



Oregon

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To: Energy Facility Siting Council

From: Todd Cornett, Assistant Director for Siting/Council Secretary

Date: July 5, 2024

Subject: Agenda Item G (Information Item and Public Comment Opportunity):
Public Notice Discussion for the July 19, 2024 EFSC Meeting

Attachments: Attachment 1: Boardman to Hemingway Draft Proposed Order Request for
Amendment 2 Public Notice

BACKGROUND

Oregon Administrative Rules (OAR) approved by EFSC establish the legal requirements of what must be included in public notices. However, the Department includes additional information in each notice to help better explain the proposal, the review process and the opportunities for participation and comment. There have recently been questions raised about what is required to be included in notices and what would be helpful to be included in notices.

Attachment 1 is a recent notice on a Type A Amendment Draft Proposed Order public hearing and comment period. All legally required elements are highlighted. They are also bolded in the OAR section of this staff report below. As you will see, of this six-page notice, only approximately two pages are required. Recent examples of information discussed to add to this type of notice in the future, which are not required by OAR's include:

- Scope of council's review for an amendment
- Oral public comment time limits

Please note that there is variation in the legal requirements for different types of notices. However, rather than evaluate all notices, the notice in Attachment 1 (of a Request for Amendment and associated Draft Proposed Order) was used as an example, and also because questions were recently raised regarding this type of notice.

PUBLIC COMMENT

This agenda item includes a specific public comment period to allow interested people to provide their feedback to EFSC about what should and should not be included in the notices, beyond what is legally required.

QUESTIONS FOR COUNCIL TO CONSIDER

1. Other than what is legally required by OAR's, what is included in the notice that should not be included?
2. Other than what we have already agreed to include in future notices, what should be added that would be helpful for the public?
3. What, if any, formatting changes should be made in the notice that would be helpful for the public?

APPLICABLE OREGON ADMINISTRATIVE RULES

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.*