



Oregon

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To: Energy Facility Siting Council

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Date: August 13, 2021

Subject: Agenda Item H (Action Item):
Radioactive Waste Materials Rulemaking –
Initiation of Rulemaking for the August 27, 2021, EFSC Meeting

Attachments: List of Recommended RAC Appointees (Supplemental Packet)

STAFF RECOMMENDATION

Staff recommends Council initiate rulemaking to revise OAR 345-050-0006 to 345-050-0038 and associated rules to implement changes to ORS chapter 469 enacted by SB 246 (2021). To assist in the development of proposed rules and provide input on potential fiscal and economic impacts, staff recommends Council appoint a Rulemaking Advisory Committee (RAC) that represents interests likely to be affected by the proposed rules. A list of recommended RAC appointees will be included in the supplemental packet. If Council approves staff's recommendation to appoint a RAC, staff also requests that Council authorize the Department to appoint additional RAC members as needed.

BACKGROUND

In its 2020-2022 Rulemaking Schedule, the Council approved a rulemaking project to evaluate the current regulatory landscape and body of evidence related to the disposal of wastes containing naturally occurring radioactive materials and identify potential updates to the Council's rules under OAR 345-050, which govern radioactive waste materials. During staff's preliminary research, staff determined that legislative action would be required to implement changes to some rules in division 050. Pending the outcome of the 2021 legislative session, the Council addressed some issues related to the enforcement of rules and laws governing the

transport and disposal of radioactive materials and wastes in Oregon under OAR 345-029 through permanent rules adopted on February 26, 2021.

During the session, the legislature passed SB 246, which as discussed further below, provides Council with the additional authority needed to address outstanding issues related to the regulation of radioactive materials and wastes. This report provides the Department's preliminary recommendations for the conduct of the rulemaking process, which are discussed further below. Specifically, we will discuss:

- The need and authority to adopt rules
- The recommended scope and objectives for the rulemaking proceedings, including the policy issues the project will address
- The potential impacts on stakeholders and recommended method for obtaining stakeholder input
- The projected timeline for the rulemaking process.

We will conclude with a request for Council to initiate the rulemaking process. Please note that the Council is not being asked to consider proposed rule amendments or the adoption of permanent rules at this time.

NEED AND AUTHORITY FOR RULES

SB 246 (2021) mandates that Council adopt standards and rules as necessary to prevent disposal of radioactive waste in Oregon and provides Council with additional authority to modify the types of materials that are considered to be radioactive waste under state law. The bill becomes effective on January 1, 2022. Staff recommends that rulemaking is needed to implement the bill, and to make any additional adjustments needed to address outstanding issues associated with the regulation of radioactive materials and wastes.

ORS 469.525 prohibits the establishment, operation, or licensure of any radioactive waste disposal facility in Oregon. Under ORS 469.300(23)(a), "radioactive waste" includes any material which is discarded, unwanted, or has no present lawful economic use and contains mined or refined naturally occurring isotopes, accelerator produced isotopes, or special nuclear material, source material or by-product material. Materials containing isotopes and concentrations identified in OAR 345-050 are not considered to be "radioactive waste materials" under the meaning of the law.

The current law references the isotopes and concentrations identified in rules adopted by the Council on December 12, 1978, limiting changes to the rule to the addition of new exempt isotopes and concentration. SB 246 (2021) removes this language, allowing the Council to revise the rules if it identifies additional isotopes that may present significant danger to public health and safety. Rulemaking is needed to ensure that the Council's rules identifying hazardous radioactive wastes are consistent with current practices and the best available science.

The new law also requires the Council to adopt standards and rules as necessary to prevent disposal of radioactive waste in Oregon. Changes in the mining and energy extraction industries have led to increased production of wastes, such as pipe scale, filter socks, and process water, containing concentrated amounts of naturally occurring radioactive isotopes. These wastes are often referred to as Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM). Some states have amended their radiation protection standards or adopted new laws to prevent the disposal of TENORM wastes and, as a result, there has been an increased demand for interstate transport and disposal of these materials. This rulemaking would satisfy the new mandate in the bill by determining if additional protection standards are needed to prevent hazardous TENORM wastes from being transported to and disposed of in Oregon.

OBJECTIVES AND SCOPE

The objective of this rulemaking is to implement the provisions of SB 246, and to ensure that the Council's rules are sufficient to protect public health and safety. Consistent with the need and authority for rules discussed above, staff recommends that the scope of this rulemaking be limited to addressing issues in three main areas:

- Evaluating whether changes to OAR 345-050-0006 to 345-050-0038 are needed to protect public health and safety.
- Considering what standards and rules are necessary to prevent the disposal of radioactive waste in Oregon.
- Making any other conforming changes to rules in OAR chapter 345 needed to implement SB 246 or new rules.

Staff notes that by law, temporary storage of wastes at the site of the former Trojan Nuclear Plant or at Oregon's two nuclear research reactors is not considered to be "disposal," and as such is considered to be outside of the scope of this rulemaking.

POTENTIAL IMPACTS ON STAKEHOLDERS

While the objective of this rulemaking is to protect public health and safety, staff acknowledges that the adoption of new standards and rules related to the disposal of radioactive materials and wastes could result in increased costs of compliance for industries that produce, handle, or dispose of radioactive materials.

RECOMMENDED METHOD FOR OBTAINING PUBLIC INPUT

Because this project is likely to generate a high level of public interest, and may result in some fiscal impacts, staff recommends Council appoint an advisory committee made up of regulated entities, public interest groups, state agencies, local governments, tribal governments, and members of the public for this project. Staff will provide a list of organizations and individuals it recommends be appointed to the RAC in the supplemental packet. Staff recommends that Council authorize the Department to appoint additional RAC members during the rulemaking process as needed to ensure that all interest groups are adequately represented.

PROJECTED RULEMAKING TIMELINE

Staff recommends that rulemaking be targeted for completion in mid-2022. The timeline below describes the steps that would be needed to adopt permanent rules at the Council’s July 2022 meeting.

Projected Rulemaking Timeline

Council initiates permanent rulemaking	August 27, 2021
Staff convenes Rulemaking Advisory Committee	September 2021 - February 2022
Staff prepares draft proposed rules	February – March 2022
Council considers draft proposed rules/ issues Notice of Proposed Rulemaking	April 2022
Public Comment Period/ Rulemaking Hearing	May-June 2022
Council Consideration of Permanent Rules	July 2022