the issue on OAR 345-029-0090 below.

At its final meeting on November 2, 2020, a RAC member expressed concerns that there were not mechanisms in place to enforce the mandatory response, and suggested that if the response is intended to be an opportunity for the responsible party to provide information that may improve its case it should be optional. Another RAC member thought that it was reasonable for the Department to expect a response and needed a timeframe to know when it could proceed with its enforcement options.

Staff Recommendation: Maintain requirement for responsible party to provide a written response to a Notice of Violation (now a “Pre-Enforcement Notice” in the draft proposed rules), but remove requirement for response to admit or deny alleged violation to allow flexibility at this point of the process. Instead, the draft proposed OAR 345-029-0520(3) requires the response to include a statement of facts relevant to the Director’s determination that a violation occurred.

OAR 345-029-0555 – Jurisdiction for Contested Cases

Issue Description: New rules should specify whether the Director or Council will be responsible for conducting contested case proceedings on a matter related to radioactive materials or waste.

Issue Summary: Under the current rules, a Notice of Violation and any associated Order assessing a civil penalty are issued by the Council, and the Council must conduct a contested case proceeding when a hearing

on an order assessing a civil penalty is requested, in accordance with ORS 469.085 and 183.475. The contested case hearing is conducted under the applicable provisions of OAR chapter 345, division 015.

Under staff's draft proposed rules, a Notice of Enforcement Action and any associated Order would be issued by the Director. While the Council could retain the authority to conduct a contested case hearing on such an order, it is not clear if it would be appropriate and may result in considerable procedural challenges.

In addition to determining which agency will conduct the contested case, it may be necessary to specify what types of orders are considered contested cases under the rules. ORS 469.085 and 183.475 require the opportunity for a contested case hearing on a civil penalty order, but it is not clear if such an opportunity is required for enforcement actions that do not include a penalty.

Alternatives:

- Specify that the Council will conduct hearings on all contested cases arising from orders issued under OAR chapter 345, division 029.
- Specify that the Director will conduct hearings on contested cases arising from any of their orders assessing a civil penalty for a violation involving radioactive materials or wastes
- Specify that the Director will conduct hearings on contested cases for any enforcement orders they issue under OAR chapter 345, division 029.

Discussion: Because these rules are adopted under the Council's authority, one stakeholder recommended that the Council should retain a role as referee in the event that a hearing is requested. If, however, Council accepts staff's recommendation for the new rules to be implemented by the director, it may be appropriate to specify that the director is also responsible for conducting the contested case hearings.

Staff notes that while the Council is exempt from using Administrative Law Judges from the Office of Administrative Hearings (OAH) to conduct its contested cases, the Director is not. As a result, the option to appoint a Hearing Officer would not be available for a contested case conducted by the Director and the hearing would likely be required to be conducted under OAH's model rules. In either case, the final order in the contested case would be subject to judicial review by the Court of Appeals under ORS 183.482. If the contested case is conducted by the Council, there may be additional procedural steps required to accommodate the Council's public meeting requirements and decision-making process.

Staff Recommendation: Specify that the Director will conduct the hearing on contested cases for any enforcement orders they issue under OAR chapter 345, division 029.

OAR 345-029-0555 – Remittal or mitigation of penalties

Issue Description: Rules do not provide for imposition of terms and conditions for the remittal or mitigation of penalties for violations involving radioactive materials or wastes.

Issue Summary: ORS 469.085(8) authorizes the Council or Director to impose terms and conditions for the cancellation or reduction of a civil penalty. The law also requires the Council or Director to consider the economic and financial condition of the responsible party when determining if a penalty should be cancelled or reduced upon the request of the responsible party.

Under OAR 345-029-0090, the Council may rescind or reduce a civil penalty upon a showing that (1) the penalty would be an unreasonable economic and financial hardship to the responsible party, (2) that the responsible party has taken prompt and effective action to correct the violation and ensure that it will not be

repeated, or (3) that the responsible party reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program.

The rules do not explain what information is required to make the showings required under OAR 345-029-0090 or how the Council would evaluate if a corrective action is effective. The rule also does not explain if the Department or Council may specify what additional actions must be taken for a penalty to be reduced or cancelled when the actions implemented by the responsibility are found to be insufficient.

It may be appropriate for the rule to explicitly provide a mechanism for the Council or Department to impose additional terms and conditions, such as remediation of contaminated areas or implementation of additional monitoring programs, that must be satisfied for a penalty to be reduced or cancelled. Staff notes that such terms and conditions are likely authorized under ORS 469.540(3), as discussed further in the next issue.

As an example, the rules under OAR 340-012 separately provide DEQ with the authority to reduce a penalty based on inability to pay under OAR 340-012-0162, or to settle a civil penalty based on a number of factors, including the introduction of new information, the effect of the settlement on deterrence, and whether the responsible party has or is willing to employ extraordinary means to correct the violation or maintain compliance. The Council could adopt a similar rule explaining that the Council may settle or reduce a penalty based on the responsible party's willingness to take corrective or preventative actions acceptable to the department, or other similar factors.

Alternatives:

- Take no action
- Establish that the Department or Council may impose additional terms or conditions for the reduction or cancellation of penalties for violations involving radioactive materials or wastes.

Discussion: In discussion of rules requiring an admission or denial of a violation in the response to violation required under OAR 345-029-0040 on July 15, 2020, several RAC members stated that allowing flexibility in the settlement process may help obtain corrective actions and facilitate the goals of the compliance program.

At its August 26, 2020 meeting, the RAC discussed this issue further. Several committee members raised concerns about potentially changing the violation classification based on corrective actions taken after the enforcement process had begun, but generally agreed that it would be appropriate to reduce penalties in a disposition or settlement of a penalty based on the responsible party's cooperation and performance of corrective actions.

Staff Recommendation: Establish that the Department may order compliance or corrective actions in its notice assessing a penalty and authorize settlement of penalty amounts, as provided in the draft proposed OAR 345-029-0555.

One RAC member strongly suggested amending the existing OAR 345-029-0090 to include a documentation requirement to provide specific parameters around what qualifies as a financial hardship and what documentation the responsible party must show to prove that hardship. This change is outside of the scope the Council authorized for the current rulemaking project, but staff recommends Council consider the issue in future rulemaking proceedings.

OAR 345-029-0560 – Penalty amounts for violations involving radioactive materials

Issue Description: Penalty amounts allowed by rules may not be sufficient to incentivize prevention and mitigation of violations of OAR 345-050.

Background: ORS 469.085(6) requires the Director or Council to adopt a schedule of civil penalty amounts for particular violations by rule. The penalty for a violation of ORS 469.300 to 469.619 or rules adopted pursuant to those sections may not exceed \$25,000 per day of violation under ORS 469.992.

Under OAR 345-029-0060(1)(a)(B), the base penalty for the improper storage or disposal of radioactive waste in Oregon under ORS 469.525 and OAR 345-050-0006 is \$100 per day from the date of discovery of the violation.

Under OAR 345-029-0060(1)(a)(C), the base penalty for failure to provide to provide specific shipment information for a shipment traveling under an Oregon Radioactive Materials Transport Permit as required by OAR 345-060, the penalty is \$250 for the first violation and \$500 for each subsequent violation in a calendar year.

The base penalty amount may be increased by up to 500% if the Department finds that the violation was intentional or reckless, or involved a requirement relating to public health, safety, or the environment.

Alternatives:

- Maintain the current base penalty amounts
- Establish new base penalty amounts
- Establish a schedule of penalty amounts for violations of OAR 345-050 based on the type or severity of the violation, or other factors.

Discussion: At the July 15, 2020 meeting Staff requests the RACs advice on whether the base penalty of \$100 per day is appropriate for these types of violations. While the RAC did not have a specific recommendation on penalty amounts, some felt that the current amount of \$100 per day was not sufficient to deter future violations or incentivize mitigation when a violation occurs.

The RAC reviewed an initial proposal which classified penalties and set amounts based on the magnitude of the violation's potential for impacts to public health and safety or the environment. Some committee members recommended the rules classify penalties based on the type of violation and use a modifier for magnitude to reflect the size of impact or risk of impact to public health or the environment, similar to the methodology DEQ uses to determine penalty amounts. RAC members did not raise concerns with the proposed penalty amounts, but some did comment that the penalties for violations involving the actual or potential release of radioactivity into the environment should be significantly higher than penalties for other types of violations.

Staff Recommendation: Establish a new schedule of base penalty amounts based on the type of violation and allow for modification based on severity and other factors as provided in the draft proposed OAR 345-029-0560. Penalty amounts would range from \$500 for the least severe to \$10,000 for the most severe.

OAR 345-029-0560 - Date of Discovery for a Violation.

Issue Description: Penalty amounts based on date of discovery of a violation may not adequately incentivize evaluation and monitoring of radioactive materials.

Issue Summary: Under OAR 345-029-0060(1)(a)(B), the base penalty for a violation of OAR 345-050 is \$100 per day from the date of discovery of the violation. Effectively, this provision limits the imposition of a penalty for a person who unknowingly disposes of radioactive materials at a site in Oregon, or who knowingly disposes of radioactive materials that does not meet the definition of radioactive waste under ORS 469.300 based on incorrect or invalid information. While some limitations on total penalty amounts for violations that are not

willful may be appropriate, the Department is concerned that the rule may not adequately incentivize persons who may accept materials that could contain radioactive waste to properly monitor or evaluate materials those materials to ensure no violation will occur.

Alternatives:

- Maintain a per day penalty for violations of OAR 345-050, with the total penalty amount calculated from the date of discovery.
- Amend rule to establish a per day penalty for violations of OAR 345-050, with the total penalty amount calculated from the date of violation.
- Amend rule to establish a per violation penalty amount for violations of OAR 345-050, with a factor to adjust for duration and an additional amount for “economic benefit.”

Discussion: The RAC discussed this issue at its July 15, 2020 meeting. The RAC generally agreed that it would be appropriate to determine the amount of penalty based on the date of violation, but that some discretion should be maintained. When asked if there should be a limitation on how far back to look, or if there should be a cap on the total amount, some RAC members suggested that these limitations may be appropriate, and suggested staff review the DEQ rules, which have an adjustment factor for duration and then an overall cap, but also allow for option to consider each day a separate violation if necessary.

In discussion at the August 26, 2020 RAC meeting, one committee member suggested that rather than imposing a cap, the Department could pursue the total available penalty amount and then reduce the amount through the settlement or disposition of the penalty as appropriate. The member also said ongoing violations could be addressed by stipulating that no further penalties would be levied if appropriate corrective action is taken. Another committee member commented that not placing a cap on penalties could disincentivize the department from taking prompt action.

The department also requested the committee’s feedback on whether the Department should consider whether or not “economic benefit” should be considered in its penalty calculation, noting that Oregon DEQ’s penalty formula uses EPA’s BEN model to estimate avoided costs of compliance. A committee member commented that the model is not perfect and does not capture some benefits such as illegal profits, but is effective at compelling compliance because the economic benefit penalty can be reduced based on expenditures related to corrective or preventative actions. Staff notes that if economic benefit was considered, it would still be subject to the \$25,000 per day of violation limit on penalties imposed by statute.

Staff Recommendation: Establish that penalties for violations involving radioactive materials and wastes may be calculated for “for each occurrence of a violation, or for each day of an ongoing violation.” This is intended to allow a penalty to be calculated from the date of violation, while leaving some discretion for staff to develop guidelines for addressing ongoing violations which extended over longer periods of time.

Staff also provided alternative rule language which establishes a per violation penalty amount with a factor to adjust for duration, similar to the DEQ rules. The alternative language also includes a consideration for economic benefit. The Department will only adopt one version of the rule, although either version may be amended after receiving feedback from the RAC.

OAR 345-029-0560 – Consideration of Economic Benefit

Issue Description: The current rules do not account for Economic Benefit in determining the amount of civil penalty.

Issue Summary: Oregon DEQ's penalty formula uses EPA's BEN model to estimate the costs of compliance a responsible party avoided through its noncompliance. Staff notes that if economic benefit was considered, it would still be subject to the \$25,000 per day of violation limit on penalties imposed by statute.

Alternatives:

- Make no changes
- Include ability to consider an additional amount for "economic benefit"

Discussion: A committee member commented that the BEN model does not capture some benefits such as illegal profits, but that considering economic benefit can still be effective at compelling compliance because the economic benefit penalty can be reduced based on expenditures related to corrective or preventative actions. Another RAC member commented that including an economic benefit component makes it harder for companies to treat potential civil penalties as part of the cost of doing business.

Staff Recommendation: Include ability to consider an additional amount for "economic benefit" as presented in draft proposed OAR 345-029-0560.

OAR 345-050, 345-060 – Detection and Discovery of TENORM Shipments

Issue Description: The current rules do not include sufficient mechanisms to prevent and detect shipments of TENORM entering the state.

Issue Summary: A RAC member raised concerns that ORS 469.525, and the current rules in OAR chapter 345, division 050 prohibit radioactive waste from being disposed of in Oregon, but do not include strong mechanisms to prevent or detect shipments of materials containing Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) such as filter socks from mining and hydraulic fracturing that may be en route to a waste disposal facility even if these materials are shipped under an Oregon Radioactive Materials Transport Permit. The RAC member also suggested that the rules should go beyond penalizing the person who disposes of wastes and prohibit persons from arranging for the transport and disposal of materials from out of state as well.

Staff Recommendation: Addressing these issues is likely outside of the scope of the Council's rulemaking authority. If the authority is expanded by legislative action, staff recommends considering these issues in conforming rulemaking.