

# Attachment 1



# Oregon

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**To:** Energy Facility Siting Council

**From:** Tom Jackman, Siting Policy Analyst & Rules Coordinator

**Date:** September 5, 2025

**Subject:** Agenda Item G (Action Item): Modernization Rulemaking Notice of Proposed Rulemaking Consideration for the September 19, 2025 EFSC Meeting

**Attachments:** Attachment 1: Draft Proposed Rules

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## STAFF RECOMMENDATION

Staff requests the Council's authorization for staff to issue a Notice of Proposed Rulemaking based on proposed amendments to its rules as shown in Attachment 1.

## BACKGROUND

On March 21, 2025, Council initiated rulemaking to review its rules for any minor corrections and updates that would not otherwise merit their own rulemakings. At this meeting, the Council approved staff's recommended scope and directed staff to proceed without a Rulemaking Advisory Committee and instead work internally to prepare a draft of proposed rules.

## SUMMARY OF PROPOSED RULES

The draft proposed rules consist of a great many minor corrections, e.g., correction of outlining errors or incorrect references, that would otherwise qualify as "statutory minor corrections." These changes can be done without the normal rulemaking process. However, bundling these minor changes in a single rulemaking creates a much cleaner rulemaking record. Other very minimal changes include a reformatting of OAR 345-022-0050 to make it flow better, a reversion of an inadvertent rule change done in a prior rulemaking (OAR 345-023-0030(2)) and updating the version of other agency rules that are required to be met to a more recent time period. See OAR 345-022-0060(1) and (2).

In addition to these corrections and updates, these draft rules contain the following, more substantive proposed rule changes intended to update and modernize the Council's rules:

### Data Submission Requirements (OAR 345-001-0100)

Staff proposes a new rule that directs parties to submit any data used to produce maps or other geospatial data in an acceptable format as approved by the department. While many applicants

are already submitting data in the preferred formats, some do not, and staff recommends introducing this new rule to clarify how data should be submitted to improve the review of data submissions as well as to enhance the compliance program.

#### DoD Notice (OAR 345-015-0110)

Staff proposes formalizing the process for providing the Department of Defense (DoD) notice of new energy facility applications. Staff already notifies DoD of new projects, but DoD requested that this new rule be added to formalize this process, and staff sees no reason not to do so.

#### Removal of Newspaper Publication (OAR 345-015-0194(1), 345-015-0220(2)(a), 345-015-0310(15)(a), 345-015-0310(21)(a))

Given the precipitous decline of print circulation in Oregon<sup>1</sup> and the rise of information sharing via social media avenues, staff recommends the removal of all newspaper circulation notification from the siting process. It is difficult to know if there is any utility left in the time and expense invested in providing newspaper notice. Indeed, in several parts of the state there are no major newspapers of record serving those areas.<sup>2</sup> Should the Council agree with this proposal, any who still find value in this type of notice, if they exist, will hopefully make themselves heard during the comment period.

#### Removal of Hard Copy Print Requirements (OAR 345-015-0200(2), 345-015-0310(5), 345-020-0006(2), 345-020-0016(1), 345-021-0000(7), 345-027-0110(4), 345-027-0230(3))

Staff proposes the removal of the requirement that applicants and site certificate holders must print copies of all their various submissions by default, while still allowing, where applicable, for the possibility that the Department might request copies to be printed should a member of the public request one. This is another legacy rule that made more sense when these hard copy requirements were introduced, but makes little sense today.

#### Removal of rule version requirements (OAR 345-022-0040(4), 345-022-0080(4), 345-022-0100(4))

When several of Council's standards were previously updated, language was inserted to help new applicants and pending applicants navigate applicability issues. Given the passage of time, these applicability provisions are no longer relevant.

#### Removal of preconstruction limitation (OAR 345-025-0006(5))

This proposed change would allow all energy facilities to begin preconstruction even if they lack the construction rights to all parts of the site. Access rights would still be needed for the locations to be constructed. This construction allowance currently applies to wind facilities, transmission lines and pipelines, but not to other types of energy facilities. It is not clear why this rule should only apply to wind facilities, transmission lines and pipelines and so staff proposes removing this restriction.

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<sup>1</sup> <https://www.opb.org/article/2024/12/09/local-news-job-loss-oregon/>

<sup>2</sup> <https://agorajournalism.center/newsecosystem22/mapping-the-local-news-ecosystem-in-oregon/>

**OAR CHAPTER 345 – OREGON ENERGY FACILITY SITING COUNCIL  
DRAFT RULES**

# **Attachment 1**

**OAR CHAPTER 345 – OREGON ENERGY FACILITY SITING COUNCIL  
DRAFT RULES**

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**DIVISION 1 - GENERAL PROVISIONS**

**345-001-0000 - Notice of Permanent Rulemaking**

(1) Before permanently adopting, amending or repealing any rule, the Council must give notice of the proposed action:

- (a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;
- (b) By sending a copy of the notice by mail or email to persons on the Council's mailing list established under ORS 183.335(8) at least 28 days before the effective date of the rule;
- (c) By sending a copy of the notice by email to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and
- (d) By sending a copy of the notice by mail, email, or hand delivery to the Associated Press and the Capitol Press Room.

(2) Notwithstanding the requirements of ORS 183.335, when the Council is required to adopt rules or regulations promulgated by an agency of the federal government and the Council has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the Council must adopt those rules or regulations under the procedure prescribed in ORS 183.337.

(3) The Council may update the mailing list described in subsection (1)(b) of this rule annually by requesting persons to confirm that they wish to remain on the mailing list. If a person does not respond to a request for confirmation within 28 days after the date the Council sends the request, the Council may remove the person from the mailing list. Any person removed from the mailing list must be immediately returned to the mailing list upon request, provided the person provides an address or email address to which notice may be sent.

Statutory/Other Authority: ORS 469.470 & ORS 183.341  
Statutes/Other Implemented: ORS 183.341

**345-001-0005 - Uniform and Model Rules**

(1) Except as described in this rule, the Energy Facility Siting Council adopts and incorporates by reference in this chapter the following rules from the Attorney General's Uniform and Model Rules (December 2023): OAR 137-001-0005 through 137-001-0100, 137-002-0010 through 137-002-0060, 137-003-0501 through 137-003-0700, and 137-005-0010 through 137-005-0070.

(2) Notwithstanding the provisions of OAR 137-003-0660(1), following the issuance of notice of a contested case, the Department of Energy shall enter into the record the substance of any significant contact between a Council member and any Department staff from that point forward, concerning facts in the record.

(3) In any conflict between the model rules and Council rules, the Council shall apply its own rules.

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Statutory/Other Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)  
Statutes/Other Implemented: ORS 469.490

#### **345-001-0010 - Definitions**

In this chapter, unless the context requires otherwise or a term is specifically defined within a division or a rule, terms have the meaning provided in ORS 469.300 and the following definitions:

(1) “Analysis area” means the area or areas specifically described in the project order issued under OAR 345-015-0160(1), containing resources that the proposed facility may significantly affect. The analysis area is the area for which the applicant must describe the proposed facility’s impacts in the application for a site certificate. A proposed facility might have different analysis areas for different types of resources. For the purpose of submitting an application for a site certificate in an expedited review granted under 345-015-0300 or 345-015-0310, the analysis areas are the study areas defined in this rule, subject to modification in the project order.

(2) “Applicant” as defined in ORS 469.300 or, if an application has not been submitted, a person who has submitted, or intends to submit, a notice of intent or a request for expedited review.

(3) “Background radiation” means the direct radiation (gamma) and concentrations of potential radionuclide contaminants in construction materials and the environment in the vicinity of the plant not associated with the nuclear operation and retirement of the facility. Background must be determined as follows:

(a) For direct radiation, the results of any background measurements taken prior to operation of the facility must be provided and 6 to 10 measurements must be taken in areas in the vicinity of the site with materials and/or geological formations representative of the site that have not been affected by the operation and retirement of the facility. Background must be calculated at the average and at the 95% confidence level.

(b) Environmental samples must be taken for soil, sediment, water, and other materials present at the facility site that could have been affected by facility operations and retirement. Measurements for these samples must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements. Background environmental samples must be taken at locations on site or in the immediate vicinity of the site which are unaffected by plant operations. Background must be calculated at the average and 95% confidence levels, based on 6 to 10 measurements at each location.

(c) For construction material such as concrete, asphalt, block, brick and other materials used to construct the buildings and systems at the site, representative samples of materials unaffected by site operations must be selected and surveyed. Six to ten samples of each material must be taken to determine the level of naturally occurring and artificially induced concentrations of naturally occurring radioactivity present. Measurements must include direct radiation (beta-gamma and

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alpha), wipes and qualitative and quantitative laboratory analyses. Concentrations of fission and activation products from historical fallout must be characterized as well.

(d) All measurements must be made using appropriate instruments, properly calibrated, and in sufficient number to determine compliance with requirements.

(4) "Certificate holder" means the person to whom a site certificate has been granted by the Council pursuant to this chapter.

(5) "Chair" means the chair of the Energy Facility Siting Council.

(6) "Committed firm energy and capacity resources" means generating facilities or power purchase contracts that are assured to be available to the energy supplier over a defined time period. Committed firm energy and capacity resources include existing generating facilities, existing power purchase contracts and planned generating facilities that sponsors have made firm commitments to develop.

(7) "Corridor" means a continuous area of land not more than one-half mile in width and running the entire length of a proposed transmission line or pipeline. "Micrositing corridor" is defined below in this rule.

(8) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(9) "Council Secretary" means the person designated by the Director of the Oregon Department of Energy to serve as secretary to the Council.

(10) "Department" means the Oregon Department of Energy created under ORS 469.030.

(11) "Direct cost" means the discounted sum of all monetary costs to the ultimate consumer over the lifetime of the facility or resource plan or resource strategy.

(12) "Energy facility" includes:

(a) An energy facility as defined in ORS 469.300;

(b) A small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210; and

(c) A facility for which a developer or governing body has elected to defer regulatory authority to the Council under ORS 469.320(8).

(13) "Energy supplier" means:

(a) A retail electric utility, a federal power marketing agency, or a local gas distribution company, or

(b) A person or public agency generating electric energy for its own consumption, lawfully purchasing electric energy directly from a generator for its own consumption, or transmitting or distributing natural or synthetic gas from an energy facility for its own consumption.

(14) "Existing corridor," as used in ORS 469.300 and 469.442, means the right-of-way of an existing transmission line, not to exceed 100 feet on either side of the physical center line of the transmission

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line or 100 feet from the physical center line of the outside lines if the corridor contains more than one transmission line.

(15) “Facility” as defined in ORS 469.300 or a small generating plant for which an applicant must have a site certificate according to OAR 345-001-0210 together with any related or supporting facilities.

(16) “Facility substantially similar to the proposed facility” means:

(a) A facility that uses the same fuel and substantially similar technology, that has substantially the same in-service date, and that has a direct cost not substantially greater than that of the proposed facility; or

(b) A facility that is demonstrated to provide as good a mix of reliability, compatibility with the power system, strategic flexibility, environmental impact and direct cost as the proposed facility taking into account reasonable trade-offs among such factors.

(17) “Fossil fuel” means natural gas, petroleum, coal and any form of solid, liquid or gaseous fuel derived from such materials that is used to produce useful energy.

(18) “Fuel chargeable to power heat rate” means the net heat rate of electric power production during the first twelve months of commercial operation. A fuel chargeable to power heat rate is calculated with all factors adjusted to the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate using the formula,  $FCP = (FI - FD) / P$ , where:

(a)  $FCP$  = Fuel chargeable to power heat rate.

(b)  $FI$  = Annual fuel input to the facility applicable to the cogeneration process in British thermal units (higher heating value).

(c)  $FD$  = Annual fuel displaced in any industrial or commercial process, heating, or cooling application by supplying useful thermal energy from a cogeneration facility instead of from an alternate source, in British thermal units (higher heating value). (d)  $P$  = Annual net electric output of the cogeneration facility in kilowatt-hours.

(19) “High efficiency cogeneration facility” means an energy facility, except coal and nuclear power plants, that sequentially produces electrical and useful thermal energy from the same fuel source and under average annual operating conditions:

(a) Has a nominal electric generating capacity of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 5550 Btu per kilowatt-hour (higher heating value); or

(b) Has a nominal electric generating capacity of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 6000 Btu per kilowatt-hour (higher heating value).

(20) “Land use approval” means a final quasi-judicial decision or determination made by a local government that:

(a) Applies existing comprehensive plan provisions or land use regulations to a proposed facility;



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- (b) Amends a comprehensive plan map or zoning map to accommodate a proposed facility;
  - (c) Amends comprehensive plan text or land use regulations to accommodate a proposed facility;
  - (d) Applies the statewide planning goals to a proposed facility; or
  - (e) Takes an exception to the statewide planning goals adopted by the Land Conservation and Development Commission for a proposed facility.
- (21) "Micrositing corridor" means a continuous area of land within which construction of facility components may occur, subject to site certificate conditions.
- (22) "Mitigation" means taking one or more of the following actions listed in order of priority:
- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
  - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
  - (c) Partially or completely rectifying the impact by repairing, rehabilitating or restoring the affected environment;
  - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures;
  - (e) Partially or completely compensating for the impact by replacing or providing comparable substitute resources or environments; or
  - (f) Implementing other measures approved by the Council.
- (23) "Net electric power output" means the electric power produced or capacity made available for use. Calculation of net electric power output subtracts losses from on-site transformers and power used for any onsite electrical loads from gross capacity as measured or estimated at the generator terminals for each generating unit.
- (24) "Owner" means owner or lessee under a capital lease.
- (25) "Permit" means any permit, license, certificate or other approval required by federal law, state statute, state administrative rule or local government ordinance.
- (26) "Protected Area" means an area designated as one or more of the following:
- (a) A National Park or other unit of the National Park System described under 54 U.S.C. 100501;
  - (b) A National Monument established under 54 U.S.C. 320301 or by an act of Congress;
  - (c) A Wilderness Area established under 16 U.S.C 1131 et seq. or by an act of Congress;
  - (d) A Wild, Scenic, or Recreational River included in the National Wild and Scenic River System under 16 U.S.C. 1271 et seq.;
  - (e) A National Wildlife Refuge included in the National Wildlife Refuge System described under 16 U.S.C. 668dd;

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- (f) A National Fish Hatchery established under 16 U.S.C. 760aa;
  - (g) A National Recreation area, National Scenic area, or Special Resources Management Unit established by an act of Congress;
  - (h) A Wilderness Study Area established under 43 U.S.C. 1782;
  - (i) Land designated in a federal land management plan or by an act of Congress as:
    - (A) An Area of Critical Environmental Concern;
    - (B) An Outstanding Natural Area;
    - (C) A Research Natural Area;
    - (D) An Experimental Forest or Range; or
    - (E) A Special Interest Area designated for scenic, geologic, botanic, zoologic, paleontological, archaeological, historic, or recreational values, or combinations of these values;
  - (j) A state park, wayside, corridor, monument, historic, or recreation area under the jurisdiction of the Oregon Parks and Recreation Department;
  - (k) The Willamette River Greenway created under ORS 390.310 to 390.368;
  - (l) A natural area listed in the Oregon Register of Natural Areas under ORS 273.581;
  - (m) The South Slough National Estuarine Research Reserve, described under ORS 273.553;
  - (n) A State Scenic Waterway designated under ORS 390.805 to 390.925 and related adjacent lands;
  - (o) A state wildlife refuge or management area identified in OAR chapter 635, division 008;
  - (p) A fish hatchery operated by the Oregon Department of Fish and Wildlife;
  - (q) An agricultural experiment station, experimental area, or research center established by Oregon State University under ORS chapter 567; or
  - (r) A research forest established by Oregon State University under ORS 526.215.
- (27) “Related or supporting facilities” as defined in ORS 469.300. The Council interprets the terms “proposed to be constructed in connection with” to mean that a structure is a related or supporting facility if it would not be built but for construction or operation of the energy facility. “Related or supporting facilities” does not include any structure existing prior to construction of the energy facility, unless such structure must be substantially modified solely to serve the energy facility.
- (28) “Reviewing agency” means any of the following officers, agencies or tribes:
- (a) The Department of Environmental Quality;
  - (b) The Water Resources Commission and the Water Resources Director through the Water Resources Department;
  - (c) The Fish and Wildlife Commission through the Oregon Department of Fish and Wildlife;

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- (d) The State Geologist;
- (e) The Department of Forestry;
- (f) The Public Utility Commission of Oregon;
- (g) The Oregon Department of Agriculture;
- (h) The Department of Land Conservation and Development;
- (i) The Oregon Department of Aviation;
- (j) The Pacific Northwest Electric Power and Conservation Planning Council;
- (k) The Office of State Fire Marshal;
- (l) The Department of State Lands;
- (m) The State Historic Preservation Office;
- (n) Any other agency identified by the Department;
- (o) Any tribe identified by the Legislative Commission on Indian Services as affected by the proposed facility;
- (p) The governing body of any incorporated city or county in Oregon within the study area as defined in OAR 345-001-0010 for impacts to public services;
- (q) Any special advisory group designated by the Department under OAR 345-015-0115; and
- (r) The federal land management agency with jurisdiction if any part of the proposed site is on federal land.

(29) "Significant" means having an important consequence, either alone or in combination with other factors, based upon the magnitude and likelihood of the impact on the affected human population or natural resources, or on the importance of the natural resource affected, considering the context of the action or impact, its intensity and the degree to which possible impacts are caused by the proposed action. Nothing in this definition is intended to require a statistical analysis of the magnitude or likelihood of a particular impact.

(30) "Site" as defined in ORS 469.300. "Energy facility site" means all land upon which an energy facility is located or proposed to be located. "Related or supporting facilities site" means all land upon which related or supporting facilities for an energy facility are located or proposed to be located.

(31) "Site boundary" means the perimeter of the site of a proposed energy facility, its related or supporting facilities, all temporary laydown and staging areas and all corridors and micrositing corridors proposed by the applicant.

(32) "Solar photovoltaic power generation facility" includes, but is not limited to, an assembly of equipment that converts sunlight into electricity and then stores or transfers that electricity. This

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includes photovoltaic modules, mounting and tracking equipment, posts, electrical cabling, inverters, transformers, collection systems, fencing, and other components.

(a) For the purposes of applying the acreage standards of ORS 469.300(11)(a)(D), the land used by a solar photovoltaic power generation facility includes the land occupied by its related or supporting facilities. Related or supporting facilities are not otherwise considered to be components of the solar photovoltaic power generation facility;

(b) A proposed solar photovoltaic power generation project may be determined to be an expansion of any existing or proposed solar photovoltaic power generation facility that is:

(A) Within one mile of the proposed project; and

(B) Determined to be under common ownership with the proposed project. Projects connected to the same parent company or individuals will be considered to be in common ownership, regardless of the operating business structure;

(c) As used in this rule and OAR 345-001-0250, a “proposed solar photovoltaic power generation project” means:

(A) The proposed development of a separate and independent solar photovoltaic power generation facility; or

(B) The proposed expansion or modification of a proposed or existing solar photovoltaic power generation facility.

(33) “Special nuclear material” means plutonium, uranium-233 or uranium enriched in the isotope 233 or in the isotope 235.

(34) “Strategic flexibility” means the value of a resource as part of a strategy to manage variance in costs or risks caused by future uncertainty.

(35) “Study area” means an area defined in this rule. Except as specified in subsections (f) and (g), the study area is an area that includes all the area within the site boundary and the area within the following distances from the site boundary:

(a) For impacts to threatened and endangered plant and animal species, 5 miles.

(b) For impacts to scenic resources and to public services, 10 miles.

(c) For land use impacts, wildfire risk, and impacts to fish and wildlife habitat, one-half mile.

(d) For impacts to recreational opportunities, 5 miles.

(e) For impacts to protected areas described in OAR 345-022-0040, 20 miles.

(f) The distance stated in subsection (a) above does not apply to surface facilities related to an underground gas storage reservoir.

(g) The distances stated in subsections (a) and (d) above do not apply to pipelines or transmission lines.

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(36) “Substantial loss of steam host” means the thermal energy user associated with a high efficiency cogeneration facility has made such long-term changes in its manner and magnitude of operation as to result in the loss of one or more work shifts for at least a year, accompanied by at least a 30 percent resultant reduction in the use of thermal energy.

(37) “Substantial loss of fuel use efficiency” means an increase in the fuel chargeable to power heat rate at a high efficiency cogeneration facility to greater than 7000 Btu per kilowatt-hour (higher heating value), or reduction of the fraction of energy output going to the thermal energy user associated with the facility to less than 20 percent, as a result of a substantial loss of steam host. Substantial loss of fuel use efficiency does not include efficiency losses due to equipment wear or condition.

(38) “Surface facilities related to an underground gas storage reservoir” means structures or equipment adjacent to and associated with an underground gas storage reservoir that are proposed to be built in connection with an underground gas storage reservoir and include, but are not limited to:

- (a) Facilities such as stripping plants, main line dehydration stations, offices, warehouses, equipment shops, odorant storage and injection equipment and compressors;
- (b) Pipelines, such as gathering lines and liquid collection lines; and
- (c) Roads and road maintenance equipment housing at the reservoir site.

(39) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.

(40) “Useful thermal energy” means the verifiable thermal energy used in any industrial or commercial process, heating or cooling application;

(41) “Vice-chair” means the vice-chair of the Energy Facility Siting Council.

Statutory/Other Authority: ORS 469.470 & 469.503  
Statutes/Other Implemented: ORS 469.300-570, 469.590-619 & 469.992

**345-001-0020 - Purpose**

(1) The purpose of the rules of this chapter is to establish application requirements, review procedures and standards for the siting, construction, operation and retirement of energy facilities, for the transport of radioactive materials, and for the disposal of radioactive waste and uranium mine overburden. These rules are to ensure that the siting, construction, operation and retirement of energy facilities and disposal facilities and the transport of radioactive materials are done consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of Oregon.

(2) Except as indicated otherwise, the Council shall use the rules of this chapter to determine whether to grant or deny a site certificate and, if the Council grants a site certificate for a facility, to oversee the construction, operation and retirement of the facility. The Council shall use the rules of this chapter in proceedings for amendment, suspension, revocation, transfer or termination of a site certificate.

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(3) When the Council deems appropriate, it may adopt additional rules on matters within its jurisdiction. The Council shall adopt any additional rules relating to site certificates sufficiently in advance of the close of testimony in a contested case proceeding on a site certificate to allow parties to address the rule, or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the new rule.

Statutory/Other Authority: ORS 469.470, 469.556, 469.559 & 469.607

Statutes/Other Implemented: ORS 469.310, 469.374, 469.401, 469.501, 469.525 & 469.603-615

**345-001-0030 - Applicability**

The rules in this chapter apply to all matters under Council jurisdiction, except that the rules in effect before the date of adoption of this rule apply to site certificate amendment proceedings pending before the Council as of that date.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310 & 469.320

**345-001-0035 - Electric and Magnetic Field Committee**

(1) The chair shall appoint an Electric and Magnetic Field Committee composed of Council members and representatives of the public, utilities, manufacturers and state agencies. The chair may delegate the authority to set meeting dates and agendas to the committee.

(2) The committee shall monitor information available and being developed on the health effects of exposure to low frequency electric and magnetic fields and report the committee's findings periodically to the Council. The Council shall report the findings of the committee to the Legislative Assembly.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.480

**345-001-0050 - Public Records Availability and Fees for Copying**

(1) All public records of the Council that are retained by the Department of Energy are available for public inspection and copying at the Department during usual business hours, except for records that the Department has determined to be exempt or conditionally exempt from disclosure in accordance with ORS Chapter 192. Except as protected under ORS 357.875, any permanent record of the Council kept by the State Archivist can be inspected at the State Archive building, subject to applicable rules of the Secretary of State, Archives Division.

(2) To inspect Council records a person shall submit to the Department a written request containing the following information:

- (a) Name, address, e-mail address and telephone number of the person requesting the record.
- (b) A specific description of the record requested.

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(3) After receiving a request to inspect a Council record, the Department shall notify the requesting person whether the record is stored on or off the premises of the Department or is kept by the State Archivist.

(4) If the requested record is stored on the premises of the Department, the person who requested the record may inspect it on the premises without charge.

(5) If the requested record is stored off the premises of the Department, the Department shall charge for the staff time necessary to make the record available for inspection on the premises of the Department.

(6) A person who is receiving a copy of a public record or information from a public record shall pay for the Department's actual cost for:

- (a) Staff time necessary to locate and handle the records, to delete material exempt from disclosure and to supervise the inspection by the requester;
- (b) Producing the copy or the information; and
- (c) Other supplies or services necessary to furnish the copy or information.

(7) The person requesting copies of records shall pay the fees described in section (6) in advance, except that government agencies or parties in proceedings before the Council need not pay before delivery of the copies.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.560

**345-001-0060 - Council Representation at Contested Case Hearings**

(1) A Council member, an officer of the Department of Energy, or an employee of the Department may appear, but not make legal argument, on behalf of the Council in a hearing or in a class of contested case hearings in which the Attorney General or the Deputy Attorney General has given written consent to the Council member or to the officer or employee of the Department pursuant to ORS 183.450(7) to represent the Council. Before each contested case hearing in which the Council wishes to appear by a member or by an officer or employee of the Department, the Council shall request written consent from the Attorney General or the Deputy Attorney General for the designated representative to appear on behalf of the Council. The Department and the Department of Justice shall maintain a copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given such consent.

(2) Legal argument as used in this rule has the same meaning as in OAR 137-003-0008(1)(c) and (d).

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 183.450(8) & 469

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**345-001-0080 - Reconsideration and Rehearing -- Orders in Other than Contested Cases**

- (1) A person entitled to judicial review under ORS 183.484 of a final order in other than a contested case may file a petition for reconsideration or rehearing with the Council within 60 days after the date of the order. A person seeking reconsideration or rehearing shall deliver or mail a copy of the petition to all other persons and agencies required by statute or rule to be notified.
- (2) The petitioner shall set forth the specified grounds for reconsideration. The petitioner may support the petition by a written argument.
- (3) The petitioner may include a request for a stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).
- (4) The Council may grant or deny a petition by summary order, and, if the Council does not take action, the petition is deemed denied as provided by ORS 183.484(2).
- (5) Any Council member may move for reconsideration of a final order in other than a contested case within 60 days after the date of the order. The Council shall grant reconsideration if approved by a majority of the Council. The procedural and substantive effect of granting reconsideration under this section is identical to the effect of granting a party's petition for reconsideration.
- (6) The Council shall not grant reconsideration after the filing of a petition for judicial review unless permitted by the court.
- (7) A final order remains in effect during reconsideration until stayed or changed.
- (8) At the conclusion of a reconsideration, the Council shall enter a new order, which may be an order affirming the existing order.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.403

**345-001-0100 – Information Submission Requirements**

- (1) Where practicable, any data used to produce maps, or any other geospatial data required under the Council's rules must also be submitted in an acceptable geospatial file format, such as a shapefile, geodatabase file, or other geospatial file format approved by the Department.
- (2) The following data must be submitted in an acceptable geospatial file format:
- (a) Biologic survey data;
  - (b) Environmental impact and risk assessment data;
  - (c) Site boundaries and microsites corridors and areas;
  - (d) Locations of all major facility components; and
  - (e) Any other geospatial data, as directed by the Department, needed to ensure a facility is in compliance with applicable laws, rules, Council standards, and site certificate conditions.



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(3) When there is a significant change in the design or location of a facility or facility or component the applicant or certificate holder must submit updated geospatial data to the Department in an acceptable geospatial file format.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310 & 469.320

**Energy Generation Areas**

**345-001-0200 - Creation of an Energy Generation Area**

- (1) The Council shall define the boundaries of an energy generation area by rule when:
- (a) The Council finds that a geographical area exists within which the effects of development of two or more small generating plants, as defined in OAR 345-001-0210, are likely to accumulate so the small generating plants have effects of a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more;
  - (b) The Council finds that creation of an energy generation area is in the public interest; and
  - (c) The Council finds that energy resource, environmental, social, economic, public health or safety justification exists to create the energy generation area.
- (2) In defining the boundaries of an energy generation area, the Council shall consider:
- (a) The location of geothermal, solar or wind resources;
  - (b) The effect of energy facility development on wildlife or wildlife habitat;
  - (c) Natural geographical features; and
  - (d) Political and treaty boundaries.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.300 & ORS 469.320

**345-001-0210 - Effect of an Energy Generation Area**

- (1) For the purpose of this rule:
- (a) "Energy resource" means geothermal, solar or wind power;
  - (b) "Small generating plant" means one or more electric power generating devices that:
    - (A) Have a combined nominal electric generating capacity of more than 3 megawatts and a combined average electric generating capacity of less than 35 megawatts;
    - (B) Are connected to a common switching station or are constructed maintained or operated as a contiguous group of devices; and

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(C) Are owned by a single person or entity or subsidiaries of a single entity;

(c) "Accumulated effects" means the effects of a proposed small generating plant or proposed expansion to a small generating plant combined with the effects of all existing small generating plants using the same energy resource within the energy generation area. "Accumulated effects" includes the effects of all related or supporting facilities;

(d) Expansion of a small generating plant includes any enlargement of the site and any increase in the small generating plant's nominal electric generating capacity;

(e) Construction of a small generating plant includes the creation of a small generating plant by constructing one or more new electric power generating devices or otherwise adding to the nominal electric generating capacity of one or more existing electric power generating devices that have a combined nominal electric generating capacity of 3 megawatts or less.

(2) For the designated energy resource within an energy generation area created under OAR 345-001-0200:

(a) Except as described in subsection (b), any person who intends to construct or expand a small generating plant shall submit a request for exemption to the Department of Energy, as described in OAR 345-015-0360(6);

(b) If the expansion of a small generating plant would create an electric power generating plant with an average electric generating capacity of 35 megawatts or more, a person shall not expand the small generating plant unless the Council has granted a site certificate or an amendment to an existing site certificate.

(3) Upon consideration of a request for exemption described in section (2), if the Council finds that the accumulated effects have a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more, a person shall not construct or expand the small generating plant as proposed unless the Council has granted a site certificate or an amendment to an existing site certificate. In making a finding about accumulated effects, the Council shall consider factors including, but not limited to, the following:

(a) The nominal electric generating capacity of the proposed small generating plant or proposed expansion to a small generating plant;

(b) The location of the proposed small generating plant or proposed expansion to a small generating plant relative to existing small generating plants and energy facilities using the same energy resource;

(c) Significant potential adverse environmental impacts of the proposed small generating plant or proposed expansion to a small generating plant, including the impacts of related or supporting facilities;

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- (d) Significant adverse environmental impacts of all existing small generating plants using the same energy resource within the energy generation area, including the impacts of all related or supporting facilities;
- (e) The contribution of the proposed small generating plant or proposed expansion to a small generating plant toward maintaining reliable energy delivery to an area in the state; and
- (f) Significant public benefits of the proposed small generating plant or proposed expansion to a small generating plant.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.320

**345-001-0220 - Energy Generation Areas**

The Council may designate geothermal, solar or wind energy generation areas by rule.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.300 & 469.320

**Solar Photovoltaic Power Generation Facilities**

**345-001-0250 - Solar Photovoltaic Power Generation Facilities**

(1) To determine that a proposed solar photovoltaic power generation project is an expansion of an existing or proposed solar photovoltaic power generation facility as described under OAR 345-001-0010(3256)(bc), the Council must find that the preponderance of the evidence on the record of a declaratory ruling issued under this rule, or other proceeding before the council, supports such a conclusion. In making findings under this section, the Council may consider factors including, but not limited to:

- (a) The permitting or operational status of the existing or proposed solar photovoltaic power generation facility;
- (b) Whether or not operational and financing decisions for the proposed project would be made independently from the existing or proposed solar photovoltaic power generation facility;
- (c) Whether or not the output of the proposed project and the proposed or existing solar photovoltaic power generation facility would be sold under separate power purchase agreements; and
- (d) Whether or not the output of the project and the proposed or existing solar photovoltaic power generation facility would be transmitted under separate interconnection agreements.

(2) Any person, including the Department, may petition the Council to issue a declaratory ruling with respect to the applicability of ORS 469.300(11)(a)(D) and section (1) of this rule to a proposed solar photovoltaic power generation project. The Council will review such a petition under the procedures described in OAR 137-002-0010 to 137-002-0060, subject to the following:

**Commented [TJ1]:** Updating rule reference.

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(a) A petition under this rule must be submitted to the Department in writing and must include all information required under OAR 137-002-0010, including:

- (A) The name of the developer or owner of the proposed solar photovoltaic power generation project;
- (B) A specific request for findings that a proposed solar photovoltaic power generation project is either:
  - (i) An expansion or modification of a proposed or existing solar photovoltaic power generation facility; or
  - (ii) A separate and independent solar photovoltaic power generation facility;
- (C) A detailed statement of facts relevant to the factors described under section (1) of this rule, including sufficient facts to show the petitioner's interest in the outcome of the requested declaratory ruling; and
- (D) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

(b) Within seven days after a petition is filed under this section, the Department will post an announcement of the petition to the Department's website.

(c) If the Council decides to issue a ruling, the petitioner, the owner or developer of the proposed solar photovoltaic power generation project, and the Department will be parties to the proceeding. Other persons may petition the Council for permission to participate in the proceedings as described in OAR 137-002-0025; and

(d) The Council will not issue a ruling on the petition if the owner or developer of the solar photovoltaic power generation project indicates that it intends to submit a notice of intent to file an application for a site certificate for a facility containing the proposed solar photovoltaic power generation project within 60 days after the petition is filed with the agency. If the NOI is not submitted by the date indicated, the Council will immediately serve notice on the parties under OAR 137-002-0020.

(3) The Council will not make a ruling on the applicability of ORS 469.300(11)(a)(D) or section (1) of this rule to any solar photovoltaic power generation facility with a land use permit approved by a local government on or before the effective date of this rule unless a solar photovoltaic power generation project is proposed on lands within one mile of the solar photovoltaic power generation facility.

(4) The developer or owner of a solar photovoltaic power generation facility is not subject to fees under ORS 469.421(1) for the expenses incurred by the Council and Department related to proceedings under section (2) of this rule.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.300

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**DIVISION 11 - COUNCIL MEETINGS**

**345-011-0000 - Authority and Purpose**

The purpose of the rules in this division is to provide procedures for the orderly conduct of meetings of the Council.

Statutory/Other Authority: ORS 183 & ORS 469.470  
Statutes/Other Implemented: ORS 192 & ORS 469.460

**345-011-0005 - Quorum and Rules of Order**

(1) Four members of the Council constitute a quorum. The Council may meet to discuss any matter in the absence of a quorum but shall take no formal action on any matter unless a quorum is present.

(2) A majority of the Council members present at a meeting must concur for the Council to act on any matter before it; however, in accordance with ORS 469.370(7), a Council decision to approve or reject an application for a site certificate requires the affirmative vote of at least four members.

(3) The Council shall not vote on any proposed Council action unless a Council member has moved, and another Council member has seconded, the proposed action.

(4) For all Council actions that result in a written order or administrative rule, the Council's action authorizes the Department of Energy to make scrivener's corrections in the written order or administrative rule.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 174.130, 469.370 & 469.460

**345-011-0010 - Officers**

(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.

(2) The chair shall preside over all Council meetings, shall determine, in cooperation with the Council Secretary, the location of the Council meetings, and shall execute all written documents that must be executed in the name of the Council.

(3) The chair may take action on behalf of the Council in emergencies that arise between meetings, subject to ratification by the Council. When practicable, the chair shall advise all members by telephone of any action proposed to be taken in an emergency.

(4) The vice-chair shall act in lieu of the chair when the chair is unable to perform any of his or her responsibilities.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.450

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**345-011-0015 - Meetings**

(1) The Council shall meet periodically, as determined by the Council. The Council may vary the locations of its meetings in order to give persons throughout the state an opportunity to observe and participate in its activities. The Council Secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of the Council.

(2) The Governor or the chair may call a special Council meeting to be held at any place in this state. The person calling the meeting shall designate the time and place of the meeting and shall give at least 24 hours' notice of the meeting to each Council member and the public. In the event of an emergency, the Council may hold a meeting upon such notice as is appropriate to the circumstances, and in the minutes for such a meeting, the Council shall describe the emergency justifying less than 24 hours' notice.

(3) The Council may hold meetings by telephone or other electronic communication. If the Council holds a meeting by telephone or other electronic means, the Council shall conduct the meeting in accordance with ORS 192.610 to 192.690.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 192.640, 192.670, 469.460 & 469.470

**345-011-0020 - Agendas for Regular Meetings**

(1) The Council Secretary shall prepare an agenda for each regular Council meeting after consulting with the chair. On the agenda, the Secretary shall specify all matters scheduled to come before the Council at the meeting and shall identify the proponent of agenda items scheduled at the request of a member of the public as described in OAR 345-011-0035.

(2) On the agenda, the Secretary may include a consent calendar, identifying items that the Secretary considers to be routine, such as minutes of previous meetings and personnel recognitions, which will be acted upon without public discussion. However, if a Council member objects to an item on the consent calendar, it will be removed from the consent calendar and placed on the regular agenda for discussion.

(3) The Secretary shall include on each agenda a notice that time will be reserved at each meeting for the presentation of concerns by interested citizens who wish to address the Council regarding any item within the Council's jurisdiction except matters that are closed to public comment as specified in the notice. The chair shall establish the duration of the time for public comment and may lengthen or shorten it at the Council meeting as the length of the meeting and timing and duration of other Council business dictate.

(4) The Secretary shall send the agenda to Council members by regular mail or email at least one week before a regular meeting and shall include draft minutes of previous meetings, as available. The Secretary shall send the agenda to each person or organization on the Council's general mailing list by regular mail or email. The "general mailing list" is the list of persons who have requested all Council meeting and facility siting mailings.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 192.640, 469.460 & 469.470

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**345-011-0025 - Consideration of Matters Not on Agenda**

A Council member or the Council Secretary may, with the approval of a majority of Council members, raise matters at a meeting that the Council Secretary did not place on the agenda. The Council shall not act on a matter not on the agenda unless a majority of the members present agree that the matter is so substantial and of such immediate concern that the Council should not defer action until the next regular Council meeting.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.460

**345-011-0030 - Order of Business**

(1) The order of business of Council meetings is as follows:

- (a) Introduction of new Council members, resolutions for retiring Council members, and other personnel recognition.
- (b) Announcements.
- (c) Minutes of previous Council meetings including corrections, additions and approval. If minutes have been mailed to Council members before the meeting, the Council may waive the reading of the minutes.
- (d) Reports of standing and special committees.
- (e) Consideration of agenda items.

(2) The chair, unless a majority of the Council disagrees, may revise the order of business and may limit debate on any item as necessary to conduct the meeting fairly and efficiently.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 192.650 & 469.460

**345-011-0035 - Requests to Place Items on the Agenda**

(1) Any person may request formal Council action on a particular subject (an "action item") by submitting a written request to the Department of Energy. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department. The Council shall treat the matter as an information item at that meeting and may take final action on the matter if a majority of the members present agree that the request is so substantial and of such immediate concern that the Council should not defer action until a future meeting. Normally, however, the Council will defer action on the matter until a future meeting.

(2) Any person may request Council discussion of an information item by submitting a written request to the Department. With the concurrence of the chair, the Council Secretary shall place the requested matter on the agenda for discussion at the next meeting occurring at least 14 days after the request is received by the Department.

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(3) The provisions of section (1) do not apply to petitions requesting the Council to initiate a rulemaking proceeding, as described in OAR 137-001-0070, or petitions requesting the Council to issue a declaratory ruling, as described in OAR 137-002-0010.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 192.640 & 469.460

**345-011-0045 - Committees and Subcommittees**

(1) The chair may appoint Council members to committees and subcommittees, alter the number of members of such committees and subcommittees, and abolish committees and subcommittees at any time unless disapproved by a majority of the Council. The individuals on such committees and subcommittees need not act as a group nor reach a consensus but may report to the Council individually.

(2) The Council Secretary shall record the membership of the committees and subcommittees appointed by the chair in the minutes of the Council.

(3) The Secretary, consistent with the requirements of ORS Chapter 192.610 to 192.690, shall give notice of each meeting of Council committees and subcommittees.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.460

**345-011-0050 - Council Files**

The Council Secretary shall maintain minutes of all Council meetings, Council committee meetings and other records of the Council.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 192.640 & 469.460

**345-011-0055 - Council Communications**

(1) Majority approval by the Council is required before the Council or the Council Secretary issues any correspondence that might materially affect policies or procedures of the Council. Members of the Council shall not communicate in the name of the Council unless authorized by a majority of the Council. In an emergency, when delay may impair the Council's ability to carry out its responsibilities, the chair may take immediate action and report such action at the next meeting of the Council. The Council Secretary shall prepare any letter issued on behalf of the Council and send a copy to each Council member.

(2) The mailing address of the Council is Department of Energy, 550 Capitol St. NE, Salem OR, 97301.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.470



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**345-011-0060 - Waiver and Suspension**

Inadvertent failure by the Council to comply with the rules of this division does not invalidate any action taken by the Council. The Council may, by a majority vote of the quorum present, temporarily suspend application of the rules of this division.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.470

**345-011-0070 - Council Requests for Information**

The Council may at any time request that any person subject to the Council's jurisdiction submit information to the Council about any matter within the Council's jurisdiction.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.470

**345-011-0080 - Unacceptable Conduct**

The chair may expel any person who engages in conduct that disrupts any Council proceeding. In any proceeding of a Council committee, the chairman or chairwoman of the committee may expel any person who engages in conduct that disrupts the proceeding.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.460

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**DIVISION 15 - PROCEDURES GOVERNING COUNCIL AND DEPARTMENT OF  
ENERGY PROCEEDINGS, INCLUDING SITE CERTIFICATE HEARINGS**

**345-015-0001 - Purpose and Authority**

The rules in this division, authorized by ORS 469.040, 469.470 and 469.440, establish procedures governing Department of Energy and Energy Facility Siting Council review processes, including contested case proceedings.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.310 to 183.550, ORS 469.040, ORS 469.370, ORS 469.405, ORS 469.440

**345-015-0003 - Remote and Electronic Public Meeting and Hearings**

(1) The Council or Chair may waive any provision of OAR chapter 345 requiring that a public meeting or public hearing be held in person or in a specific geographical area, if:

- (a) The Council or Chair finds that in-person attendance at the meeting or hearing would present a risk to public health or safety or the health and safety of the participants;
- (b) The public meeting or public hearing is held through the use of telephone or other electronic communication in accordance with ORS 192.610 to 192.690; and
- (c) For public hearings, the Council provides an opportunity for submission of testimony by telephone, video, or through some other electronic or virtual means, or provides a means of submitting written testimony, including by email or other electronic methods, that the Council may consider in a timely manner.

(2) This rule does not apply to:

- (a) Any meeting or hearing otherwise required to be held in-person or in a specified geographic location by ORS chapter 469; or
- (b) A contested case hearing held pursuant to ORS chapter 183 and OAR chapter 345.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 192.670

**345-015-0110 - Public Notice of a Notice of Intent**

(1) After receiving a notice of intent (NOI), the Department must issue public notice of the NOI by:

- (a) Sending notice by mail or email to persons on the Council's general mailing list as defined in OAR 345-011-0020 and any special mailing list set up for the proposed project;

(b) Sending notice by mail or email to the Northwest Department of Defense Regional Coordination Team representative;

- ~~(c)~~ Sending notice by mail to the property owners listed in Exhibit F of the NOI;

**Commented [TJ2]:** Formalizing DoD notice.

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~~(de)~~ Sending notice by mail or email to the land management agency or organization with jurisdiction over the protected areas identified in Exhibit L of the NOI;

~~(d) Except as provided in subsection (e), publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility; and~~

~~(e) If the energy facility is a transmission line or a pipeline or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, publishing notice in one or, if possible, two newspapers of general circulation in the vicinity of the proposed facility;~~

**Commented [TJ3]:** Removing newspaper notice, given the decline of newspaper publication.

(2) In the public notice of the NOI, the Department must include the following information:

(a) A description of the proposed facility;

(b) The location of the site of the proposed facility;

(c) The date when the applicant expects to submit an application for a site certificate;

(d) A brief description of the Council's review process, including an explanation of the difference between the informational meetings described in OAR 345-015-0130 and the public hearing described in 345-015-0220;

(e) An explanation that the applicant may choose to meet the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval from the affected local government and that, if the applicant chooses to obtain local land use approval, any person interested in land use issues should participate in that affected local government's land use process if it is not yet complete;

(f) The date, time, and location of any informational meeting on the NOI that the Department has scheduled or an explanation of how interested persons may request an informational meeting. If the Department has scheduled an informational meeting, the Department must state in the notice that public comments on the NOI may be given in person at the meeting;

(g) An explanation that written comments on the NOI must be submitted by a specified date and may be submitted by regular mail, email or fax;

(h) The name, address, email address and telephone number of a Department representative to contact for additional information; and

(i) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI, as required by 345-020-0011(1)(d):

(A) An explanation that the corridors proposed by the applicant in the NOI are subject to change and that the applicant may propose adjustments to any proposed corridor in the application;

(B) An explanation that the applicant may present adjustments to any proposed corridors at the informational meeting; and

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(C) An explanation that, in selecting one or more corridors for analysis in the application for a site certificate, the applicant must consider public comments on the corridors proposed in the NOI and on any corridor adjustments the applicant presents at the informational meeting.

(3) If the Department learns that an applicant has applied for local land use approval, the Department must post a notice of the local land use proceeding on its website.

(4) The Department must issue public notice in accordance with section (1) through (3) of this rule of any amended notice of intent that:

(a) Significantly changes the proposed site boundary or location of the proposed energy facility or related or supporting facility;

(b) Significantly increases:

(A) The estimated quantity of fuel that will be used or produced by the proposed facility, or changes the proposed fuel type or source;

(B) The generating capacity of the proposed energy facility;

(C) The voltage of a proposed transmission line;

(D) The capacity or operating pressure of a proposed pipeline; or

(E) The estimated gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed facility, or the proposed means of compliance with any applicable carbon dioxide standard emissions standard;

(c) Increases water consumption or disposal by more than 5 percent; or

(d) Changes the source of water.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.330

**345-015-0115 – Appointment of Special Advisory Groups**

After receiving the notice of intent (NOI), the Department shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.480

**345-015-0120 - Memorandum on a Notice of Intent**

After receiving a notice of intent (NOI), the Department must prepare a memorandum. In the memorandum, the Department must:

(1) Request comments from the reviewing agency by a specified date.

(2) Request the following information:

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- (a) The name, address and telephone number of the agency contact person assigned to review the application;
  - (b) Comments on aspects of the proposed facility that are within the particular responsibility or expertise of the reviewing agency;
  - (c) Recommendations regarding the size and location of analysis areas;
  - (d) A list of studies that should be conducted to identify potential impacts of the proposed facility and mitigation measures;
  - (e) If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by OAR 345-020-0011(1)(d), a discussion of the relative merits of the corridors described in the NOI and recommendations, if any, on the selection of a corridor;
  - (f) A list of statutes, administrative rules and local government ordinances administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for determining compliance;
  - (g) A list of any permits administered by the agency that might apply to construction or operation of the proposed facility and a description of any information needed for reviewing a permit application; and
  - (h) For tribes affected by the proposed facility, a list of tribal codes that the tribe recommends to the Council for its review of the application and specific information regarding the proposed facility or study areas described in the NOI that is necessary for determining compliance with those tribal codes.
- (3) State the date, time, location, and purpose of any informational meeting that the Department has scheduled on the NOI and encourage the recipient to attend and participate in the informational meeting.
- (4) The Department must mail or email the memorandum and NOI to each person on the distribution list before the distribution date.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.330

**345-015-0130 - Informational Meeting on a Notice of Intent**

- (1) After issuing the public notice described in OAR 345-015-0110, the Department of Energy may hold one or more informational meetings on the proposed facility in the vicinity of the site of the proposed facility. The informational meeting is not a contested case hearing.
- (2) If the Department holds an informational meeting, the Department shall present an explanation of the notice of intent (NOI) process and the application process, including the means and opportunities for the general public to participate in these processes, and an explanation of the difference between

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informational meetings and the public hearing described in 345-015-0220. The Department may present this information orally or by a written handout.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.330

**345-015-0140 - Review by the Department of Energy**

The Department of Energy shall review the notice of intent (NOI) and the comments and recommendations received by the final date for submission of comments specified in the public notice described in OAR 345-015-0110 and in the memorandum described in OAR 345-015-0120. The Department shall send copies of any written comments or recommendations to the applicant.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.330

**345-015-0160 - Project Order**

(1) Following the review of a notice of intent or, in the case of an expedited review, following receipt of a preliminary application for a site certificate, the Department of Energy shall issue a project order to the applicant establishing the following:

- (a) All state statutes and administrative rules containing standards or criteria that must be met for the Council to issue a site certificate for the proposed facility, including applicable standards of divisions 22, 23 and 24 of this chapter.
- (b) All local government ordinances applicable to the Council's decision on the proposed facility.
- (c) All application requirements in OAR 345, divisions 022 through 24 applicable to the proposed facility.
- (d) All state and local permits necessary to the construction and operation of the proposed facility and the name of each agency with the authority to issue such permits.
- (e) Any other data and information that must be included in the application for a site certificate to allow the Council to determine whether the proposed facility will comply with applicable statutes, administrative rules and local government ordinances.
- (f) The analysis area(s) for the proposed facility.
- (g) Public concerns that address matters within the jurisdiction of the Council that the applicant shall consider and discuss in the application for a site certificate, based on comments the Department has received in writing or at any informational meeting held under OAR 345-015-0130.
- (h) If the applicant has identified one or more proposed corridors in Exhibit D of the notice of intent as required by OAR 345-020-0011(1)(d), any adjustments to the corridor(s) that the applicant shall evaluate in the corridor selection assessment described in 345-021-0010(3)(a).
- (i) If the applicant chooses to demonstrate need for a proposed electric transmission line, natural gas pipeline, or liquefied natural gas storage facility under the economically reasonable rules, OAR

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345-023-0030 and OAR 345-023-0040, any alternatives to construction and operation of the proposed facility that the applicant must evaluate in the application in addition to the alternatives described in OAR 345-023-0030 or OAR 345-023-0040.

(j) Except in the case of an expedited review granted under OAR 345-015-0300 or 345-015-0310, the expiration date of the notice of intent, according to 345-020-0060(1).

(2) In determining the application and study requirements to be included in the project order, the Department shall consider the size and type of proposed facility and significant potential impacts of the proposed facility.

(3) The Council or the Department may amend the project order at any time.

(4) The project order is not a final order.

(5) Except in the case of an expedited review granted under OAR 345-015-0300 or 345-015-0310, the Department shall, to the extent practicable, issue the project order within 140 days following the date of submission of the notice of intent.

Stat. Authority: ORS 469.373, ORS 469.470  
Stat. Implemented: ORS 469.330, ORS 469.370

**345-015-0171 - Public Notice of a Preliminary Application**

After receiving the preliminary application, the Department must post an announcement on its website to notify the public that a preliminary application has been received. The Department must include the addresses of locations where the public may review copies of the preliminary application in the announcement. The announcement may include the preliminary application or sections of the preliminary application that may be viewed or downloaded. The announcement may include a link to the applicant's website, if any, where the preliminary application may be viewed or downloaded.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.350

**345-015-0180 - Agency Memorandum on a Preliminary Application**

(1) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application.

(2) The Department must mail or email the memorandum described under (3) to the reviewing agencies.

(3) In the memorandum, the Department must:

(a) Request comments or recommendations regarding the preliminary application on the following:

(A) Whether the reviewing agency needs any additional information from the applicant to review the application under the statutes, administrative rules or ordinances administered by the reviewing agency and describe such information; and

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(B) The status of applications for permits, if any, that the applicant has submitted to the reviewing agency and that are necessary for the construction and operation of the proposed facility.

(b) For any special advisory group designated by the Department under OAR 345-015-0115, request that the special advisory group recommend to the Council the applicable substantive criteria and explain that, as required by ORS 469.504(5), if the special advisory group does not recommend applicable substantive criteria by the specified date, the Council may either determine and apply the applicable substantive criteria or determine compliance with the statewide planning goals under ORS 469.504(1)(b)(B) or (C);

(c) Set a deadline for the response to (3)(a)-(b).

(d) State that the reviewing agency must comment in person or in writing on the record of the public hearing described in OAR 345-015-0220 to preserve the right to participate in the contested case proceeding as a party, limited party or interested agency and the right to appeal the Council's final decision;

(e) Explain that the recipient's written comments, recommendations and reports are part of the decision record for the application for a site certificate;

(4)

(a) If the applicant has elected to demonstrate compliance with the Council's land use standard under ORS 469.504(1)(a), each local government with land use jurisdiction over the proposed facility must, in the comments or recommendations submitted to the Department under section (3)(a), describe the status of the local land use proceedings and state the date when the local government expects to issue a final land use decision;

(b) If the applicant has elected to obtain a Council determination of compliance with the Council's land use standard under ORS 469.504(1)(b), each local government with land use jurisdiction over the proposed facility must, in the comments or recommendations submitted to the Department under section (3)(a), include:

(A) A complete list of applicable substantive criteria from the local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application was submitted. For the purpose of this rule, the application is submitted on the date that the Department receives the preliminary application. "Applicable substantive criteria" means the criteria and standards that the local government would apply in making all land use decisions necessary to site the proposed facility in the absence of a Council proceeding;

(B) A complete list of Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3);



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(C) Copies of the criteria listed in (A) and any interpretations of ambiguous terms and matters arising from the local government's land use regulations.

(c) The local government may submit its recommendations, comments and interpretations as described in subsection (b) in the form of a resolution adopted by the local governing body.

(65) The Department must, as soon as practicable, send the applicant copies of all comments submitted under section (3)(a) that identify a need for additional information.

**Commented [TJ4]:** Correcting an outline error.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.350 & 469.504

**345-015-0190 - Determination of Completeness**

(1) Within 60 days after receipt of a preliminary application for a site certificate, the Department must notify the applicant whether the application is complete. In the notification, the Department must:

(a) State that the application is complete and state the date of filing;

(b) State that the application is incomplete, and:

(A) Describe any information needed to complete the application to the extent known to the Department at the time of the notification;

(B) Ask the applicant to submit the needed information by the deadline described in section (4); and

(C) Estimate the additional time the Department will need to make a determination of completeness; or

(c) Explain the reasons why the Department cannot determine completeness and estimate the additional time the Department will need to make a determination of completeness.

(2) If the Department does not notify the applicant as described in section (1), the application is deemed complete and filed 60 days after receipt of the preliminary application. Otherwise, the application is complete as determined under section (5) and the date of filing is the date determined under section (6).

(3) If the Department finds that the applicant did not give adequate consideration to public concerns about the corridors the applicant identified in Exhibit D of the notice of intent or corridor adjustments presented at the informational hearing described in OAR 345-015-0130, the Department may find the application incomplete and notify the applicant as described under section (1)(b).

(4) The Department may specify a date by which the applicant must submit additional information needed to complete the application. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. At the request of the applicant, the Department may allow additional time for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any

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allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

(5) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and OAR 345, divisions 21 through 24. The Department must notify the applicant when the Department finds that the application is complete and, if needed, may request the application supplement described in OAR 345-015-020021-0055.

**Commented [TJ5]:** Updating rule reference.

(6) The date of filing is the date the Department receives the application supplement described in OAR 345-015-0200 21-0055 or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

**Commented [TJ6]:** Updating rule reference.

(7) After a determination that an application is complete, if the Department identifies a need for additional information during its review of the application, the applicant must submit additional information to the Department. Submission of such information does not constitute an amendment of the application.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.350

#### 345-015-0194 - Public Notice of a Complete Application for Site Certificate

(1) The Department ~~must inform the public that the application is complete by publishing notice in a newspaper of general circulation available in the vicinity of the proposed facility. In addition, the Department must send notice indicating that the application is complete~~ by mail or email to all persons on:

**Commented [TJ7]:** Removing newspaper publication requirement given the decline of newspaper circulation.

(a) The Council's general mailing list as defined in OAR 345-011-0020;

(b) Any special mailing list set up for the proposed facility; and

(c) The list of property owners provided in the Background Information Exhibit Exhibit F of the application (OAR 345-021-0010(3)(c)).

**Commented [TJ8]:** Updating rule reference.

(d) The land management agency or organization with jurisdiction over the protected areas identified in the application.

(2) In notices described in section (1), the Department must include the following information:

(a) A description of the proposed facility;

(b) The location of the site of the proposed facility;

(c) The date of filing;

(d) A description of the procedure for review of the application, including the date, time and location of any informational meeting that has been scheduled on the application and an

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explanation of the difference between the informational meeting and the public hearing described in OAR 345-015-0220;

(e) Addresses of locations where the public may review copies of the application;

(f) The name, address, email address, and telephone number of the Department’s representative to contact for more information;

(g) If the applicant has elected to seek local land use approvals pursuant to ORS 469.503(2)(a), a statement of the status of the land use approvals, and the name, address and telephone number of the local governments(s) making or having made the land use determination; and

(h) If the proposed facility is an energy facility that must comply with a carbon dioxide emissions standard adopted by the Council, a statement of the applicant’s proposed means of compliance with the applicable carbon dioxide emissions standard.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.350

### **345-015-0198 - Informational Meeting on a Complete Application**

(1) After issuing the public notice described in OAR 345-015-0194, the Department of Energy may hold one or more informational meetings on the proposed facility in the vicinity of the site of the proposed facility. The informational meeting is not a contested case hearing.

(2) If the Department holds an informational meeting, the Department shall present an explanation of the application process, including the means and opportunities for the general public to participate in these processes, and an explanation of the difference between the informational meeting and the public hearing described in OAR 345-015-0220. The Department may present this information orally or by a written handout.

(3) The applicant or the applicant’s representative must attend all public informational meetings described in this rule.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.350

### **345-015-0200 - Notice to Agencies that the Application is Complete**

(1) After receiving notification from the Department that the application is complete, the applicant must prepare an application supplement that includes all amendments to the preliminary application and all additional information requested by the Department before the determination of completeness.

(2) The applicant must submit to the Department, ~~two printed copies of the application supplement, and~~ an electronic version of the application supplement in a non-copy-protected format acceptable to the Department. The applicant must submit ~~additional~~ printed copies of the application supplement to the Department upon request.

**Commented [TJ9]:** Allowing for possible printed copies, but not by default.

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(3) After receiving the application supplement, the Department must determine a distribution date and prepare a distribution list that includes, but is not limited to, the reviewing agencies for the application.

(4) Except as described in OAR 345-015-0310, and unless the Department directs otherwise, the applicant must mail or email an electronic copy of the application supplement to each person on the distribution list provided by the Department on or before the distribution date. The applicant must provide a printed copy of all or part of the application supplement to a person on the mailing list upon request.

(5) If the Department determines it is necessary to present the amendments and additional information described in section (1) of this rule clearly, the Department may require the applicant to provide a complete revision of the preliminary application in place of the application supplement under sections (2) and (4) of this rule.

(6) After the date of filing, the Department must prepare a notice for distribution. In the notice, the Department must:

- (a) State the date of filing;
- (b) Explain that if a person intends to raise an issue in the contested case, the person must raise the issue in the manner described in OAR 345-015-0415;
- (c) State a date by which the Department and the applicant must receive the reports described in sections (d) through (f) below;
- (d) Request an agency report containing the following information:
  - (A) The agency's recommendations regarding any applications for permits administered by the agency that are applicable to construction or operation of the proposed facility;
  - (B) Issues significant to the agency;
  - (C) The agency's conclusions concerning the proposed facility's compliance with state statutes, administrative rules or ordinances administered by the agency;
  - (D) A list of site certificate conditions recommended by the agency; and
  - (E) Any other information that the reviewing agency believes will be useful to the Council in reviewing the site certificate application.
- (e) Request a report from the affected local government regarding the proposed facility's compliance with the applicable substantive criteria for a land use decision under ORS 469.504(1)(b).
- (f) Request a report from the affected local government that describes any land use decisions made under ORS 469.504(1)(a).
- (g) Explain that the reports described in sections (d) through (f) above are part of the decision record for the application for a site certificate.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.350

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**345-015-0205 – Agency Coordination**

Each agency with legal authority to implement or enforce state statutes, state administrative rules or local government ordinances that must be satisfied in order for the Council to issue a site certificate for a proposed facility is encouraged to conduct its review of the application for a site certificate and other permit applications for the proposed facility filed with the agency on a timeline and in a manner that enables the agency to:

- (1) Make recommendations to the Department of Energy and Council about compliance of the applications with the state statutes, administrative rules or ordinances administered by the agency.
- (2) Recommend conditions for inclusion in the site certificate that will ensure compliance with such statutes, rules and ordinances.
- (3) Present testimony and evidence at the contested case hearing on the site certificate application.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503, ORS 469.504, ORS 469.505

**345-015-0210 - Draft Proposed Order**

(1) Following the deadline for its receipt of agency reports and final land use decisions stated under OAR 345-015-0200, the Department of Energy shall issue a draft proposed order on the application that includes its recommendation to grant with conditions or deny a site certificate for the proposed facility and a discussion of the reasons for that recommendation. The draft proposed order may include, but is not limited to:

- (a) Draft proposed findings of fact and conclusions of law concerning the proposed facility's compliance with all state statutes and administrative rules and ordinances applicable to the issuance of a site certificate for the proposed facility;
- (b) Draft proposed conditions for inclusion in the site certificate;
- (c) Draft proposed monitoring plans to ensure the proposed facility's continued compliance with applicable state statutes and administrative rules and ordinances; and
- (d) A description of the status of other applications for state permits and local government land use permits for the proposed facility.

(2) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(a), the Department shall include in the draft proposed order the local government's land use decisions on the proposed facility, if available, including findings of fact, conclusions of law, and conditions.

(3) If the applicant has elected to address the Council's land use standard under ORS 469.504(1)(b), the Department shall include in the draft proposed order the Department's proposed findings of fact, conclusions of law, and proposed conditions under the applicable substantive criteria from the affected

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local government's acknowledged comprehensive plan and land use regulations, under the applicable statewide planning goals, or under the exception criteria set forth in ORS 469.504(2).

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.370

**345-015-0220 - Public Hearing and Notice on the Draft Proposed Order**

(1) After the issuance of the draft proposed order described in OAR 345-015-0210, the Energy Facility Siting Council or its hearing officer must conduct at least one public hearing on the draft proposed order in the vicinity of the site of the proposed facility. The public hearing is not a contested case hearing. If there is more than one public hearing, the “close of the record of the public hearing” means the close of the record of the final public hearing.

(2) The Department must, at least 20 days before the hearing,

~~(a) Submit notice for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and~~

~~(b) S~~end notice of the hearing 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 set up for the proposed project; and

~~(c)~~ The property owners listed in the Background Information Exhibit ~~Exhibit F~~ of the application (OAR 345-021-0010(3)(c)), as updated by the applicant upon the request of the Department.

~~(d)~~ The land management agency or organization with jurisdiction over the protected areas identified in the application.

(3) In the notices described in subsections ~~(2)(a) and (2)(b)~~, the Department must include:

(a) The date, time and location of the public hearing;

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

(c) The name, address, email address, and telephone number of the Department's representative to contact for additional information;

(d) The addresses of locations where the public may inspect copies of the complete application and the website where the application may be found;

(e) The website where the draft proposed order may be found;

(f) The deadline for the public to submit written comments to be included in the record of the public hearing and a statement that such comments should be submitted to the presiding officer in care of the Department;

(g) A statement that 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 and received by the Department before the deadline;

**Commented [TJ10]:** Removing newspaper publication requirement.

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(h) A statement that failure to raise an issue in person or in writing on the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case;

(i) A statement that to raise an issue with sufficient specificity, the person must have identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object, specified the Council standard or other applicable state and local requirements on which their objection is based, and presented facts or statements supporting that objection on the record of the draft proposed order; and

(j) A statement that the Council will not accept or consider any further public comment on the site certificate application 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 application 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 state that:

(a) A person who intends to raise any issue that may be the basis for a contested case must raise the issue in person at the hearing or in a written comment submitted to the Department before the deadline stated in the notice of the public hearing; and

(b) A person who intends to raise any issue that may be the basis for a contested case must raise the issue with sufficient specificity to afford the Council, the Department, and the applicant an adequate opportunity to respond, including a statement of facts that support the person's position on the issue.

(6) At the public hearing, any person may present information regarding the pending application 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 application and may be rebutted in the contested case proceeding.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.370

**345-015-0230 - Council Review and the Department of Energy's Proposed Order**

(1) Following the close of the record of the public hearing conducted under OAR 345-015-0220, the Energy Facility Siting Council 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 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 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

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the record of the public hearing, and agency consultation. In the proposed order, the Department 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 must issue a 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 Order;
- (C) A description of the process and deadline for requests to participate as a party or limited party in the contested case under OAR 345-015-0415;
- (D) The date of the prehearing conference, if any; and
- (E) The date of the hearing; and
- (F) The deadline for the Department and the applicant or certificate holder to respond to petitions for party status; and

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

- (A) All persons on the Council's general mailing list;
- (B) All persons on any special mailing list set up for the proposed project;
- (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 the Background Information Exhibit of the application (OAR 345-021-0010(3)(c))Exhibit F site certificate application, as updated by the applicant upon the request of the Department.
- (E) The land management agency or organizations with jurisdiction over the protected areas identified in the proposed order.

**Commented [TJ11]:** Updating rule reference.

(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.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.370

**345-015-0240 - The Decision-Making Record**

The decision-making record on an application for a site certificate includes the decision record for the Department of Energy's proposed order and the record of the contested case proceeding.

Stat. Authority: ORS 469.470

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Stat. Implemented: ORS 469.370

**Procedures for Expedited Review of Certain Energy Facilities**

**345-015-0300 - Request for Expedited Review of Small Capacity Facilities**

(1) In accordance with ORS 469.370(10), any person proposing to construct and operate an energy facility with an average electric generating capacity of less than 100 megawatts who chooses to request expedited review of an application for a site certificate shall submit to the Department of Energy a request for expedited review as described in section (2) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy. If the proposed energy facility has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, the proposed energy facility is not eligible for expedited review.

(2) In the request for expedited review, the applicant shall include:

- (a) A description of the facility and the proposed site;
- (b) The applicant's name and address;
- (c) A schedule stating when the applicant expects to submit a preliminary application for a site certificate;
- (d) A list of all statutes, rules and ordinances applicable to the facility;
- (e) A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval pursuant to ORS 469.504(1)(a) or by seeking a Council determination pursuant to ORS 469.504(1)(b); and
- (f) The reason and justification for any request for exception to an analysis area as provided under section (3).

(3) In an expedited review granted under this rule, the Department shall issue a project order following the applicant's submission of a preliminary application for a site certificate. For the purposes of submitting the preliminary application, the analysis areas are the study areas as defined in OAR 345-001-0010, unless the applicant requests an exception in the request for expedited review and the Department approves the exception. The Department may, in the project order, modify the analysis areas. The Department may request additional information from the applicant, as provided in OAR 345-015-0190, before determining the application complete. Submission of the site certificate application and the Department's review of the application in all other respects are the same for expedited review as for other site certificate applications.

(4) The Council hereby grants any request for expedited review from an applicant proposing a facility meeting the definition in section (1) if the Department determines that the request satisfies the requirements of section (2). The Department shall notify the applicant of its determination.

Stat. Authority: ORS 469.470

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Stat. Implemented: ORS 469.370

**345-015-0310 - Request for Expedited Review of Special Criteria Facilities**

(1) Any person who proposes to construct and operate a special criteria facility, as defined in section (2), and who chooses to request expedited review of an application for a site certificate must submit to the Department a request for expedited review as described in section (3) with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) "Special criteria facility" means a facility that meets the criteria stated in ORS 469.373(1).

(3) In the request for expedited review, the applicant must provide documentation that the proposed facility is a special criteria facility, as defined in section (2), and:

- (a) A description of the facility and the proposed site;
- (b) The applicant's name and address;
- (c) A schedule stating when the applicant expects to submit an application for a site certificate; and
- (d) A list of all statutes, rules and ordinances applicable to the facility;

(4) Within 14 days after receiving the request for expedited review, the Department must determine, on a preliminary, non-binding basis, whether the proposed facility qualifies for expedited review under this rule and must notify the applicant. The Department may decide, on a preliminary, non-binding basis, that the proposed location of associated transmission lines or new natural gas pipelines outside of existing rights of way imposes no significant impact. The Department must provide to the applicant a mailing list of persons including, but not limited to, the agencies listed in ORS 469.373(4).

(5) After the Department has made the determination described in section (4), the applicant may submit a preliminary application for a site certificate, as described in OAR 345-021-0000 and OAR 345, divisions 21 through 24, subject to the following:

(a) The applicant must submit, to the Department, ~~two printed copies of the preliminary application, and an~~ electronic version of the preliminary application in a non-copy-protected format acceptable to the Department. The applicant must submit ~~additional~~ printed copies of the preliminary application to the Department upon request; and

(b) Unless the Department directs otherwise, the applicant must send an electronic copy of the preliminary application to each person on the mailing list described in section (4). The applicant must provide a printed copy of all or part of the preliminary application to any person on the mailing list upon request.

(6) Within 30 days after receiving a preliminary application for a site certificate, the Department must issue a project order. In the project order, the Department may make changes to the analysis areas. The project order is not a final order. The Council or the Department may amend the project order at any time.

**Commented [TJ12]:** Removing default printed copy requirement.

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(7) Within 30 days after receiving a preliminary application for a site certificate, the Department must either:

- (a) Notify the applicant that the application is complete; or
- (b) Notify the applicant that the application is not complete and describe the information needed to complete the application, to the extent known to the Department at the time of the notification.

(8) If additional information is needed to complete the application, the applicant must submit the information to the Department. If follow-up requests for additional information are needed, the Department may specify dates by which the applicant must submit the information. The Department may specify the dates by which the applicant must submit additional information needed to complete the application. At the request of the applicant, the Department may extend the deadline for submission of the information. If the applicant does not submit the information by the deadline specified by the Department, including any allowed extension, the Council may reject the application. The rejection of an application is subject to appeal under ORS 469.403(3).

(9) An application is complete when the Department finds that the applicant has submitted information adequate for the Council to make findings or impose conditions on all applicable Council standards. The Department may find that the application is complete without requiring the applicant to submit all information described under OAR 345-021-0000 and OAR 345, divisions 21 through 24. The Department must notify the applicant when the Department finds that the application is complete and, if needed, may request the application supplement described in OAR 345-0~~15-020021-0055~~.

(10) The date of filing is the date the Department receives the application supplement described in OAR 345-0~~15-020021-0055~~ or, if no supplement is needed, the date the Department notifies the applicant that the application is complete.

(11) After a determination that an application is complete, the Department may require additional information from the applicant if the Department identifies a need for that information during its review of the application. Submission of such information does not constitute an amendment of the application.

(12) In the notification to the applicant that the application is complete, as described in section (7)(a) or (9), the Department must instruct the applicant send a copy of the notice described in section (13) and a copy of the application supplement, if any, to specified persons including but not limited to the agencies listed in ORS 469.373(4).

(13) The Department must prepare a notice that:

- (a) States that the application is complete and specifies the date of filing;
- (b) Requests the agency reports as described in OAR 345-015-0200; and
- (c) Includes the statements required by ORS 469.373(4)(a) and (b).

(14) At the time specified in section (15), the Department must issue a public notice, including but not limited to:

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- (a) A description of the proposed facility and the general location of the energy facility;
- (b) The date, time, and location of a public informational meeting on the application;
- (c) A statement that the application has been filed;
- (d) Addresses of locations where the public may review copies of the application; and
- (e) The name, address, email address, and telephone number of the Department's representative to contact for more information.

(15) At least 14 days before the meeting described in section (16), the Department must:

~~(a) Submit the notice described in section (14) for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and~~

~~(b) Send the notice described in section (14) by mail or email to all persons on:~~

- ~~(aA)~~ The Council's general mailing list as defined in OAR 345-011-0020;
- ~~(bB)~~ Any special mailing list set up for the proposed project; and
- ~~(cC)~~ The list of property owners provided in Exhibit F of the application.
- ~~(dD)~~ The land management agencies or organizations with jurisdiction over the protected areas identified in the application.

(16) The Department must hold a public informational meeting on the application.

(17) Within 90 days after the date of filing, the Department must issue a draft proposed order including, but not limited to:

- (a) A description of the proposed facility;
- (b) A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed facility;
- (c) A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed facility; and
- (d) Proposed findings regarding compliance with the applicable standards and criteria for approval of a site certificate and specifying conditions that are required for the facility to comply.

(18) The Council 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 may not permit the applicant, reviewing agencies, or the public to comment on any issue that may be the basis for a contested case.

(19) After the Council's review as described in section (18), the Department must issue a proposed order.

(20) At the time specified in section (21), the Department must issue a public notice, including but not limited to:

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**Commented [TJ13]:** Removing newspaper publication requirement given decline in newspaper circulation.

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- (a) A description of the facility and its general location;
- (b) The name, address, email address, and telephone number of the Department's representative to contact for more information;
- (c) A statement that the Department has issued a proposed order and that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost;
- (d) The date, time and location of a public hearing on the proposed order;
- (e) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision;
- (f) A statement that to raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue; and
- (g) A statement that the hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(21) At least 20 days before the hearing described in section (22), the Department must:

~~(a) Submit the notice described in section (20) for publication in a newspaper of general circulation available in the vicinity of the proposed facility; and~~

**Commented [TJ14]:** Removing newspaper notice.

~~(b)~~ Send the notice described in section (20) by mail or email to all persons on:

- ~~(A)~~ a The Council's general mailing list as defined in OAR 345-011-0020; and
- ~~(b)~~ B Any special mailing list set up for the proposed project;
- ~~(c)~~ C The list of property owners provided in Exhibit F of the application; and
- ~~(d)~~ D The land management agencies or organizations with jurisdiction over the protected areas identified in the application.

(22) The Council must hold at least one public hearing on the proposed order in the area affected by the proposed facility according to the procedures described in OAR 345-015-0320.

(23) Before the conclusion of the hearing described in section (22), the applicant may either:

- (a) Request an opportunity to present additional written evidence, arguments or testimony regarding the application; or
- (b) Request a contested case hearing on the application. Not later than 7 days after making a request in the public hearing, the applicant must submit the request to the Council in writing, including evidence sufficient to show good cause for the contested case hearing.

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(24) Except as described in section (27), following the close of the record of the public hearing, the Department must issue a draft final order for the Council. In preparing the draft final order, the Department must take into account the entire record, including the summary prepared by the hearing officer described in OAR 345-015-0320.

(25) Except as described in section (27), within six months after the date of filing, the Council must make its decision on the record and the draft final order. The Council must:

- (a) Grant the site certificate;
- (b) Grant the site certificate with conditions;
- (c) Deny the site certificate; or
- (d) Determine that the proposed facility is not a special criteria facility as defined in section (2) and is not eligible for expedited review under this rule.

(26) The Council must issue a site certificate for the proposed facility if the Council determines that the proposed facility, with any required conditions to the site certificate, will comply with:

- (a) The requirements for expedited review as specified in this rule;
- (b) The standards adopted by the Council pursuant to ORS 469.501(1)(a), (c) to (e), (g), (h) and (L) to (o);
- (c) The requirements of ORS 469.503(3); and
- (d) The requirements of ORS 469.504(1)(b).

(27) If the applicant requests a contested case hearing as described in section (23)(b), the Council, after considering the request in a public meeting, may grant the request if the Council finds that the applicant has shown good cause for a contested case hearing.

(28) If the Council grants the request for a contested case hearing, the Department must issue a notice of a contested case on the proposed order as described in OAR 345-015-0014. The Council must then consider the application under the same contested case procedures used for a nonexpedited application for a site certificate.

(29) If, as described in section (25), the Council determines that the proposed facility is not a special criteria facility and is not eligible for expedited review under this rule, then the Council must consider the application under the same review procedures used for a nonexpedited application from the point of the applicant's submission of an application. The Department must treat the application before the Council at the time of the determination as a preliminary application for the purpose of review under OAR 345-015-0190, except that within 30 days after the Council's determination, the Department must determine whether the application is complete. The Department must notify the applicant as described in OAR 345-015-0190(1) and the Department must issue an amended project order that includes the Council standards that were not applicable under expedited review. For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-

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0030(2)(b), and the Council must apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

(30) The applicant may withdraw its request for expedited review under this rule at any time and request that the Council consider its application under the same review procedures used for a nonexpedited application. After such a request, the Department must treat the application as a preliminary application for the purpose of review under OAR 345-015-0190 as described in section (29). For the purpose of the land use standard, the applicant must obtain a Council determination as described under OAR 345-022-0030(2)(b), and the Council must apply the applicable substantive criteria in effect on the date the application was originally submitted under section (5).

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.373

**345-015-0320 - Public Hearing Procedures for Special Criteria Facilities**

(1) The Council shall appoint a hearing officer to conduct the public hearing described in OAR 345-015-0310(22). The Council may appoint a Council member, an employee of the Department of Energy or other person.

(2) The duties of the hearing officer are to:

- (a) Ensure a full, fair and impartial hearing.
- (b) Facilitate presentation of evidence.
- (c) Comply with statutory time limits on Council decisions.
- (d) Maintain order.
- (e) Assist the Council in making its decision.
- (f) Prepare a summary of the evidence presented on the record of the public hearing addressing the factual and legal issues raised in the hearing, including findings related to the credibility of witnesses, as necessary. The hearing officer shall submit the summary and the record of the hearing to the Council within 7 days after the close of the record.

(3) During the public hearing, the Department shall present the following information either orally or by written handout:

- (a) A description of the proposed facility.
- (b) A description of the Council standards, including those standards on which the Council may base site certificate conditions.
- (c) An explanation of the application process, including the means and opportunities for the general public to participate in the process.

(4) At the commencement of the public hearing, the hearing officer shall state that:

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(a) The record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record with sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes consideration of the issue in a contested case or by a court on judicial review of the Council's decision.

(b) To raise an issue with sufficient specificity, a person must present facts that support the person's position on the issue.

(c) The hearing is the only opportunity for the public to make a factual record for review and that persons having objection to the proposed order must appear at the hearing in person or in writing and present factual evidence, including any expert testimony, and legal argument.

(5) Any person may present information regarding the pending application without administration of an oath.

(6) The hearing officer shall record all presentations made during the public hearing, and the presentations are part of the decision record for the application. The hearing officer shall maintain a record of all exhibits received and any rulings made during the course of the hearing.

(7) If the applicant requests an opportunity to present written evidence, arguments or testimony as described in OAR 345-015-0310, the hearing officer shall leave the record open for that purpose only for a specified period not to exceed 14 days after the date of the hearing or any continuance.

(8) The hearing officer is authorized to carry out the duties assigned in this rule, including but not limited to:

(a) Adopting special rules of procedure to govern the proceeding.

(b) Setting reasonable time limits for oral presentations.

(c) Receiving evidence and ruling on offers of proof.

(d) Requiring persons to submit written testimony in lieu of oral testimony if the hearing officer determines that a reasonable opportunity for oral presentation has been provided.

(e) Asking questions of commenters.

(f) Requiring expert witnesses to submit a statement of qualifications in writing

(g) Continuing the hearing during a period not exceeding 7 days from the commencement of the hearing. Notwithstanding this time limit, the hearing officer shall leave the record open for the purpose described in section (7).

(h) Continuing the hearing beyond any continuance allowed under subsection (g) for the limited purpose of allowing the applicant reasonable time to review written material submitted to the record before making the request described in section (7).

(i) Taking any other action consistent with the statutes governing expedited review of special criteria facilities and the applicable Council's rules.



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(9) A request by the applicant for a contested case as provided in OAR 345-015-0310(23)(b) does not suspend the public hearing, and the hearing officer shall continue to accept evidence from interested persons until the close of the hearing.

(10) Notwithstanding the provisions of OAR 137-003-0055(1), following the issuance of a notice of the public hearing, the hearing officer shall enter into the record the substance of any significant contact with the applicant, the Department of Energy staff or a commenter from that point forward concerning facts in the record.

(11) The Council may remove a hearing officer if it determines that the hearing officer is not competent, is biased or is otherwise unable to conduct the proceeding.

(12) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a public hearing or fails to obey an order of the hearing officer, the hearing officer may suspend the hearing or order such person excluded from the hearing temporarily or permanently. If the hearing officer issues an order permanently excluding a person from further participation in a public hearing, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Council within seven days after the date of the order.

(13) Upon the request of a governing body of a city, county or tribe, the Department of Energy shall offer, and the hearing officer shall receive in evidence, a certified copy of a resolution of the governing body. The hearing officer shall receive such resolutions subject to rebuttal as to the authenticity of the resolution or the circumstances surrounding its procurement. The hearing officer shall receive such resolutions only for the purpose of showing the expression of official action of the resolving body with respect to matter contained in the resolution. Such resolutions are not proof of facts related to the subject of the resolution.

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.370

**Exemptions from Council Jurisdiction**

**345-015-0350 - Council Determination of Exemption**

The Council shall, upon request, determine whether a proposed facility or proposed expansion of a facility is exempt from the requirement to obtain a site certificate. A site certificate is not required for:

(1) A facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if the site is not enlarged and:

(a) The ability of the facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993; or

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(b) The facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.

(2) Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory commission or successor agency.

(3) A high efficiency cogeneration facility, as defined in OAR 345-001-0010.

(4) A small generating plant or an expansion to a small generating plant, as defined in OAR 345-001-0210, if the Council finds that the accumulated effects do not have a magnitude similar to a single generating plant with an average electric generating capacity of 35 megawatts or more, as described in OAR 345-001-0210(3).

(5) An energy facility as defined in ORS 469.300(11)(a)(G), if the facility meets the requirements of ORS 469.320(2)(f).

(6) A standby generation facility as defined under ORS 469.320.

Stat. Authority: ORS 469.470  
Stat. Implemented: ORS 469.320

**345-015-0360 - Contents of Request for Exemption for a Standby Generator**

(1) Except as noted in (8), any person wishing to construct and operate a facility exempt from Council jurisdiction shall submit a request for exemption to the Department of Energy before beginning construction. A person shall not construct or expand a facility as defined in OAR 345-001-0010 unless the Council has granted an exemption as described in OAR 345-015-0370 or has issued a site certificate or an amendment to an existing site certificate.

(2) In a request for an exemption under OAR 345-015-0350(1)(a) for a modification of a facility for which no site certificate has been issued that will not increase the ability of the facility to use fuel for electricity production under peak steady state operating conditions to more than 200 million Btu per hour (higher heating value) greater than it was on August 2, 1993, the person shall provide the following information in support of the request:

- (a) A detailed description of the proposed upgrade or expansion;
- (b) The proposed and current facility fuel use;
- (c) The proposed and current nominal electric generating capacity;
- (d) The proposed and current related or supporting facilities and site boundary;
- (e) The proposed and current heat rate; and
- (f) Verification that the facility had operable electric generating equipment on August 2, 1993.

(3) In a request for an exemption under OAR 345-015-0350(1)(b) for modification of a facility for which no site certificate has been issued that is called for in the short-term plan of action of an energy

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resource plan that has been acknowledged by the Public Utility Commission of Oregon, the person shall provide the following information in support of the request:

- (a) The information described in subsections (2)(a) through (f) of this rule;
- (b) Identification and discussion of the portion of the short-term plan of action of an energy resource plan that calls for the facility expansion; and
- (c) The Public Utility Commission of Oregon Order acknowledging the plan described in subsection (b).

(4) In a request for an exemption under OAR 345-015-0350(2) for construction or expansion of an interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission, the person shall provide a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission for the proposed pipeline or associated underground natural gas storage facility, or other comparable evidence that the proposed pipeline or storage facility is within that agency's jurisdiction.

(5) In a request for an exemption based on a very efficient use of fuel (high efficiency cogeneration) under OAR 345-015-0350(3), the person shall provide the following information in support of the request:

- (a) Detailed information on proposed fuel use, power plant design, steam or heat output to the thermal host and proposed electric output;
- (b) Detailed information on the current facility, including fuel to be displaced, current steam or heat use and current electric output if any;
- (c) A detailed engineering assessment of fuel efficiency, showing that the proposed facility is a high efficiency cogeneration facility under the definition in OAR 345-001-0010. The person shall provide calculations in sufficient detail to facilitate independent review by the Department. The person shall state the underlying assumptions necessary to support the calculation including assumptions concerning the energy content of fuel displaced; and
- (d) A description of the facility, including the thermal host, the proposed energy facility, the location by address as well as township and range and any associated linear equipment needed.

(6) In a request for an exemption of a small generating plant or expansion of a small generating plant, as defined in OAR 345-001-0210, the person shall include the following information:

- (a) A description of the proposed small generating plant or proposed expansion to a small generating plant and a description of related or supporting facilities;
- (b) Identification of the person or persons who will construct, operate and own the plant;
- (c) An analysis of the factors described in OAR 345-001-0210(3); and
- (d) Any other information the Department of Energy determines the Council needs to make the finding described in OAR 345-001-0210(3).

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(7) In a request for an exemption under OAR 345-015-0350(5) for a plant that converts biomass to a liquid fuel, the person shall include the following information:

- (a) A description of the proposed plant, including, but not limited to, the location, acreage and annual production capacity of the proposed plant and the type of liquid fuel the plant will produce;
- (b) A description of the feedstock verifying that the facility will use only the types of feedstock described in ORS 469.320(2)(f);
- (c) The identity of the affected local government that has given land use approval under the applicable acknowledged comprehensive plan and land use regulations and copies of all land use approval documents the local government has issued;
- (d) The statewide planning goals or rules of the Land Conservation and Development Commission that are directly applicable to the facility and evidence to support a finding by the Council that the facility complies with those goals and rules;
- (e) A description of the expected electrical loads and fuel needs of the facility and a statement verifying that the facility requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate; and
- (f) A statement verifying that the plant will produce synthetic fuel, at least 90 percent of which will be used in an industrial or refueling facility located within one mile of the facility or will be transported from the facility by rail or barge and evidence that adequate rail and barge facilities are available to serve the proposed site.

(8) Requests for an exemption for a standby generation facility under OAR 345-015-0350(6) are not required.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.320

**345-015-0370 - Consideration of Request for Exemption**

(1) Except as described in section (2), within 45 days after receipt of a request for exemption, the Department of Energy shall review the request for exemption for completeness and provide the requestor with either a notice of filing of the request for exemption or a request for additional information. When the Department finds the submitted request for exemption is complete, the Department shall issue a notice of filing. Within 60 days after issuing the notice of filing, the Department shall review the request, prepare a proposed order for Council action and bring the matter before the Council for action.

(2) When submitting a request for exemption, the requestor shall submit the fee established by the Council as described in ORS 469.441. The requestor is liable for reimbursement of any review expenses beyond the initial fee that are incurred by the Department of Energy and Council relating to the review and decision by the Council.

Stat. Authority: ORS 469.470

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Stat. Implemented: ORS 469.320, ORS 469.421, ORS 469.441

### **345-015-0380 - Loss of Exemption**

(1) In accordance with ORS 469.320(6), any person operating a facility for which the Council previously granted an exemption under ORS 469.320(2)(c) and that has experienced a substantial loss of steam host resulting in a substantial loss in fuel use efficiency must submit an application for a site certificate within 12 months of the loss.

(2) Any person proposing to enlarge the site of a facility previously determined to be exempt under 469.320(2)(a) must submit an application for a site certificate.

(3) Any person submitting an application for a site certificate under section (1) or (2) may request expedited review as described in OAR 345-015-0300 or OAR 345-015-0310 if the average electric generating capacity of the energy facility is less than 100 megawatts.

(4) Any person operating a plant that the Council has determined exempt under OAR 345-015-0350(5) must apply for a site certificate before making any change in the operation of the plant such that the plant would no longer meet the requirements of ORS 469.320(2)(f).

Stat. Authority: ORS 469.373, ORS 469.470

Stat. Implemented: ORS 469.320

## **Procedures for the Conduct of Contested Cases**

### **345-015-0400 – Governing Provisions**

(1) All contested case proceedings before the Council shall be conducted in accordance with OAR 137-003-0501 through 137-003-0700 (as of December 31, 2023), referred to herein as the Office of Administrative Hearing rules.

(2) The rules in this Division addressing contested cases (OAR 345-015-0400 through 345-015-0475) are intended to supplement the Office of Administrative Hearing rules by providing additional procedures governing requests for and the conduct of Energy Facility Siting Council contested cases.

(3) In any conflict between the Office of Administrative Hearing rules and Council rules, the Council shall apply its own rules.

STATUTORY/OTHER AUTHORITY: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

STATUTES/OTHER IMPLEMENTED: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440

### **345-015-0403 - Contested Case Notices**

The Department must issue contested case notices for Energy Facility Siting Council contested case proceedings as provided in OAR 137-003-0505. The notices will be served personally or by registered or certified mail to persons who commented in person or in writing on the record for a Draft Proposed Order as described in OAR 345-015-0220 and provided a mailing address. The notices must also include:

(1) A statement that persons requesting a contested case should state whether they are requesting to participate as a party or limited party.

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- (2) The deadline for submitting a petition for party or limited party status in a contested case and the deadline for the Department and applicant or certificate holder to respond to petitions for party or limited party status as outlined in OAR 345-015-0415;
- (3) A statement that active-duty service members have a right to stay a contested case proceeding under the federal Servicemembers Civil Relief Act as described in ORS 183.415(3)(g); and
- (4) A statement that, notwithstanding OAR 137-003-0505(1)(h), both full and limited parties may use lay representation.

STATUTORY/OTHER AUTHORITY: ORS 469.470, ORS 469.370(5), ORS 183.417(2)  
STATUTES/OTHER IMPLEMENTED: ORS 183.415

**345-015-0405 - Appointment and Duties of Hearing Officer**

- (1) The Energy Facility Siting Council shall appoint a hearing officer to conduct a contested case proceeding on behalf of the Council or to compile the record of the contested case proceeding and recommend resolution of objections to the record of a local land use proceeding held pursuant to ORS 469.503(2)(a). The Council may refer a contested case to the Office of Administrative Hearings for appointment of a hearing officer, or Council may appoint some other person or persons as it sees fit.
- (2) A hearing officer shall take all necessary action to:
  - (a) Ensure a full, fair, impartial, and efficient proceeding;
  - (b) Facilitate presentation of evidence;
  - (c) Comply with statutory time limits on Council decisions;
  - (d) Maintain order; and
  - (e) Assist the Council in making its decision.
- (3) The hearing officer shall keep the Council informed regularly on the status of the contested case and maintain a complete and current record of the contested case proceeding, including:
  - (a) All pleadings, motions, and intermediate rulings;
  - (b) Evidence received or considered;
  - (c) Stipulations;
  - (d) A statement of matters officially noticed;
  - (e) Questions and offers of proof, objections, and rulings thereon;
  - (f) Information about any ex parte communication with the hearing officer that must be made part of the record under OAR 137-003-0625(2);
  - (g) Proposed findings and exceptions; and
  - (h) The proposed contested case order.

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(4) The hearing officer is authorized to carry out the responsibilities assigned in this rule, including the authority to:

- (a) Administer oaths and affirmations;
- (b) Rule on offers of proof and receive evidence pursuant to the hearing officer's established schedule;
- (c) Consider petitions for, authorize, and limit depositions, as provided in OAR 137-003-0572;
- (d) Order and control discovery, as provided in OAR 137-003-0568, and all other aspects of the contested case proceeding, the order of proof, and the conduct of the participants;
- (e) Dispose of procedural matters and rule on motions;
- (f) Call and examine witnesses;
- (g) Hold conferences, including one or more prehearing conferences as provided in OAR 137-003-0575, before or during the hearing for settlement, for the simplification of issues or any other purpose the hearing officer finds necessary. For a contested case proceeding on an application for a site certificate or for an amendment to a site certificate, the hearing officer shall review and rule on petitions for party or limited party status consistent with the requirements of OAR 345-015-0415, including limiting the issues to the issues that have been raised with sufficient specificity in the public hearing;
- (h) Continue the contested case proceeding from time to time;
- (i) Issue protective orders in accordance with the standards of Rule 36(C) of the Oregon Rules of Civil Procedure.
- (j) At the request of the Council, or upon motion of a party or limited party for good cause shown as provided in OAR 345-015-0470, and with reasonable notice to all parties, reopen the contested case proceeding for reception of further evidence on issues identified in the notice at any time prior to final decision by the Council;
- (k) Within the hearing officer's discretion, or at the request of the Council, certify any question to the Council for its consideration and disposition;
- (l) Prepare and serve upon the parties a proposed order addressing those issues enumerated in the request for contested case hearing and any additional issues approved by the hearing officer, including findings of fact, findings of ultimate fact and conclusions of law; and
- (m) Take any other action consistent with the Council's governing statutes and the Council's rules.

(5) The Council may, on its own motion or upon the motion of a party or limited party, remove a hearing officer if it determines that the hearing officer is not competent to conduct the proceeding, is demonstrably biased for or against any party, or is otherwise unable to conduct the proceeding.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

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**345-015-0410 - Filing and Service**

(1) The hearing officer shall specify permissible means of filing and service of any pleading or document. The methods of filing with the hearing officer and service upon any party or limited party, may include, but are not limited to: personal delivery, first class or certified mail (properly addressed with postage prepaid), facsimile, or electronic mail.

(2) The hearing officer may waive requirements for serving parties who are no longer actively participating in the proceeding upon consent by the party or limited party.

(3) The hearing officer may modify the requirements for serving a limited party consistent with such party's limited interest.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440

**345-015-0415 - Requests for Party or Limited Party Status**

(1) The Department and applicant or certificate holder are parties to the contested case proceeding, with the right to participate on all issues in the contested case proceeding. Notwithstanding OAR 137-003-0535(2) and (3), other persons requesting to participate as a party or limited party in a contested case proceeding must submit a petition to the hearing officer and provide copies to the Department and the site certificate applicant or certificate holder by the date specified in the Department's notice issued under OAR 345-015-0230 and OAR 345-015-00403. Petitions received after the deadline will not be considered unless the hearing officer determines that good cause has been shown for failure to submit the petition by the required date.

(2) Except as described in sections (3) and (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 Energy Facility Siting 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 ORS 469.370(2) or (3) or unless the action recommended in the proposed order described in OAR 345-015-230 and OAR 345-015-0403, 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.

(3) Subject to the exceptions in ORS 469.370(5), if a person has not raised an issue at the public hearing with sufficient specificity to afford the Council, the Department and the applicant an adequate opportunity to respond to the issue, the hearing officer may not consider the issue in the contested case proceeding.

(4) To have raised an issue with sufficient specificity, the person must have:



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- (a) identified the recommended findings of fact, conclusions of law, or conditions of approval to which they object;
- requirements on which their objection is based; and
- (c) presented facts or statements supporting that objection on the record of the draft proposed order.

(5) The requirements in (2), (3), and (4) also apply to a Council decision to grant a contested case proceeding under OAR 345-015-0310 (Request for Expedited Review of Special Criteria Facilities), with the exception that a person must have commented in person or on the record of the public hearing described in OAR 345-015-320 as opposed to the public hearing described in OAR 345-015-0220.

(6) In a petition to request party or limited party status, the person requesting such status must include:

- (a) The information required under OAR 137-003-0535(4);
- (b) A short and plain statement for each issue that the person desires to raise in the contested case proceeding; the statement should be worded the way the person requests the issue be worded for the contested case proceeding; and
- (c) A reference to the person's comments on the record of the draft proposed order showing that the person raised the issue or issues on the record of the draft proposed order.

(7) The applicant, the Department, or the certificate holder may submit written responses to petitions to request party or limited party status to the hearing officer by the date specified for such responses in the Department's notice issued under OAR 345-015-0230, providing copies to one another and the person who submitted the petition for party or limited party status.

(8) In ruling on petitions to participate as a party or a limited party, the Hearing Officer shall consider the criteria described in OAR 137-003-0535(8). A limited party is a person, other than the Department, an applicant, or the certificate holder, who requests to participate in the contested case and who the hearing officer determines raised one or more issues with sufficient specificity as described in subsections (3) and (4), but did not raise all the issues to be addressed in the contested case, as established by the hearing officer in the prehearing order on party status described in OAR 345-015-0430.

(9) 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, with supporting arguments and documents, to the Council within seven days after the date of service of the hearing officer's determination.

(10) Subject to the exceptions in ORS 469.370(5) and OAR 345-015-0445(3), a limited party may participate in the contested case only on the issues they raised with sufficient specificity, including related proposed site certificate conditions.

Statutory/Other Authority: ORS 469.373 & 469.470

Statutes/Other Implemented: ORS 469.370, 469.440, 469.605, 469.615 & 469.992

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**345-015-0420 - Petition for Indigent Status**

(1) By petition to the hearing officer in a contested case submitted before the time of the prehearing conference, a party or limited party may request to be treated as an indigent. In the petition, the petitioner shall state in detail the facts demonstrating that the petitioner is indigent in the context of the financial burdens associated with full participation as a party or limited party in the contested case and the reasons why the petitioner would be prejudiced if indigent status were not granted.

(2) “Indigent” means the person has an income level at or below 125 percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services for the person's household/family size, unless the hearing officer makes a determination as to the person's ability to pay for the cost to participate in the pending case based on other factors. In making the determination as to a person's ability to pay costs to participate in the case, the hearing officer shall consider not only the person's income, but also the availability of any assets, including, but not limited to, cash, stocks, bonds, and any other property that may be applied to the satisfaction of judgments, other financial obligations the person bears, and the nature and complexity of the case.

(3) The hearing officer shall issue a determination on a petition for indigent status in writing and shall state the grounds for the determination. The hearing officer's determination is final unless the petitioner submits an appeal to the Energy Facility Siting Council within seven days after the date of service of the determination.

(4) The hearing officer may excuse a person granted indigent status from such requirements of the rules of this division as the hearing officer determines appropriate. As determined by the hearing officer, the Council may provide for the cost of service of pleadings and other documents, reasonable travel expenses of witnesses and copies of the record necessary to enable a person granted indigent status to participate fully in the contested case.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0425 - Participation by Government Agencies**

(1) Any state or local government agency other than the Department may request participation in a contested case as a party, limited party or interested agency, subject to the limitations described in OAR 345-015-0415. For a contested case on a site certificate application, the agency must submit the request to the hearing officer in writing by the date specified in the Department's public notice issued under OAR 345-015-0230(3) and OAR 345-015-0403. For a contested case on a site certificate amendment, the agency 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 345-027-0371(4).

(2) The Department must participate in all contested case proceedings conducted by the Energy Facility Siting Council with all the rights of a party.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

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**345-015-0430 - Prehearing Conference and Prehearing Order**

- (1) The hearing officer may hold one or more prehearing conferences to address petitions for party or limited party status and issues. The hearing officer shall consider which issues, if any, the person may participate in by considering the applicable provisions in OAR 345-015-0415 and OAR 137-003-0535(8).
- (2) The hearing officer may also conduct one or more prehearing conferences for the purposes and in the manner described in OAR 137-003-0575.
- (3) At the conclusion of the prehearing conference(s) described in (1) and (2), the hearing officer must issue a prehearing order or orders stating the issues to be addressed in the contested case hearing, the parties, the limited parties, the issue(s) on which each limited party may participate, the contested case procedures, and the schedule.
- (4) The hearing officer may cancel or reschedule any previously noticed prehearing conference.
- (5) If an appeal to Council of a hearing officer's ruling on party status described in subsection (1) results in the granting of party status, the hearing officer shall issue an amended order.
- (6) Failure to raise an objection regarding suggested procedures to be followed in the contested case or a proposed description of an issue during the prehearing conference when such procedures and issues are being discussed and established by the hearing officer constitutes waiver of that objection.
- (7) Failure to raise an issue in the prehearing conferences for the contested case hearing on an application for a site certificate constitutes a waiver of that issue.

STATUTORY/OTHER AUTHORITY: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

STATUTES/OTHER IMPLEMENTED: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992, ORS 183.310(7)

**345-015-0435 - Suspension of Hearing and Exclusion of a Party**

- (1) If any person engages in conduct that interferes with the hearing officer's duty in connection with any aspect of a contested case proceeding or fails to obey an order of the hearing officer, the hearing officer may suspend the contested case proceeding or order such person excluded from the proceeding temporarily or permanently. Conduct that interferes with the hearing officer's duties includes conduct impeding discovery, conduct impeding schedules, or disruptive conduct during the contested case hearing.
- (2) If the hearing officer issues an order permanently excluding a party, limited party, or legal counsel from further participation in a contested case proceeding, the hearing officer shall issue the order in writing and shall state in the order the grounds for the order. The order is final unless the person subject to the order submits an appeal to the Energy Facility Siting Council within seven calendar days of service of the order.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

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**345-015-0440 - Burden of Presenting Evidence**

In a contested case regarding an application for a site certificate or amendment to a site certificate, each party or limited party bears the burden of presenting evidence in support of facts that party or limited party alleges and/or positions they take on any issue they submitted a petition for party or limited party status and on which the hearing officer determines they may participate.

Stat. Authority: ORS 183.341, ORS 183.417, ORS 469.370(5), ORS 183.417(2), ORS 469.470  
Stat. Implemented: ORS 183.450

**345-015-0445 - Submission of Evidence and Proposed Site Certificate Conditions**

(1) The hearing officer may require parties or limited parties to submit to the hearing officer, in writing, the qualifications and direct testimony of each witness whom a party or limited party proposes to call and all exhibits that a party or limited party proposes to introduce in conjunction with the testimony of a witness. Parties and limited parties shall send to all other parties and limited parties copies of all written materials submitted to the hearing officer under this rule per the schedule and means set forth by the hearing officer.

(2) The hearing officer shall allow any party, including any limited party, to propose site certificate conditions related to issues for which they have been permitted to participate in the contested case and to present evidence related to any such conditions. Parties shall submit proposed site certificate conditions to the hearing officer in writing according to a schedule set by the hearing officer, which shall occur no later than the deadline for the submission of direct evidence.

(3) In a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, any party or limited party may address material changes to actions to be taken under site certificate conditions that are suggested during the contested case proceeding.

(4) The hearing officer may not receive evidence or hear legal argument on issues not identified in the prehearing order.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)  
Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0450 - Official Notice of Evidence**

(1) In a contested case proceeding, the hearing officer may take official notice of the following:

- (a) All facts of which the courts of the State of Oregon may take judicial notice;
- (b) Administrative rulings and reports of the Energy Facility Siting Council and other governmental agencies;
- (c) Facts contained in permits and licenses issued by the Council or any other government agency;
- (d) The factual results of the hearing officer's or the Council's personal inspection of physical conditions involved in the contested case; and

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(e) General, technical, or scientific facts within the specialized knowledge of the Council or the Department of Energy.

(2) The hearing officer shall notify parties of facts officially noticed and shall allow parties an opportunity to contest the facts so noticed.

Stat. Authority: ORS 469.470, ORS 469.370(5)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.605, ORS 469.405, ORS 469.440, ORS 469.615, ORS 469.992

**345-015-0455- Motions**

All parties, including limited parties, shall submit any motions in a contested case to the hearing officer. All motions are subject to OAR 137-003-0630 and the following requirements:

(1) Unless a motion is made orally on the record during a contested case hearing, or unless the hearing officer directs otherwise, the moving party shall submit the motion in writing and shall state with particularity the grounds and relief sought. The moving party shall submit with the motion any brief, affidavit or other document relied on, and, as appropriate, a proposed form of order. The moving party shall serve the motion on all parties and limited parties to the contested case.

(2) Within seven calendar days after the date of service of a written motion, or such other period as the hearing officer may prescribe, a party or limited party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the hearing officer.

(3) The parties shall not have oral argument on a motion unless permitted by the hearing officer. The hearing officer shall dispose of motions by written order served on all parties and limited parties or read into the record of the contested case proceeding.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0460 - Interlocutory Appeals to Council**

(1) Except as otherwise specifically provided for in the rules of this division, a party or limited party may not take an interlocutory appeal to the Energy Facility Siting Council from a ruling of the hearing officer unless such ruling would terminate that party's right to participate in the contested case proceeding.

(2) A party or limited party shall submit an appeal involving that party's right to participate in a contested case proceeding, with supporting arguments and documents, to the Council within seven calendar days after the date of the ruling of the hearing officer.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0465 - Stays**

(1) The hearing officer has the power to stay a proceeding for good cause, including to ensure a full, fair, and impartial proceeding.

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(2) Neither the filing of a motion nor the certification of a question to the Energy Facility Siting Council stays a contested case proceeding or extends the time for the performance of any act.

Stat. Authority: ORS 469.470, ORS 469.370(5)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.405, ORS 469.440, ORS 469.605, ORS 469.615, ORS 469.992

**345-015-0470 - Reopening Record Prior to Decision**

The Energy Facility Siting Council or its hearing officer, on its own motion or for good cause shown, may reopen the contested case proceeding record for the taking of additional evidence while the proceeding is under advisement with the hearing officer or the Council. In addition to good cause, the moving party or limited party shall show that:

- (1) The evidence is material to the proceeding; or
- (2) The evidence would substantially affect the outcome of the proceeding.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.605, ORS 469.615, ORS 469.992, ORS 469.405, ORS 469.440

**345-015-0475 - Hearing Officer's Proposed Contested Case Order**

(1) After the completion of a contested case proceeding on an application for a site certificate or on a proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact, conclusions of law, and recommended site certificate conditions on the issues in the contested case. The hearing officer shall serve the proposed contested case order on all parties and limited parties. In the proposed contested case order, the hearing officer shall include recommended resolutions of objections to the local land use record, if any. The hearing officer's recommendations are part of the decision-making record for the application but are not part of the Energy Facility Siting Council's order unless adopted by Council.

(2) After the hearing in a contested case proceeding on any matter other than an application for a site certificate or proposed site certificate amendment, the hearing officer shall issue a proposed contested case order stating the hearing officer's findings of fact and conclusions of law. The hearing officer shall serve the proposed contested case order on all parties and limited parties.

(3) Parties and limited parties may file exceptions to the proposed contested case order with the Council within the time set by the hearing officer, not to exceed 30 days after the hearing officer issues the proposed order. A party filing exceptions shall serve a copy of the exceptions on all other parties and limited parties. In an exception, the party shall specifically identify the finding of fact, conclusion of law or, in contested case proceeding on an application for a site certificate or a proposed site certificate amendment, recommended site certificate condition to which the party excepts and shall state the basis for the exception.

(4) Parties and limited parties may file responses to exceptions within the time set by the hearing officer, not to exceed 15 days after the time set for filing exceptions. A party filing responses to exceptions shall serve a copy of the responses to exceptions on all other parties and limited parties.

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(5) For limited parties, the filings described in (3) and (4) are only allowed to the extent they relate to issues on which the hearing officer has determined they may participate.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.605, ORS 469.615, ORS 469.992, ORS 469.405, ORS 469.440

**345-015-0480 - Council's Final Order and Issuance of a Site Certificate**

(1) After the period for filing responses to exceptions to the proposed contested case order described in OAR 345-015- 0475 (3) and (4), the Council shall:

- (a) Evaluate the exceptions and responses to the proposed contested case order;
- (b) Review the hearing officer's proposed contested case order;
- (c) Review the Department's proposed order; and
- (d) Issue a final order. The final order may adopt, modify, or reject the hearing officer's proposed order and also the Department's proposed order.

(2) In its final order, the Council shall either approve or deny the application. If the Council approves the application, the Council shall issue a site certificate. The site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

(3) Following a contested case proceeding on a proposed site certificate amendment, the Council, in its final order, 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. The amended site certificate becomes effective upon execution by the Council and by the applicant. However, for purposes of identification, the Department may refer to a site certificate by the date of the Council action.

(4) The Council shall issue a site certificate or amended site certificate in duplicate counterpart originals and each counterpart, upon signing, will have the same effect.

Stat. Authority: ORS 469.470, ORS 469.370(5), ORS 183.417(2)

Stat. Implemented: ORS 183.415, ORS 469.370, ORS 469.605, ORS 469.615, ORS 469.992, ORS 469.405, ORS 469.440

**Confidentiality and Inadmissibility of Mediation Communications**

**345-015-0500 - Confidentiality and Inadmissibility of Mediation Communications**

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

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(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

- (a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or
- (b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;
- (c) Mediation in which the only parties are public bodies;
- (d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or
- (e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation;

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

- (a) All the parties to the mediation and the mediator agree in writing to the disclosure; or
- (b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule; or

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

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**Agreement to Participate in a Confidential Mediation**

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 345-015-0500(7) and this agreement. This agreement relates to the following mediation:

- a) \_\_\_\_\_ (Identify the mediation to which this agreement applies)
- b) To the extent authorized by OAR 345-015-0500(7), mediation communications in this mediation are: (check one or more)

\_\_\_\_\_ confidential and may not be disclosed to any other person  
not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

\_\_\_\_\_ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c)

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Signature of Agency's authorized representative (when agency is a party)  
or Agency employee acting as the mediator (when Agency is mediating the dispute)

\_\_\_\_\_  
Date

d)

\_\_\_\_\_  
Name of party to the mediation

\_\_\_\_\_  
Signature of party's authorized representative

\_\_\_\_\_  
Date

e)

\_\_\_\_\_  
Name of party to the mediation

\_\_\_\_\_  
Signature of party's authorized representative

\_\_\_\_\_  
Date

**(9) Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or

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introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may

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be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

- (A) A request for mediation, or
- (B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or
- (C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or
- (D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

- (A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or
- (B) Attorney work product prepared in anticipation of litigation or for trial, or
- (C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or
- (D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or
- (E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the chair of the Council determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from

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disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224

Stat. Implemented: ORS 36.224, ORS 36.228, ORS 36.230, ORS 36.232

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**DIVISION 20 - NOTICE OF INTENT**

**345-020-0006 - Submission of a Notice of Intent**

(1) The purpose of the notice of intent (NOI) is to notify the Department of Energy and the Council of a proposed facility and to provide information about the site and the characteristics of the facility sufficient for the preparation of the project order described in OAR 345-015-0160. Any person who intends to apply for a site certificate for a facility shall submit an NOI to the Department with the fee required by the fee schedule established under ORS 469.441, payable to the Oregon Department of Energy.

(2) The applicant must submit, to the Department, ~~two printed copies of the NOI, and an electronic version of the NOI in a non-copy-protected format acceptable to the Department. The applicant must submit additional printed copies of the NOI to the Department upon request. The applicant must prepare and distribute additional copies of the NOI as directed by the Department.~~

**Commented [TJ15]:** Removing default printed copy requirement.

(3) Notwithstanding sections (1) and (2), an applicant granted expedited review under OAR 345-015-0300 or 345-015-0310 need not submit an NOI.

Statutory/Other Authority: ORS 469.370 & 469.470  
Statutes/Other Implemented: ORS 469.330

**345-020-0011 - Contents of a Notice of Intent**

(1) The applicant must, to the extent reasonably practicable, include in the notice of intent (NOI) the information described in the following subsections. If the applicant proposes alternative sites, the applicant must describe each alternative separately. The applicant must designate the information with the appropriate exhibit label identified in the following subsections:

(a) **Exhibit A.** Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the NOI, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;

(C) If the applicant is a corporation:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;

(ii) The date and place of its incorporation;

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- (iii) A copy of its articles of incorporation and its authorization for submitting the NOI; and
- (iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;
- (D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;
- (E) If the person submitting the NOI is an association of citizens, a joint venture or a partnership:
  - (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI;
  - (ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;
  - (iii) Proof of registration to do business in Oregon;
  - (iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and
  - (v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;
- (F) If the applicant is a public or governmental entity:
  - (i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the NOI; and
  - (ii) Written authorization from the entity's governing body to submit an NOI;
- (G) If the applicant is an individual, the individual's mailing address, email address and telephone number; and
- (H) If the applicant is a limited liability company:
  - (i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the NOI;
  - (ii) The date and place of its formation;
  - (iii) A copy of its articles of organization and its authorization for submitting the NOI; and
  - (iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.
- (b) **Exhibit B.** Information about the proposed facility, including:
  - (A) A description of the proposed energy facility, including as applicable:

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- (i) For electric power generating plants, the nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;
- (ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate, store, transmit, or transport electricity, useful thermal energy, or fuels;
- (iii) Methods for waste management and waste disposal, including, to the extent known, the amount of wastewater the applicant anticipates, the applicant's plans for disposal of wastewater and storm water, and the location of disposal;
- (iv) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from any gas, liquid, or solid fuels:
  - (I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;
  - (II) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gases into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;
  - (III) A discussion of the methods for the disposal of waste heat generated by the facility;
- (v) For transmission lines, approximate transmission line voltage, load carrying capacity and type of current;
- (vi) For pipelines, approximate operating pressure and delivery capacity in thousand cubic feet per day;
- (vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;
- (viii) For facilities to store liquefied natural gas, the approximate volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;
- (B) A description of major components, structures and systems of each related or supporting facility; and
- (C) The approximate dimensions of major facility structures and visible features.
- (c) **Exhibit C.** A description of the location of the proposed energy facility site and the proposed site of each related or supporting facility and all areas that might be temporarily disturbed during construction of the facility, including the approximate land area of each.
- (d) **Exhibit D.** If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the

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definition in ORS 469.300, identification of at least two proposed corridors, as defined in OAR 345-001-0010, or identification of a single proposed corridor with an explanation of why alternate corridors are unlikely to better meet the applicant's needs and satisfy the Council's standards. The applicant must include an explanation of the basis for selecting the proposed corridors and, for each proposed corridor, the information described in subsections (e), (g), (i), (j), (k), (L), (o) and (q) that is available from existing maps, aerial photographs, and a search of readily available literature.

(e) **Exhibit E.** Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, address, email address and telephone number of the agency or office responsible for each permit. For each permit, the applicant must provide a preliminary analysis of whether the permit should or should not be included in and governed by the site certificate.

(f) **Exhibit 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 NOI, 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 NOI, 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 NOI, where the subject property is within a farm or forest zone; and

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

(g) **Exhibit G.** A map or maps showing:

(A) The proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(B) The proposed locations of the corridors the applicant has identified under subsection (d) in relation to major roads, water bodies, cities and towns, important landmarks and topographic features;

(C) The study areas for the proposed facility as defined in OAR 345-001-0010;

(D) The topography of the study areas including streams, rivers, lakes, major roads and contour lines;

(E) All protected areas in the study area as defined in OAR 345-001-0010 for impacts to protected areas;



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- (F) The location of any potential waters of the state or waters of the United States that are on or adjacent to the site; and
- (G) For energy generation facilities, the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.
- (h) **Exhibit H.** If the proposed facility is a non-generating energy facility for which the applicant must demonstrate need under OAR 345-023-0005, identification of the rule in division 23 of this chapter under which the applicant intends to demonstrate need and a summary statement of the need and justification for the proposed facility.
- (i) **Exhibit I.** A statement indicating whether the applicant intends to satisfy the Council's land use standard, OAR 345-022-0030, by obtaining local land use approval under ORS 469.504(1)(a) or by seeking a Council determination under ORS 469.504(1)(b).
- (j) **Exhibit J.** Identification of potential significant environmental impacts of construction and operation of the proposed facility on resources in the study areas, including those impacts affecting air quality, surface and ground water quality and availability, wildlife and wildlife habitat, threatened and endangered plant and animal species, historic, cultural and archaeological resources, scenic resources, recreation opportunities, land use, and wildfire risk.
- (k) **Exhibit K.** Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of communities in the study area to provide the services listed in OAR 345-022-0110.
- (L) **Exhibit L.** A list of all protected areas in the study area for impacts to protected areas identifying:
- (A) The distance and direction of the protected area from the proposed facility;
  - (B) The basis for protection of the area, by reference to a specific subsection of OAR 345-001-0010(26); and
  - (C) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area;
- (m) **Exhibit M.** Information about anticipated water use during construction and operation of the proposed facility, including:
- (A) A description of each source of water and the applicant's estimate of the amount of water the facility will need from each source;
  - (B) If a new water right is required, the approximate location of the points of diversion and the estimated quantity of water to be taken at each point; and
  - (C) For operation, the source of cooling water and the estimated consumptive use of cooling water, based on annual average conditions.

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(n) **Exhibit N.** If the proposed facility would emit carbon dioxide, an estimate of the gross carbon dioxide emissions that are reasonably likely to result from the operation of the facility and a statement of the means by which the applicant intends to comply with the applicable carbon dioxide emissions standard under OAR 345-024-500.

(o) **Exhibit O.** Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in Exhibit E, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant must analyze and describe any problems the applicant foresees in satisfying the requirements of any such statute, rule or ordinance.

(p) **Exhibit P.** A schedule stating when the applicant expects to submit a preliminary application for a site certificate.

(q) **Exhibit Q.** Evidence of consultation with the Legislative Commission on Indian Services to identify each appropriate tribe to consult with regarding the proposed facility's possible effects on Indian historic and cultural resources.

(2) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required by section (1) of this rule. The applicant may copy relevant sections of such documents into the appropriate exhibits of the NOI. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the NOI, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant must include additional information in the NOI as needed to meet the requirements of section (1) of this rule.

(3) The applicant must include a table of contents in the NOI identifying the location of each exhibit required by this rule.

(4) The applicant or the applicant's representative must attend all public informational meetings on the NOI as described in OAR 345-015-0130 to discuss the proposed facility and to answer questions from the public. If the applicant has identified one or more proposed corridors in Exhibit D of the NOI as required by section (1)(d), the applicant may present adjustments to the proposed corridor(s) at any public informational meeting. An adjustment is any change that is outside the boundaries of the corridors proposed in the NOI and may include an entirely new corridor.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.330

**345-020-0016 - Amendment of Notice of Intent**

(1) The applicant may amend the notice of intent (NOI). The applicant must submit ~~to the Department,~~  
~~two printed copies of the amended NOI, and~~ an electronic version of the amended NOI in a non-copy-

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protected format acceptable to the Department. The applicant must provide a printed copy of all or part of the amended NOI to any person on the distribution list as directed by the Department.

(2) Submission of an amended NOI does not extend the expiration date of the NOI. The applicant, however, may petition the Council to extend the duration of the NOI as provided in OAR 345-020-0060.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.330

**345-020-0060 - Expiration of a Notice of Intent**

(1) A notice of intent (NOI) expires two years after the applicant submits the NOI unless, not less than 45 days before the expiration date, the applicant submits a petition to the Council to extend the expiration date. If the Council finds that the petition shows good cause, the Council may extend the expiration date for a period of up to one year. The applicant's submission of a timely petition for an extension under this rule stays the expiration of the NOI until the Council's decision to grant or deny the extension.

(2) If the applicant does not submit an application for a site certificate for the facility described in an NOI before the expiration of the NOI or any extension period granted by the Council, the applicant must submit a new NOI to satisfy ORS 469.330.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.330

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**DIVISION 21 - APPLICATION FOR SITE CERTIFICATE**

**345-021-0000 - General Requirements**

- (1) Except for facilities that the Council has determined exempt as described in OAR 345-015-0350 to 345-015-0370 or for which a separate site certificate is not required according to ORS 469.320(5), a person may not construct or expand a facility unless the Council has granted a site certificate or an amendment to an existing site certificate.
- (2) An applicant may not submit an application for a site certificate before the Department has issued a project order for the proposed facility as described in OAR 345-015-0160. The applicant may submit a draft application before the issuance of a project order. The applicant must submit the application before the expiration of the notice of intent.
- (3) For an expedited review granted under OAR 345-015-0300 or 345-015-0310, section (2) does not apply and the applicant may submit an application for a site certificate any time after the Department determines the request for expedited review satisfies the requirements for expedited review as described in those rules.
- (4) If the applicant submits a written request for waiver or modification of requirements in OAR 345, divisions 22 through 24 to the Department, the Department may waive or modify those requirements that the Department determines are not applicable to the proposed facility.
- (5) For any state or local government agency permits, licenses or certificates proposed by the applicant to be included in and governed by the site certificate, the applicant must include within the site certificate application all information that would otherwise be required by the state or local government agency in an application for such permit, license or certificate.
- (6) For any federally-delegated permits that are needed for construction or operation of the proposed facility, the applicant must submit to the Department one copy of each federally-delegated permit application. The applicant may submit the site certificate application before submitting a copy of a federally-delegated permit application if the applicant submits a schedule of the date by which the applicant intends to submit the federally-delegated permit application. The Department may not find the site certificate application to be complete before receiving copies of all federally-delegated permit applications and a letter or other indication from each agency responsible for issuing a federally-delegated permit stating that the agency has received the permit application, identifying any additional information the agency is likely to need from the applicant and estimating the date when the agency will complete its review and issue a permit decision.
- (7) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, in addition to the application for a site certificate described in OAR 345, divisions 21 through 24, the applicant must submit to the Department ~~two copies of~~ in an electronic format each energy resource plan or combination of plans on which the applicant relies to demonstrate need under OAR 345-023-0020, unless the applicant chooses to incorporate ~~copies of~~ the plans as part of the application for a site certificate. The applicant must submit the plans to the Department with the

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site certificate application. The Department may not find the site certificate application to be complete before receiving ~~copies of the~~ these plans. The plans described in this section are part of the decision record for the Department's proposed order, described in OAR 345-015-0230.

(8) The applicant must submit an application for a site certificate to the Department with 25 percent of the fee the Department determines necessary for review of the application under ORS 469.421(3), payable to the Oregon Department of Energy. The applicant must pay the balance of the fee periodically, as specified by the Department.

(9) Until the Department determines the application to be complete as described in OAR 345-015-0190 or 345-015-0310, it is a preliminary application. For the purpose of determining the applicable substantive criteria under ORS 469.504(1)(b)(A), the date the preliminary application is received by the Department is the date the application is submitted.

**Statutory/Other Authority:** ORS 469.373 & 469.470

**Statutes/Other Implemented:** ORS 469.350, 469.370 & 469.421

**345-021-0010 - Contents of an Application**

(1) The project order described in OAR 345-015-0160(1) identifies the provisions of this rule and OAR 345, divisions 22 through 24, that are applicable to the application for the proposed facility, including any appropriate modifications to applicable provisions of these rules. The applicant must include in its application for a site certificate information that addresses each provision of the rules identified in the project order. The applicant must designate the information with an appropriate exhibit label that corresponds with the standard in question, e.g., the information provided for the land use standard described in OAR 345-022-0030 should be labeled as "Land Use Exhibit." If the same information is required in each of several exhibits the applicant may provide the required information in one exhibit and include appropriate references in the others. For the purpose of submitting an application for a site certificate in an expedited review granted under OAR 345-015-0300 or 345-015-0310, the applicant must include information that addresses all applicable provisions of this rule and OAR 345, divisions 22 through 24. In such expedited reviews, analysis areas addressed in this rule are the study areas defined in OAR 345-001-0010, subject to later modification in the project order.

(2) The Council standards referred to in the project order described in OAR 345-015-0160(1) are detailed in OAR 345, divisions 22 through 24, including all applicable factual support.

(3) In addition to the material required in OAR 345, divisions 22 through 24, the applicant must submit in an exhibit called "Background Information Exhibit" the following background information about the project to assist the Council in its review of the application:

(a) Information about the proposed facility, construction schedule and temporary disturbances of the site, including:

(A) A description of the proposed energy facility, including as applicable:

(i) For electric power generating plants, the nominal electric generating capacity and the average electrical generating capacity, as defined in ORS 469.300;

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- (ii) Major components, structures and systems, including a description of the size, type and configuration of equipment used to generate, store, transmit, or transport electricity, useful thermal energy, or fuels;
- (iii) A site plan and general arrangement of buildings, equipment and structures;
- (iv) Fuel and chemical storage facilities, including structures and systems for spill containment;
- (v) Equipment and systems for fire prevention and control;
- (vi) For thermal power plants, combustion turbine power plants, or other facilities designed to generate electricity from gas, liquid, or solid fuels:
  - (I) A discussion of the source, quantity and availability of all fuels proposed to be used in the facility to generate electricity or useful thermal energy;
  - (II) If the facility will generate electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material, a discussion of methods the facility will use to ensure that the facility does not emit greenhouse gases into the atmosphere, and a description of any equipment the facility will use to capture, sequester, or store greenhouse gases;
  - (III) A description of energy flows within the facility, including power cycle and steam cycle diagrams, as appropriate;
  - (IV) A description of equipment and systems for disposal of waste heat generated by the facility; and
  - (V) The fuel chargeable to power heat rate of the energy facility.
- (vii) For surface facilities related to underground gas storage, estimated daily injection and withdrawal rates, horsepower compression required to operate at design injection or withdrawal rates, operating pressure range and fuel type of compressors;
- (viii) For facilities to store liquefied natural gas, the volume, maximum pressure, liquefaction and gasification capacity in thousand cubic feet per hour;
- (B) A description of major components, structures and systems of each related or supporting facility;
- (C) The approximate dimensions of major facility structures and visible features;
- (D) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a transmission line or pipeline that, by itself, is an energy facility under the definition in ORS 469.300, a corridor selection assessment explaining how the applicant selected the corridors for analysis in the application. In the assessment, the applicant must evaluate the corridor adjustments the Department has described in the project order, if any. The applicant may select any corridor for analysis in the application and may select more than one corridor.

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However, if the applicant selects a new corridor, then the applicant must explain why the applicant did not present the new corridor for comment at an informational meeting under OAR 345-015-0130. In the assessment, the applicant must discuss the reasons for selecting the corridors, based upon evaluation of the following factors:

- (i) Least disturbance to streams, rivers and wetlands during construction;
- (ii) Least percentage of the total length of the pipeline or transmission line that would be located within areas of Habitat Category 1, as described by the Oregon Department of Fish and Wildlife;
- (iii) Greatest percentage of the total length of the pipeline or transmission line that would be located within or adjacent to public roads and existing pipeline or transmission line rights-of-way;
- (iv) Least percentage of the total length of the pipeline or transmission line that would be located within lands that require zone changes, variances or exceptions;
- (v) Least percentage of the total length of the pipeline or transmission line that would be located in a protected area as described in OAR 345-022-0040;
- (vi) Least disturbance to areas where historical, cultural or archaeological resources are likely to exist;
- (vii) Greatest percentage of the total length of the pipeline or transmission line that would be located to avoid seismic, geological and soils hazards; and
- (viii) Least percentage of the total length of the pipeline or transmission line that would be located within lands zoned for exclusive farm use.

(E) If the proposed energy facility is a pipeline or transmission line or has, as a related or supporting facility, a transmission line or pipeline of any size:

- (i) The length of the pipeline or transmission line;
- (ii) The proposed right-of-way width of the pipeline or transmission line, including to what extent new right-of-way will be required or existing right-of-way will be widened;
- (iii) If the proposed transmission line or pipeline corridor follows or includes public right-of-way, a description of where the transmission line or pipeline would be located within the public right-of-way, to the extent known. If the applicant proposes to locate all or part of a transmission line or pipeline adjacent to but not within the public right-of-way, describe the reasons for locating the transmission line or pipeline outside the public right-of-way. The applicant must include a set of clear and objective criteria and a description of the type of evidence that would support locating the transmission line or pipeline outside the public right-of-way, based on those criteria;
- (iv) For pipelines, the operating pressure and delivery capacity in thousand cubic feet per day and the diameter and location, above or below ground, of each pipeline; and

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(v) For transmission lines, the rated voltage, load carrying capacity, type of current, and a description of transmission line structures and their dimensions.

(F) A construction schedule including the date by which the applicant proposes to begin construction and the date by which the applicant proposes to complete construction. Construction is defined in OAR 345-001-0010. The applicant must describe in this exhibit all work on the site that the applicant intends to begin before the Council issues a site certificate. The applicant must include an estimate of the cost of that work. For the purpose of this exhibit, “work on the site” means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor, that the applicant anticipates or has performed as of the time of submitting the application.

(b) Information about the location of the proposed facility, including:

(A) A map or maps showing the proposed locations of the energy facility site, all related or supporting facility sites and all areas that might be temporarily disturbed during construction of the facility in relation to major roads, water bodies, cities and towns, important landmarks and topographic features, using a scale of 1 inch = 2000 feet or smaller when necessary to show detail;

(B) A description of the location of the proposed energy facility site, the proposed site of each related or supporting facility and areas of temporary disturbance, including the total land area (in acres) within the proposed site boundary, the total area of permanent disturbance, and the total area of temporary disturbance. If a proposed pipeline or transmission line is to follow an existing road, pipeline or transmission line, the applicant must state to which side of the existing road, pipeline or transmission line the proposed facility will run, to the extent this is known; and

(C) For energy generation facilities, a map showing the approximate locations of any other energy generation facilities that are known to the applicant to be permitted at the state or local level within the study area as defined in OAR 345-001-0010 for impacts to public services.

(c) A list of the names and mailing addresses of property owners, as described in this subsection:

(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 is the subject of the application, where the subject property is wholly or in part within an urban growth boundary;

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

(iii) Within 500 feet of the property which is the subject of the application, where the property is within a farm or forest zone.



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(B) The applicant must submit an updated list of property owners as requested by the Department before the Department issues notice of any public hearing on the application for a site certificate as described in OAR 345-015-0220; and

(C) In addition to incorporating the list in the application, the applicant must submit the list to the Department in an electronic format approved by the Department.

(d) Identification, by legal citation, of all state statutes and administrative rules and local government ordinances containing standards or criteria that the proposed facility must meet for the Council to issue a site certificate, other than statutes, rules and ordinances identified in ~~Exhibit EOAR 345-022-0010(c)~~, and identification of the agencies administering those statutes, administrative rules and ordinances. The applicant must identify all statutes, administrative rules and ordinances that the applicant knows to be applicable to the proposed facility, ~~whether or even if~~ not identified in the project order. To the extent not addressed by other materials in the application, the applicant must include a discussion of how the proposed facility meets the requirements of the applicable statutes, administrative rules and ordinances.

(e) If the proposed facility is a facility for which the Council has adopted specific standards, information about the facility providing evidence to support findings by the Council as required by the following rules:

(A) For wind energy facilities, OAR 345-024-0010 and 345-024-0015;

(B) For surface facilities related to underground gas storage reservoirs, OAR 345-024-0030, including information required by OAR 345-024-0030(3);

(C) For any transmission line under Council jurisdiction, OAR 345-024-0090; and

(D) For a fossil-fueled power plant or other facility that emits carbon dioxide, OAR 345-024-0500 to 345-024-0720.

(f) Documents prepared in connection with an environmental assessment or environmental impact statement for the proposed facility under the National Environmental Policy Act of 1970, if any, may contain some of the information required under the application information requirements in OAR 345, divisions 021 and 022. The applicant may copy relevant sections of such documents into the appropriate exhibits of the site certificate application. The applicant may otherwise submit full copies of those documents and include, in the appropriate exhibits of the site certificate application, cross-references to the relevant sections of those documents. The applicant may use such documents only to avoid duplication. The applicant must include additional information in the site certificate application as needed to meet the requirements of the application information requirements in OAR 345, divisions 021 and 022.

(g) The applicant must include a table of contents in the preliminary application identifying the location of each required exhibit.

(h) The applicant must submit, to the Department, ~~an original and a copy of the printed preliminary application, and~~ a non-copy-protected electronic version of the preliminary application in a format

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acceptable to the Department. The applicant must submit ~~additional~~ printed copies of the preliminary application to the Department upon request. The applicant must prepare and distribute additional copies of the application as required by OAR 345-001-0050.

(i) Any other information that the Department requests in the project order or in a notification regarding expedited review.

**Statutory/Other Authority:** ORS 469.373 & 469.470

**Statutes/Other Implemented:** ORS 469.350, 469.370, 469.413, 469.501, 469.503 & 469.504

**345-021-0090 - Amendment of an Application**

(1) When the applicant is preparing to submit an amended application, the applicant must notify the Department.

(2) The applicant may amend a preliminary application at any time.

(3) If the applicant submits an amended application after the date of filing as determined under OAR 345-015-0190 or 345-015-0310, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.

(4) If the applicant submits an amended application after issuance of a contested case notice under OAR 345-015-0014, the Department may, by motion, request that the contested case proceeding be terminated and the Council's hearing officer may issue an order terminating the proceeding. Upon issuance of the order, the Department may withdraw the filing of the application until the Department has reviewed the amended application for completeness as described under OAR 345-015-0190 or 345-015-0310.

(5) The applicant must submit, to the Department, ~~two printed copies of the amended application, and~~ an electronic version of the amended application in a non-copy-protected format acceptable to the Department. The applicant must provide ~~additional~~ printed copies of the amended application to the Department upon request. The applicant must prepare and distribute additional copies of the amended application in the manner described in OAR 345-015-0180.

**Statutory/Other Authority:** ORS 469.373 & 469.470

**Statutes/Other Implemented:** ORS 469.350

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**DIVISION 22 - GENERAL STANDARDS FOR SITING FACILITIES**

**345-022-0000 - General Standard of Review**

(1) To issue a site certificate for a proposed facility or to amend a site certificate, the Council shall determine that the preponderance of evidence on the record supports the following conclusions:

- (a) The facility complies with the requirements of the Oregon Energy Facility Siting statutes, ORS 469.300 to 469.570 and 469.590 to 469.619, and the standards adopted by the Council pursuant to 469.501 or the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet as described in section (2);
- (b) Except as provided in OAR 345-022-0030 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the Council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(2) The Council may issue or amend a site certificate for a facility that does not meet one or more of the applicable standards adopted under ORS 469.501 if the Council determines that the overall public benefits of the facility outweigh any adverse effects on a resource or interest protected by the applicable standards the facility does not meet. The Council shall make this balancing determination only when the applicant has shown that the proposed facility cannot meet applicable Council standards or has shown, to the satisfaction of the Council, that there is no reasonable way to meet the applicable Council standards through mitigation or avoidance of any adverse effects on a protected resource or interest. The applicant has the burden to show that the overall public benefits outweigh any adverse effects on a resource or interest, and the burden increases proportionately with the degree of adverse effects on a resource or interest. The Council shall weigh overall public benefits and any adverse effects on a resource or interest as follows:

- (a) The Council shall evaluate any adverse effects on a resource or interest by considering factors including, but not limited to, the following:
  - (A) The uniqueness and significance of the resource or interest that would be affected;
  - (B) The degree to which current or future development may adversely affect the resource or interest, if the proposed facility is not built;
  - (C) Proposed measures to reduce any adverse effects on a resource or interest by avoidance of impacts;
  - (D) The magnitude of any anticipated adverse effects on a resource or interest, taking into account any proposed mitigation.

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(b) The Council shall evaluate overall public benefits by considering factors including, but not limited to, the following:

- (A) The overall environmental effects of the facility, considering both beneficial and adverse environmental effects;
- (B) The degree to which the proposed facility promotes Oregon energy policy as described in ORS 469.010 by demonstrating or advancing new efficiency or renewable technology or by expanding electric generating capacity from renewable energy sources;
- (C) Recommendations from any special advisory group designated by the Department under OAR 345-015-0115;
- (D) Evidence that the benefits are likely to occur only if the proposed facility is built;
- (E) For facilities that are subject to a need standard, evidence underlying the Council's decision on compliance with the rules in OAR 345, Division 23, except that the Council shall not find that need for a facility is sufficient, by itself, to outweigh any adverse effects on a resource or interest affected by the proposed facility.

(3) Notwithstanding section (2) of this rule, the Council shall not apply the balancing determination to the following standards:

- (a) The organizational expertise standard described in OAR 345-022-0010;
- (b) The land use standard described in OAR 345-022-0030;
- (c) The retirement and financial assurance standard described in OAR 345-022-0050;
- (d) The need standards described in OAR 345-023-0005;
- (e) The standards for energy facilities that emit carbon dioxide described in OAR 345-024-0500 through 345-024-0720;
- (f) The protected areas standard described in OAR 345-022-0040, if the statutes or administrative rules governing the management of the protected area prohibit location of the proposed facility in that area; or
- (g) The sage-grouse specific habitat mitigation requirements under the Council's fish and wildlife habitat standard described in OAR 345-022-0060, except that the Council may apply the balancing determination to the requirements of 635-140-0025(2)(a) and (b) for indirect impacts on core and low density sage-grouse habitat, as defined in 635-140-0015, which are caused by transmission lines or pipelines as defined in ORS 469.300(11)(a), and by transmission lines or pipelines that are related or supporting facilities to an energy facility as defined in ORS 469.300(24), proposed to be sited entirely outside of core and low density sage-grouse habitat.

(4) In making determinations regarding compliance with statutes, rules and ordinances normally administered by other agencies or compliance with requirements of the Council statutes if other agencies have special expertise, the Department of Energy shall consult with such other agencies during

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the notice of intent, site certificate application and site certificate amendment processes. Nothing in these rules is intended to interfere with the state's implementation of programs delegated to it by the federal government.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501, ORS 469.503, ORS 469.504, ORS 469.505

**345-022-0010 - Organizational Expertise**

(1) To issue a site certificate, the Council must find that the applicant has the organizational expertise to construct, operate and retire the proposed facility in compliance with Council standards and conditions of the site certificate. To conclude that the applicant has this expertise, the Council must find that the applicant has demonstrated the ability to design, construct and operate the proposed facility in compliance with site certificate conditions and in a manner that protects public health and safety and has demonstrated the ability to restore the site to a useful, non-hazardous condition. The Council may consider the applicant's experience, the applicant's access to technical expertise and the applicant's past performance in constructing, operating and retiring other facilities, including, but not limited to, the number and severity of regulatory citations issued to the applicant.

(2) The Council may base its findings under section (1) on a rebuttable presumption that an applicant has organizational, managerial and technical expertise, if the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program.

(3) If the applicant does not itself obtain a state or local government permit or approval for which the Council would ordinarily determine compliance but instead relies on a permit or approval issued to a third party, the Council, to issue a site certificate, must find that the third party has, or has a reasonable likelihood of obtaining, the necessary permit or approval, and that the applicant has, or has a reasonable likelihood of entering into, a contractual or other arrangement with the third party for access to the resource or service secured by that permit or approval.

(4) If the applicant relies on a permit or approval issued to a third party and the third party does not have the necessary permit or approval at the time the Council issues the site certificate, the Council may issue the site certificate subject to the condition that the certificate holder shall not commence construction or operation as appropriate until the third party has obtained the necessary permit or approval and the applicant has a contract or other arrangement for access to the resource or service secured by that permit or approval.

(5) To assist the Council in determining whether the standard outlined in (1) through (4) has been met, the Applicant must submit:

(a) Information about the applicant and participating persons, including:

(A) The name and address of the applicant including all co-owners of the proposed facility, the name, mailing address, email address and telephone number of the contact person for the

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application, and if there is a contact person other than the applicant, the name, title, mailing address, email address and telephone number of that person;

(B) The contact name, mailing address, email address and telephone number of all participating persons, other than individuals, including but not limited to any parent corporation of the applicant, persons upon whom the applicant will rely for third-party permits or approvals related to the facility, and, if known, other persons upon whom the applicant will rely in meeting any facility standard adopted by the Council;

(C) If the applicant is a corporation:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its incorporation;

(iii) A copy of its articles of incorporation and its authorization for submitting the application; and

(iv) In the case of a corporation not incorporated in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon;

(D) If the applicant is a wholly owned subsidiary of a company, corporation or other business entity, in addition to the information required by paragraph (C), the full name and business address of each of the applicant's full or partial owners;

(E) If the applicant is an association of citizens, a joint venture or a partnership:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application;

(ii) The name, business address and telephone number of each person participating in the association, joint venture or partnership and the percentage interest held by each;

(iii) Proof of registration to do business in Oregon;

(iv) A copy of its articles of association, joint venture agreement or partnership agreement and a list of its members and their cities of residence; and

(v) If there are no articles of association, joint venture agreement or partnership agreement, the applicant must state that fact over the signature of each member;

(F) If the applicant is a public or governmental entity:

(i) The full name, official designation, mailing address, email address and telephone number of the person responsible for submitting the application; and

(ii) Written authorization from the entity's governing body to submit an application;

(G) If the applicant is an individual, the individual's mailing address, email address and telephone number; and

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(H) If the applicant is a limited liability company:

(i) The full name, official designation, mailing address, email address and telephone number of the officer responsible for submitting the application;

(ii) The date and place of its formation;

(iii) A copy of its articles of organization and its authorization for submitting the application; and

(iv) In the case of a limited liability company not registered in Oregon, the name and address of the resident attorney-in-fact in this state and proof of registration to do business in Oregon.

(b) Information about the organizational expertise of the applicant to construct and operate the proposed facility, including:

(A) The applicant's previous experience, if any, in constructing and operating similar facilities;

(B) The qualifications of the applicant's personnel who will be responsible for constructing and operating the facility, to the extent that the identities of such personnel are known when the application is submitted;

(C) The qualifications of any architect, engineer, major component vendor, or prime contractor upon whom the applicant will rely in constructing and operating the facility, to the extent that the identities of such persons are known when the application is submitted;

(D) The past performance of the applicant, including but not limited to the number and severity of any regulatory citations in constructing or operating a facility, type of equipment, or process similar to the proposed facility;

(E) If the applicant has no previous experience in constructing or operating similar facilities and has not identified a prime contractor for construction or operation of the proposed facility, other evidence that the applicant can successfully construct and operate the proposed facility. The applicant may include, as evidence, a warranty that it will, through contracts, secure the necessary expertise;

(F) If the applicant has an ISO 9000 or ISO 14000 certified program and proposes to design, construct and operate the facility according to that program, a description of the program; and

(G) If the applicant relies on mitigation to demonstrate compliance with any standards of Division 22 or 24 of this chapter, evidence that the applicant can successfully complete such proposed mitigation, including past experience with other projects and the qualifications and experience of personnel upon whom the applicant will rely, to the extent that the identities of such persons are known at the date of submittal.

(c) Information about permits needed for construction and operation of the facility, including:

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- (A) Identification of all federal, state and local government permits related to the siting of the proposed facility, a legal citation of the statute, rule or ordinance governing each permit, and the name, mailing address, email address and telephone number of the agency or office responsible for each permit;
- (B) A description of each permit, the reasons the permit is needed for construction or operation of the facility and the applicant's analysis of whether the permit should or should not be included in and governed by the site certificate;
- (C) For any state or local government agency permits, licenses or certificates that are proposed to be included in and governed by the site certificate, evidence to support findings by the Council that construction and operation of the proposed facility will comply with the statutes, rules and standards applicable to the permit. For permits related to wetlands and water rights the applicant may show this evidence in the State and Local Laws and Regulations Exhibit.
- (D) For federally-delegated permit applications, evidence that the responsible agency has received a permit application and the estimated date when the responsible agency will complete its review and issue a permit decision;
- (E) If the applicant relies on a state or local government permit or approval issued to a third party, identification of any such third-party permit and for each:
- (i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;
  - (ii) Evidence that the third party has, or has a reasonable likelihood of obtaining, the necessary permit;
  - (iii) An assessment of the impact of the proposed facility on any permits that a third party has obtained and on which the applicant relies to comply with any applicable Council standard;
- (F) If the applicant relies on a federally-delegated permit issued to a third party, identification of any such third-party permit and for each:
- (i) Evidence that the applicant has, or has a reasonable likelihood of entering into, a contract or other agreement with the third party for access to the resource or service to be secured by that permit;
  - (ii) Evidence that the responsible agency has received a permit application;
  - (iii) The estimated date when the responsible agency will complete its review and issue a permit decision; and
- (G) The applicant's proposed monitoring program, if any, for compliance with permit conditions.



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Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-022-0020 - Structural Standard**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that:

(a) The applicant, through appropriate site-specific study, has adequately characterized the seismic hazard risk of the site.

(b) The applicant can design, engineer, and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site, as identified in subsection (1)(a).

(c) The applicant, through appropriate site-specific study, has adequately characterized the potential geological and soils hazards of the site and its vicinity that could, in the absence of a seismic event, adversely affect, or be aggravated by, the construction and operation of the proposed facility; and

(d) The applicant can design, engineer and construct the facility to avoid dangers to human safety and the environment presented by the hazards identified in subsection (c).

(2) The Council may not impose the Structural Standard in section (1) to approve or deny an application for an energy facility that would produce power from wind, solar or geothermal energy. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may not impose the Structural Standard in section (1) to deny an application for a special criteria facility under OAR345-015-0310. However, the Council may, to the extent it determines appropriate, apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(4) To assist the Council in determining whether the standard outlined in (1) through (3) has been met, the Applicant must submit information from reasonably available sources regarding the geological and soil stability within the analysis area, including:

(a) A geologic report meeting the Oregon State Board of Geologist Examiners geologic report guidelines. Current guidelines must be determined based on consultation with the Oregon Department of Geology and Mineral Industries, as described in ~~paragraph (B) of this~~ subsection (b);

(b) A summary of consultation with the Oregon Department of Geology and Mineral Industries regarding the appropriate methodology and scope of the seismic hazards and geology and soil-related hazards assessments, and the appropriate site-specific geotechnical work that must be performed before submitting the application for the Department to determine that the application is complete;

(c) A description and schedule of site-specific geotechnical work that will be performed before construction for inclusion in the site certificate as conditions;

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(d) For all transmission lines, and for all pipelines that would carry explosive, flammable or hazardous materials, a description of locations along the proposed route where the applicant proposes to perform site specific geotechnical work, including but not limited to railroad crossings, major road crossings, river crossings, dead ends (for transmission lines), corners (for transmission lines), and portions of the proposed route where geologic reconnaissance and other site specific studies provide evidence of existing landslides, marginally stable slopes or potentially liquefiable soils that could be made unstable by the planned construction or experience impacts during the facility's operation;

(e) An assessment of seismic hazards, in accordance with standard-of-practice methods and best practices, that addresses all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection, and an explanation of how the applicant will design, engineer, construct, and operate the facility to avoid dangers to human safety and the environment from these seismic hazards. Furthermore, an explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters. The applicant must include proposed design and engineering features, applicable construction codes, and any monitoring and emergency measures for seismic hazards, including tsunami safety measures if the site is located in the DOGAMI-defined tsunami evacuation zone; and

(f) An assessment of geology and soil-related hazards which could, in the absence of a seismic event, adversely affect or be aggravated by the construction or operation of the facility, in accordance with standard-of-practice methods and best practices, that address all issues relating to the consultation with the Oregon Department of Geology and Mineral Industries described in paragraph (B) of this subsection. An explanation of how the applicant will design, engineer, construct and operate the facility to adequately avoid dangers to human safety and the environment presented by these hazards, as well as:

(A) An explanation of how the applicant will design, engineer, construct and operate the facility to integrate disaster resilience design to ensure recovery of operations after major disasters; and

(B) An assessment of future climate conditions for the expected life span of the proposed facility and the potential impacts of those conditions on the proposed facility.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-022-0022 - Soil Protection**

(1) To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in a significant adverse impact to soils including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills.

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(2) To assist the Council in determining whether the standard outlined in (1) has been met, the Applicant must submit, ~~the Applicant must submit:~~

(a) A materials analysis, including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

(b) Information from reasonably available sources regarding soil conditions and uses in the analysis area, providing evidence to support findings by the Council as required by OAR 345-022-0022, including:

(A) Identification and description of the major soil types in the analysis area;

(B) Identification and description of current land uses in the analysis area, such as growing crops, that require or depend on productive soils;

(C) Identification and assessment of significant potential adverse impact to soils from construction, operation and retirement of the facility, including, but not limited to, erosion and chemical factors such as salt deposition from cooling towers, land application of liquid effluent, and chemical spills;

(D) A description of any measures the applicant proposes to avoid or mitigate adverse impact to soils; and

(E) The applicant's proposed monitoring program, if any, for adverse impact to soils during construction and operation.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

**345-022-0030 - Land Use**

(1) To issue a site certificate, the Council must find that the proposed facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission.

(2) The Council shall find that a proposed facility complies with section (1) if:

(a) The applicant elects to obtain local land use approvals under ORS 469.504(1)(a) and the Council finds that the facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The applicant elects to obtain a Council determination under ORS 469.504(1)(b) and the Council determines that:

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(A) The proposed facility complies with applicable substantive criteria as described in section (3) and the facility complies with any Land Conservation and Development Commission administrative rules and goals and any land use statutes directly applicable to the facility under ORS 197.646(3);

(B) For a proposed facility that does not comply with one or more of the applicable substantive criteria as described in section (3), the facility otherwise complies with the statewide planning goals or an exception to any applicable statewide planning goal is justified under section (4); or

(C) For a proposed facility that the Council decides, under sections (3) or (6), to evaluate against the statewide planning goals, the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under section (4).

(3) As used in this rule, the “applicable substantive criteria” are criteria from the affected local government’s acknowledged comprehensive plan and land use ordinances that are required by the statewide planning goals and that are in effect on the date the applicant submits the application. If the special advisory group recommends applicable substantive criteria, as described under OAR 345-015-0180, the Council shall apply them. If the special advisory group does not recommend applicable substantive criteria, the Council shall decide either to make its own determination of the applicable substantive criteria and apply them or to evaluate the proposed facility against the statewide planning goals.

(4) The Council may find goal compliance for a proposed facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to the exception process, the Council may take an exception to a goal if the Council finds:

(a) The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goal should not apply;

(B) The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the Council applicable to the siting of the proposed facility; and

(C) The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.

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(5) If the Council finds that applicable substantive local criteria and applicable statutes and state administrative rules would impose conflicting requirements, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

(6) If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(11)(a)(C) to (E) or for a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the Council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300(11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the Council shall review the recommended criteria and decide whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making the decision, the Council shall consult with the special advisory group, and shall consider:

- (a) The number of jurisdictions and zones in question;
- (b) The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and
- (c) The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.

(7) To assist the Council in determining whether the standard outlined in (1) through (6) has been met, the Applicant must submit:

(a) Information about the proposed facility's compliance with the statewide planning goals adopted by the Land Conservation and Development Commission, providing evidence to support a finding by the Council as required by OAR 345-022-0030.

(b) The applicant must state whether the applicant elects to address the Council's land use standard by obtaining local land use approvals under ORS 469.504(1)(a) or by obtaining a Council determination under ORS 469.504(1)(b). An applicant may elect different processes for an energy facility and a related or supporting facility but may not otherwise combine the two processes. Once the applicant has made an election, the applicant may not amend the application to make a different election. In this subsection, "affected local government" means a local government that has land use jurisdiction over any part of the proposed site of the facility. In the application, the applicant must:

- (A) Include a map showing the comprehensive plan designations and land use zones in the analysis area;
- (B) If the applicant elects to obtain local land use approvals:
  - (i) Identify the affected local governments from which land use approvals will be sought;

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- (ii) Describe the land use approvals required in order to satisfy the Council's land use standard;
  - (iii) Describe the status of the applicant's application for each land use approval; and
  - (iv) Provide an estimate of time for issuance of local land use approvals.
- (C) If the applicant elects to obtain a Council determination on land use:
- (i) Identify the affected local governments;
  - (ii) Identify the applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and that are in effect on the date the application is submitted and describe how the proposed facility complies with those criteria;
  - (iii) Identify all Land Conservation and Development Commission administrative rules, statewide planning goals and land use statutes directly applicable to the facility under ORS 197.646(3) and describe how the proposed facility complies with those rules, goals and statutes;
  - (iv) If the proposed facility might not comply with all applicable substantive criteria, identify the applicable statewide planning goals and describe how the proposed facility complies with those goals; and
  - (v) If the proposed facility might not comply with all applicable substantive criteria or applicable statewide planning goals, describe why an exception to any applicable statewide planning goal is justified, providing evidence to support all findings by the Council required under ORS 469.504(2).
- (D) If the proposed facility will be located on federal land:
- (i) Identify the applicable land management plan adopted by the federal agency with jurisdiction over the federal land;
  - (ii) Explain any differences between state or local land use requirements and federal land management requirements;
  - (iii) Describe how the proposed facility complies with the applicable federal land management plan;
  - (iv) Describe any federal land use approvals required for the proposed facility and the status of application for each required federal land use approval;
  - (v) Provide an estimate of time for issuance of federal land use approvals; and
  - (vi) If federal law or the land management plan conflicts with any applicable state or local land use requirements, explain the differences in the conflicting requirements, state whether the applicant requests Council waiver of the land use standard described under paragraph (B) or (C) of this subsection and explain the basis for a waiver.

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(c) A materials analysis, including:

- (A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;
- (B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and
- (C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.504

**345-022-0040 - Protected Areas**

(1) To issue a site certificate, the Council must find:

- (a) The proposed facility will not be located within the boundaries of a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363;
- (b) The design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to a protected area designated on or before the date the application for site certificate or request for amendment was determined to be complete under OAR 345-015-0190 or 345-027-0363.

(2) Notwithstanding section (1)(a), the Council may issue a site certificate for:

- (a) A facility that includes a transmission line, natural gas pipeline, or water pipeline located in a protected area, if the Council determines that other reasonable alternative routes or sites have been studied and that the proposed route or site is likely to result in fewer adverse impacts to resources or interests protected by Council standards; or
- (b) Surface facilities related to an underground gas storage reservoir that have pipelines and injection, withdrawal or monitoring wells and individual wellhead equipment and pumps located in a protected area, if the Council determines that other alternative routes or sites have been studied and are unsuitable.

(3) The provisions of section (1) do not apply to:

- (a) A transmission line routed within 500 feet of an existing utility right-of-way containing at least one transmission line with a voltage rating of 115 kilovolts or higher; or
- (b) A natural gas pipeline routed within 500 feet of an existing utility right of way containing at least one natural gas pipeline of 8 inches or greater diameter that is operated at a pressure of 125 psig.

~~(4) The Council shall apply the version of this rule adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the~~

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~~effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.~~

**Commented [TJ16]:** Removing as no longer relevant given the passage of time.

(45) To assist the Council in determining whether the standard outlined in (1) through (4) has been met, the Applicant must submit information about the potential impacts of the proposed facility on protected areas in the analysis area, providing evidence to support a finding by the Council as required by this rule, including:

(a) A list of all protected areas within the analysis area identifying:

(A) The distance and direction of the protected area from the proposed facility

(B) The basis for protection by reference to a specific subsection of OAR 345-001-0010(26); and

(C) The name, mailing address, phone number, and email address of the land management agency or organization with jurisdiction over the protected area.

(b) A map showing the location of the proposed facility in relation to the protected areas;

(c) A description of significant potential impacts of the proposed facility, if any, on the protected areas including, but not limited to, potential impacts such as:

(A) Noise resulting from facility construction or operation;

(B) Increased traffic resulting from facility construction or operation;

(C) Water use during facility construction or operation;

(D) Wastewater disposal resulting from facility construction or operation;

(E) Visual impacts of facility structures or plumes, including, but not limited to, changes in landscape character or quality; and

(F) Visual impacts from air emissions resulting from facility construction or operation, including, but not limited to, impacts on Class 1 Areas as described in OAR 340-204-0050.

(d) A materials analysis, including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501



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**345-022-0050 - Retirement and Financial Assurance**

**Commented [TJ17]:** Clean up flow and remove outline errors.

(1) To issue a site certificate, the Council must find that:

~~(a)~~ The site, taking into account mitigation, can be restored adequately to a useful, non-hazardous condition following permanent cessation of construction or operation of the facility.

~~(2) To assist the Council in determining whether the standard outlined in (1) has been met, the Applicant must submit information about site restoration, providing evidence to support a finding by the Council as required by this rule. The applicant must include:~~

~~(a) The estimated useful life of the proposed facility;~~

~~(b) Specific actions and tasks to restore the site to a useful, non-hazardous condition;~~

~~(c) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition;~~

~~(d) A discussion and justification of the methods and assumptions used to estimate site restoration costs; and~~

~~(e) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.~~

~~(b)~~ The applicant has a reasonable likelihood of obtaining 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.

(2) To assist the Council in determining whether the standard outlined in ~~(1)~~(4a) has been met, the Applicant must submit information about site restoration, providing evidence to support a finding by the Council as required by this rule. The applicant must include:

(a) The estimated useful life of the proposed facility;

(b) Specific actions and tasks to restore the site to a useful, non-hazardous condition;

(c) An estimate, in current dollars, of the total and unit costs of restoring the site to a useful, non-hazardous condition;

(d) A discussion and justification of the methods and assumptions used to estimate site restoration costs; and

(e) For facilities that might produce site contamination by hazardous materials, a proposed monitoring plan, such as periodic environmental site assessment and reporting, or an explanation why a monitoring plan is unnecessary.

(34) To assist the Council in determining whether the standard outlined in ~~(3)~~(1)(b) has been met, the Applicant must submit information:

(a) Information about the applicant's financial capability, providing evidence to support a finding by the Council as required by OAR 345-022-0050(2). Nothing in this section rule requires the disclosure of

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information or records protected from public disclosure by any provision of state or federal law. The applicant must include:

(A) An opinion or opinions from legal counsel stating that, to counsel's best knowledge, the applicant has the legal authority to construct and operate the facility without violating its bond indenture provisions, articles of incorporation, common stock covenants, or similar agreements;

(B) The type and amount of the applicant's proposed bond or letter of credit to restore the site to a useful, non-hazardous condition~~meet the requirements of OAR 345-022-0050~~; and

(C) Evidence that the applicant has a reasonable likelihood of obtaining the proposed bond or letter of credit in the amount proposed in paragraph (B), before beginning construction of the facility.

(b) A materials analysis, including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

**345-022-0060 - Fish and Wildlife Habitat**

To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are consistent with:

(1) The general fish and wildlife habitat mitigation goals and standards of OAR 635-415-0025(1) through (6) in effect as of ~~February-September 124, 2025~~<sup>17</sup>; and

(2) For energy facilities that impact sage-grouse habitat, the sage-grouse specific habitat mitigation requirements of the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-415-0025(7) and OAR 635-140-0000 through -0025 in effect as of ~~February 24, 2017~~<sup>September 1, 2025</sup>.

(3) To assist the Council in determining whether the standard outlined in (1) through (2) has been met, the Applicant must submit information about the fish and wildlife habitat and the fish and wildlife species, other than the species addressed in OAR-022-0070(3) (the Threatened and Endangered Species Exhibit) that could be affected by the proposed facility, providing evidence to support a finding by the Council as required by this rule. The applicant must include:

(a) A description of biological and botanical surveys performed that support the information in this exhibit, including a discussion of the timing and scope of each survey;

(b) Identification of all fish and wildlife habitat in the analysis area, classified by the general fish and wildlife habitat categories as set forth in OAR 635-415-0025 and the sage-grouse specific habitats

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described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025 (core, low density, and general habitats), and a description of the characteristics and condition of that habitat in the analysis area, including a table of the areas of permanent disturbance and temporary disturbance (in acres) in each habitat category and subtype;

(c) A map showing the locations of the habitat identified in (b);

(d) Based on consultation with the Oregon Department of Fish and Wildlife (ODFW) and appropriate field study and literature review, identification of all State Sensitive Species that might be present in the analysis area and a discussion of any site-specific issues of concern to ODFW;

(e) A baseline survey of the use of habitat in the analysis area by species identified in (d) performed according to a protocol approved by the Department and ODFW;

(f) A description of the nature, extent and duration of potential adverse impacts on the habitat identified in (b) and species identified in (d) that could result from construction, operation and retirement of the proposed facility;

(g) A description of any measures proposed by the applicant to avoid, reduce, or mitigate the potential adverse impacts described in (f) in accordance with the general fish and wildlife habitat mitigation goals and standards described in OAR 635-415-0025 and a description of any measures proposed by the applicant to avoid, minimize, and provide compensatory mitigation for the potential adverse impacts described in (f) in accordance with the sage-grouse specific habitat mitigation requirements described in the Greater Sage-Grouse Conservation Strategy for Oregon at OAR 635-140-0000 through 635-140-0025, and a discussion of how the proposed measures would achieve those goals and requirements; and

(h) A description of the applicant's proposed monitoring plans to evaluate the success of the measures described in (g).

Stat. Authority: ORS 469.470, ORS 469.501

Stat. Implemented: ORS 469.501

**345-022-0070 - Threatened and Endangered Species**

To issue a site certificate, the Council, after consultation with appropriate state agencies, must find that:

(1) For plant species that the Oregon Department of Agriculture has listed as threatened or endangered under ORS 564.105(2), the design, construction and operation of the proposed facility, taking into account mitigation:

(a) Are consistent with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3); or

(b) If the Oregon Department of Agriculture has not adopted a protection and conservation program, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

(2) For wildlife species that the Oregon Fish and Wildlife Commission has listed as threatened or endangered under ORS 496.172(2), the design, construction and operation of the proposed facility, taking

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into account mitigation, are not likely to cause a significant reduction in the likelihood of survival or recovery of the species.

(3) To assist the Council in determining whether the standard outlined in (1) through (2) has been met, the Applicant must submit information about threatened and endangered plant and animal species that may be affected by the proposed facility, providing evidence to support a finding by the Council as required by OAR 345-022-0070. The applicant must include:

(a) Based on appropriate literature and field study, identification of all threatened or endangered species listed under ORS 496.172(2) and ORS 564.105(2) that may be affected by the proposed facility;

(b) For each species identified under (a), a description of the nature, extent, locations and timing of its occurrence in the analysis area and how the facility might adversely affect it;

(c) For each species identified under (a), a description of measures proposed by the applicant, if any, to avoid or reduce adverse impact;

(d) For each plant species identified under (a), a description of how the proposed facility, including any mitigation measures, complies with the protection and conservation program, if any, that the Oregon Department of Agriculture has adopted under ORS 564.105(3);

(e) For each plant species identified under paragraph (a), if the Oregon Department of Agriculture has not adopted a protection and conservation program under ORS 564.105(3), a description of significant potential impacts of the proposed facility on the continued existence of the species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species;

(f) For each animal species identified under (a), a description of significant potential impacts of the proposed facility on the continued existence of such species and on the critical habitat of such species and evidence that the proposed facility, including any mitigation measures, is not likely to cause a significant reduction in the likelihood of survival or recovery of the species; and

(g) The applicant's proposed monitoring program, if any, for impacts to threatened and endangered species.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-022-0080 - Scenic Resources**

(1) To issue a site certificate, the Council must find that the design, construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse visual impacts to significant or important scenic resources.

(2) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). In issuing such a site certificate, the Council may impose conditions of approval to minimize the potential significant adverse visual impacts from the design, construction, and operation of the facility on significant or important scenic resources.

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(3) A scenic resource is considered to be significant or important if it is identified as significant or important in a current land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency.

~~(4) The Council shall apply the version of this rule adopted under Administrative Order EFSC 1-2007, filed and effective May 15, 2007, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.~~

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~~(4)~~ To assist the Council in determining whether the standard outlined in (1) through (4) has been met, the Applicant must submit an analysis of potential visual impacts of the proposed facility, if any, on significant or important scenic resources within the analysis area, providing evidence to support a finding by the Council under OAR 345-022-0080, including:

- (a) An inventory of scenic resources identified as significant or important in a land use management plan adopted by one or more local, tribal, state, regional, or federal government or agency applicable to lands within the analysis area for scenic resources. The applicant must provide a list of the land management plans reviewed in developing the inventory and a copy of the relevant portion of the plans;
- (b) A map or maps showing the location of the scenic resources described under subsection (a), in relation to the site of the proposed facility;
- (c) A description of the methodology the applicant used to identify and assess potential visual impacts to the scenic resources identified in subsection (a);
- (d) Identification of potential visual impacts to the scenic resources identified in subsection (a), including, but not limited to:
  - (A) Loss of vegetation or alteration of the landscape as a result of construction or operation;
  - (B) Visual impacts of facility structures or plumes, including but not limited to, changes in landscape character or quality; and
  - (C) Loss of visibility due to air emissions or other pollution resulting from the construction or operation of the proposed facility;
- (e) An assessment of the significance of the visual impacts described under subsection (d);
- (f) A description of the measures the applicant proposes to avoid, reduce or otherwise mitigate any potential significant adverse visual impacts; and
- (g) The applicant's proposed monitoring program, if any, for impacts to scenic resources.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

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**345-022-0090 - Historic, Cultural and Archaeological Resources**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impacts to:

(a) Historic, cultural or archaeological resources that have been listed on, or would likely be listed on the National Register of Historic Places;

(b) For a facility on private land, archaeological objects, as defined in ORS 358.905(1)(a), or archaeological sites, as defined in ORS 358.905(1)(c); and

(c) For a facility on public land, archaeological sites, as defined in ORS 358.905(1)(c).

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(4) To assist the Council in determining whether the standard outlined in (1) through (3) has been met, the Applicant must submit information about historic, cultural and archaeological resources. Information concerning the location of archaeological sites or objects may be exempt from public disclosure under ORS 192.345(11). The applicant must submit such information separately, clearly marked as “confidential,” and shall request that the Department and the Council keep the information confidential to the extent permitted by law. The applicant must include information in this exhibit or in confidential submissions providing evidence to support a finding by the Council as required by OAR 345-022-0090, including:

(a) Historic and cultural resources within the analysis area that have been listed, or would likely be eligible for listing, on the National Register of Historic Places;

(b) For private lands, archaeological objects, as defined in ORS 358.905(1)(a), and archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(c) For public lands, archaeological sites, as defined in ORS 358.905(1)(c), within the analysis area;

(d) The significant potential impacts, if any, of the construction, operation and retirement of the proposed facility on the resources described in subsections (a), (b), and (c) and a plan for protection of those resources that includes at least the following:

(A) A description of any discovery measures, such as surveys, inventories, and limited subsurface testing work, recommended by the State Historic Preservation Officer or the National Park Service of the U.S. Department of Interior for the purpose of locating, identifying and assessing the significance of resources listed in subsections (a), (b), and (c);

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(B) The results of the discovery measures described in paragraph (A), together with an explanation by the applicant of any variations from the survey, inventory, or testing recommended;

(C) A list of measures to prevent destruction of the resources identified during surveys, inventories and subsurface testing referred to in paragraph (A) or discovered during construction; and

(e) The applicant's proposed monitoring program, if any, for impacts to historic, cultural and archaeological resources during construction and operation of the proposed facility.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-022-0100 - Recreation**

(1) To issue a site certificate, the Council must find that the design, construction and operation of a facility, taking into account mitigation, are not likely to result in a significant adverse impact to important recreational opportunities.

(2) The Council must consider the following factors in judging the importance of a recreational opportunity:

(a) Any special designation or management of the location;

(b) The degree of demand;

(c) Any outstanding or unusual qualities;

(d) The availability or rareness; and

(e) The irreplaceability or irretrievability of the opportunity.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). In issuing such a site certificate, the Council may impose conditions of approval to minimize the potential significant adverse impacts from the design, construction, and operation of the facility on important recreational opportunities.

~~(4) The Council must apply the version of this rule adopted under Administrative Order EFSC 1-2002, filed and effective April 3, 2002, to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 before the effective date of this rule. Nothing in this section waives the obligations of the certificate holder and Council to abide by local ordinances, state law, and other rules of the Council for the construction and operation of energy facilities in effect on the date the site certificate or amended site certificate is executed.~~

~~(4)~~ To assist the Council in determining whether the standard outlined in (1) through ~~(4)~~ has been met, the Applicant must submit information about the impacts the proposed facility would have on important recreational opportunities in the analysis area, providing evidence to support a finding by the Council as required by OAR 345-022-0100, including:

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- (a) A description of the recreational opportunities in the analysis area that includes information on the factors listed in OAR 345-022-0100(1) as a basis for identifying important recreational opportunities;
- (b) A description of any potential adverse impacts to the important opportunities identified in subsection (a) including, but not limited to:
  - (A) Direct or indirect loss of a recreational opportunity as a result of facility construction or operation;
  - (B) Noise resulting from facility construction or operation;
  - (C) Increased traffic resulting from facility construction or operation; and
  - (D) Visual impacts of facility structures or plumes, including but not limited to, changes in landscape character or quality.
- (c) An evaluation of the significance of the potential adverse impacts identified under subsection (b);
- (d) A description of any measures the applicant proposes to avoid, reduce or otherwise mitigate any significant adverse impacts identified in subsection (b);
- (e) A map of the analysis area showing the locations of important recreational opportunities identified in subsection (a); and
- (f) The applicant's proposed monitoring program, if any, for impacts to important recreational opportunities.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-022-0110 - Public Services**

- (1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that the construction and operation of the facility, taking into account mitigation, are not likely to result in significant adverse impact to the ability of public and private providers within the analysis area described in the project order to provide: sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.
- (2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.
- (3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.
- (4) To assist the Council in determining whether the standard outlined in (1) through (3) has been met, the Applicant must submit:



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(a) Information about significant potential adverse impacts of construction and operation of the proposed facility on the ability of public and private providers in the analysis area to provide the services listed in OAR 345-022-0110, providing evidence to support a finding by the Council as required by OAR 345-022-0110. The applicant must include:

- (A) The important assumptions the applicant used to evaluate potential impacts;
- (B) Identification of the public and private providers in the analysis area that would likely be affected;
- (C) A description of any likely adverse impact to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110;
- (D) Evidence that adverse impacts described in (C) are not likely to be significant, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and
- (E) The applicant's proposed monitoring program, if any, for impacts to the ability of the providers identified in (B) to provide the services listed in OAR 345-022-0110.

(b) A materials analysis, including:

- (A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;
- (B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and
- (C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-022-0115 - Wildfire Prevention and Risk Mitigation**

(1) To issue a site certificate, the Council must find, by way of supporting evidence from the applicant, that:

(a) The applicant has adequately characterized wildfire risk within the analysis area using current data from reputable sources, by identifying:

- (A) Baseline wildfire risk, based on factors that are expected to remain fixed for multiple years, including but not limited to topography, vegetation, existing infrastructure, and climate;
- (B) Seasonal wildfire risk, based on factors that are expected to remain fixed for multiple months but may be dynamic throughout the year, including but not limited to, cumulative precipitation and fuel moisture content;
- (C) Areas subject to a heightened risk of wildfire, based on the information provided under paragraphs (A) and (B) of this subsection;

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(D) High-fire consequence areas, including but not limited to areas containing residences, critical infrastructure, recreation opportunities, timber and agricultural resources, and fire-sensitive wildlife habitat; and

(E) All data sources and methods used to model and identify risks and areas under paragraphs (A) through (D) of this subsection.

(b) That the proposed facility will be designed, constructed, and operated in compliance with a Wildfire Mitigation Plan approved by the Council. The Wildfire Mitigation Plan must, at a minimum:

(A) Identify areas within the site boundary that are subject to a heightened risk of wildfire, using current data from reputable sources, and discuss data and methods used in the analysis;

(B) Describe the procedures, standards, and time frames that the applicant will use to inspect facility components and manage vegetation in the areas identified under subsection (a) of this section;

(C) Identify preventative actions and programs that the applicant will carry out to minimize the risk of facility components causing wildfire, including procedures that will be used to adjust operations during periods of heightened wildfire risk;

(D) Identify procedures to minimize risks to public health and safety, the health and safety of responders, and damages to resources protected by Council standards in the event that a wildfire occurs at the facility site, regardless of ignition source; and

(E) Describe methods the applicant will use to ensure that updates of the plan incorporate best practices and emerging technologies to minimize and mitigate wildfire risk.

(2) The Council may issue a site certificate without making the findings under section (1) if it finds that the facility is subject to a Wildfire Protection Plan that has been approved in compliance with OAR chapter 860, division 300.

(3) This Standard does not apply to the review of any Application for Site Certificate or Request for Amendment that was determined to be complete under OAR 345-015-0190 or 345-027-0363 on or before the effective date of this rule.

Statutory/Other Authority: ORS 469.470 & 469.501  
Statutes/Other Implemented: 469.501

**345-022-0120 - Waste Minimization**

(1) Except for facilities described in sections (2) and (3), to issue a site certificate, the Council must find that, to the extent reasonably practicable:

(a) The applicant's solid waste and wastewater plans are likely to minimize generation of solid waste and wastewater in the construction and operation of the facility, and when solid waste or wastewater is generated, to result in recycling and reuse of such wastes;

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(b) The applicant's plans to manage the accumulation, storage, disposal and transportation of waste generated by the construction and operation of the facility are likely to result in minimal adverse impact on surrounding and adjacent areas.

(2) The Council may issue a site certificate for a facility that would produce power from wind, solar or geothermal energy without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(3) The Council may issue a site certificate for a special criteria facility under OAR 345-015-0310 without making the findings described in section (1). However, the Council may apply the requirements of section (1) to impose conditions on a site certificate issued for such a facility.

(4) To assist the Council in determining whether the standard outlined in (1) through (3) has been met, the Applicant must submit:

(a) Information about the applicant's plans to minimize the generation of solid waste and wastewater and to recycle or reuse solid waste and wastewater, providing evidence to support a finding by the Council as required by OAR 345-022-0120. The applicant must include:

(A) A description of the major types of solid waste and wastewater that construction, operation and retirement of the facility are likely to generate, including an estimate of the amount of solid waste and wastewater;

(B) A description of any structures, systems and equipment for management and disposal of solid waste, wastewater and storm water;

(C) A discussion of any actions or restrictions proposed by the applicant to reduce consumptive water use during construction and operation of the facility;

(D) The applicant's plans to minimize, recycle or reuse the solid waste and wastewater described in (A);

(E) A description of any adverse impact on surrounding and adjacent areas from the accumulation, storage, disposal and transportation of solid waste, wastewater and stormwater during construction and operation of the facility;

(F) Evidence that adverse impacts described in (E) are likely to be minimal, taking into account any measures the applicant proposes to avoid, reduce or otherwise mitigate the impacts; and

(G) The applicant's proposed monitoring program, if any, for minimization of solid waste and wastewater impacts.

(b) A materials analysis, including:

(A) An inventory of substantial quantities of industrial materials flowing into and out of the proposed facility during construction and operation;

(B) The applicant's plans to manage hazardous substances during construction and operation, including measures to prevent and contain spills; and

(C) The applicant's plans to manage non-hazardous waste materials during construction and operation.

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Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

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**345-022-0160 - State and Local Laws and Regulations**

To assist the Council in determining compliance with all state and local laws and regulations applicable to EFSC and the siting process, submit the following, as directed by the project order described in OAR 345-015-0160:

**(1) Regarding Water**

(a) Information based on literature and field study, as appropriate, about waters of this state, as defined under ORS 196.800, including:

(A) A description of all areas within the site boundary that might be waters of this state and a map showing the location of these features;

(B) An analysis of whether construction or operation of the proposed facility would adversely affect any waters of this state;

(C) A description of the significance of potential adverse impacts to each feature identified in (A), including the nature and amount of material the applicant would remove from or place in the waters analyzed in (B);

(D) If the proposed facility would not need a removal-fill authorization, an explanation of why no such authorization is required for the construction and operation of the proposed facility;

(E) If the proposed facility would need a removal-fill authorization, information to support a determination by the Council that the Oregon Department of State Lands should issue a removal-fill permit, including information in the form required by the Department of State Lands under OAR Chapter 141 Division 85; and

(F) A description of proposed actions to mitigate adverse impacts to the features identified in (A) and the applicant's proposed monitoring program, if any, for such impacts.

(b) Information about anticipated water use during construction and operation of the proposed facility. The applicant must include:

(A) A description of the use of water during construction and operation of the proposed facility;

(B) A description of each source of water and the applicant's estimate of the amount of water the facility will need during construction and during operation from each source under annual average and worst-case conditions;

(C) A description of each avenue of water loss or output from the facility site for the uses described in (A), the applicant's estimate of the amount of water in each avenue under annual average and worst-case conditions and the final disposition of all wastewater;

(D) For thermal power plants, a water balance diagram, including the source of cooling water and the estimated consumptive use of cooling water during operation, based on annual average conditions;

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(E) If the proposed facility would not need a groundwater permit, a surface water permit or a water right transfer, an explanation of why no such permit or transfer is required for the construction and operation of the proposed facility;

(F) If the proposed facility would need a groundwater permit, a surface water permit or a water right transfer, information to support a determination by the Council that the Water Resources Department should issue the permit or transfer of a water use, including information in the form required by the Water Resources Department under OAR Chapter 690, Divisions 310 and 380; and

(G) A description of proposed actions to mitigate the adverse impacts of water use on affected resources.

(2) Information about noise generated by operation of the proposed facility, providing evidence to support a finding by the Council that the proposed facility complies with the Oregon Department of Environmental Quality's noise control standards in OAR 340-035-0035, including:

- (a) Predicted noise levels resulting from construction and operation of the proposed facility;
- (b) An analysis of the proposed facility's compliance with the applicable noise regulations in OAR 340-035-0035, including a discussion and justification of the methods and assumptions used in the analysis;
- (c) Any measures the applicant proposes to reduce noise levels or noise impacts or to address public complaints about noise from the facility;
- (d) Any measures the applicant proposes to monitor noise generated by operation of the facility; and
- (e) A list of the names and addresses of all owners of noise sensitive property, as defined in OAR 340-035-0015, within one mile of the proposed site boundary.

(3) If the proposed facility has an evaporative cooling tower, information about the cooling tower plume, including:

- (a) The predicted size and frequency of occurrence of a visible plume and an assessment of its visual impact;
- (b) The predicted locations and frequency of occurrence of ice formation on surfaces and ground level fogging and an assessment of significant potential adverse impacts, including, but not limited to, traffic hazards on public roads;
- (c) The predicted locations and rates of deposition of solids released from the cooling tower (cooling tower drift) and an assessment of significant potential adverse impacts to soils, vegetation and other land uses;
- (d) Any measures the applicant proposes to reduce adverse impacts from the cooling tower plume or drift;
- (e) The assumptions and methods used in the plume analysis; and
- (f) The applicant's proposed monitoring program, if any, for cooling tower plume impacts.

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Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

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**DIVISION 23 - NEED STANDARD FOR NONGENERATING FACILITIES**

**345-023-0005 - Need for a Facility**

This division applies to nongenerating facilities as defined in ORS 469.503(2)(e), except nongenerating facilities that are related or supporting facilities. To issue a site certificate for a facility described in sections (1) through (3), the Council must find that the applicant has demonstrated the need for the facility. The Council may adopt need standards for other nongenerating facilities. This division describes the methods the applicant shall use to demonstrate need. In accordance with ORS 469.501(1)(L), the Council has no standard requiring a showing of need or cost-effectiveness for generating facilities. The applicant shall demonstrate need:

- (1) For electric transmission lines under the least-cost plan rule, OAR 345-023-0020(1), or the system reliability rule for transmission lines, OAR 345-023-0030, or by demonstrating that the transmission line is proposed to be located within a "National Interest Electric Transmission Corridor" designated by the U.S. Department of Energy under Section 216 of the Federal Power Act;
- (2) For natural gas pipelines under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for natural gas pipelines, OAR 345-023-0040;
- (3) For storage facilities for liquefied natural gas with storage capacity of three million gallons or greater under the least-cost plan rule, OAR 345-023-0020(1), or the economically reasonable rule for liquefied natural gas storage facilities, OAR 345-023-0040.
- (4) If the proposed facility is a non-generating facility for which the applicant must demonstrate need under OAR 345-023-0005, the applicant must submit information about the need for the facility, providing evidence to support a finding by the Council as required by (1) through (3), including identification of the rule in Division 23 of this chapter under which the applicant chooses to demonstrate need.

Statutory/Other Authority: ORS 469.470 & 469.501  
Statutes/Other Implemented: ORS 469.501 & 469.503

**345-023-0020 - Least-Cost Plan Rule**

(1) The Council shall find that the applicant has demonstrated need for the facility if the capacity of the proposed facility or a facility substantially similar to the proposed facility, as defined by OAR 345-001-0010, is identified for acquisition in the short-term plan of action of an energy resource plan or combination of plans adopted, approved or acknowledged by a municipal utility, people's utility district, electrical cooperative, other governmental body that makes or implements energy policy, or electric transmission system operator that has a governance that is independent of owners and users of the system and if the energy resource plan or combination of plans:

- (a) Includes a range of forecasts of firm energy and capacity demands and committed firm energy and capacity resources, as defined in OAR 345-001-0010, over the planning period using a reasonable method of forecasting;



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- (b) Considers and evaluates a reasonable range of practicable demand and supply resource alternatives over the planning period on a consistent and comparable basis. Practicable alternatives are those that are demonstrated to be technically and economically achievable within the time frame considered to meet potential energy or capacity needs;
- (c) Uses financial assumptions, including discount rates and treatment of resource lifetimes and end effects that are consistent and comparable between resources;
- (d) For electric transmission line facilities, considers alternatives that include but are not limited to:
  - (A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (B) Construction and operation of electric generating facilities as a substitute for the proposed facility;
  - (C) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility; and
  - (D) Adding standard sized smaller or larger transmission line capacity;
- (e) For natural gas pipeline facilities, considers alternatives that include but are not limited to:
  - (A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (B) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;
  - (C) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and
  - (D) Adding standard sized smaller or larger pipeline capacity;
- (f) For storage facilities for liquefied natural gas, considers alternatives that include, but are not limited, to:
  - (A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;
  - (B) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;
  - (C) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility; and
  - (D) Adding smaller or larger liquefied natural gas storage capacity;
- (g) Includes the development and evaluation of alternative resource plans to meet forecast energy or capacity needs over the planning time period;
- (h) Analyzes the uncertainties associated with alternative resource plans or strategies. The range of uncertainties about the future must be sufficient to test the performance of each alternative resource

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strategy. The criteria used to evaluate performance of alternative resource strategies must be broad enough to judge the merits of a strategy from a societal perspective;

(i) Aims to minimize long-run total resource costs while taking into account reliability, compatibility with the energy system, strategic flexibility, as defined in OAR 345-001-0010, and external environmental costs and benefits. The value provided by reliability, compatibility with the energy system, strategic flexibility and external environmental costs and benefits may justify actions that increase the total resource cost of the plan. The Council finds that the goals of a least-cost plan are to minimize expected total resource costs for society and the variance in those costs due to uncertainty about future conditions;

(j) Includes a short-term plan of action;

(k) Is consistent with the energy policy of the state as set forth in ORS 469.010. An energy resource plan is consistent with the energy policy of the state if its short-term plan of action describes actions that must be taken within a two to three year time frame to provide a reasonable assurance that future energy or capacity demands can be met while aiming to minimize total resource cost; and

(L) Was adopted, approved or acknowledged after a full, fair and open public participation and comment process. Such a process is one in which the public has reasonable and timely access to the decision-maker and to information and records legally available to the public.

(2) The Council shall find that a least-cost plan meets the criteria of an energy resource plan described in section (1) if the Public Utility Commission of Oregon has acknowledged the least cost plan.

(3) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, they must submit the following additional information in their application:

(a) Identification of the energy resource plan or combination of plans on which the applicant relies to demonstrate need;

(b) The name, address and telephone number of the person responsible for preparing each energy resource plan identified in subsection (a);

(c) For each plan reviewed by a regulatory agency, the agency's findings and final decision, including:

(A) For a plan reviewed by the Oregon Public Utility Commission, the acknowledgment order; or

(B) For a plan reviewed by any other regulatory agency, a summary of the public process including evidence to support a finding by the Council that the agency's decision process included a full, fair and open public participation and comment process as required by OAR 345-023-0020(1)(L), and the location of and means by which the Department can obtain a complete copy of the public record;

(d) Identification of the sections of the short-term action plan that call for the acquisition of the proposed facility or, as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility;

(e) The attributes of the proposed facility that qualify it as one called for in the short-term action plan of the energy resource plan or combination of plans identified in subparagraph (i) or a demonstration that,

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as defined in OAR 345-001-0010, a facility substantially similar to the proposed facility is called for in the plan.

(4) If the applicant chooses to demonstrate need for the proposed facility under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, they must submit the following additional information:

(a) The names, addresses and telephone numbers of members of any public advisory groups that participated in the preparation and review of each plan identified in (3)(c);

(b) A discussion of how the plan or combination of plans conforms to the standards in OAR 345-023-0020(1)(a) through (L) including citations to relevant portions of the plan documents or other supporting evidence;

(c) The expected annual emissions in tons of nitrogen oxides, PM-10 particulate, sulfur dioxide, carbon dioxide and mercury and a discussion of other environmental impacts, as compared to resources in the applicable energy resource plan;

(d) In addition to the information described in (b) and (c), if the applicant chooses to demonstrate need for a proposed natural gas pipeline or storage facility for liquefied natural gas under OAR 345-023-0020(1), the least-cost plan rule, and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant must include the information described in OAR 345-023-0040(3) if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in OAR 345-023-0040(3), the applicant must provide a list of citations to the sections of the energy resource plan that contain the information;

(e) In addition to the information described in (b) and (c), if the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0020(1), the least-cost plan rule and relies on an energy resource plan not acknowledged by the Public Utility Commission of Oregon, the applicant must include the information described in OAR 345-023-0030(4) if the energy resource plan or combination of plans does not contain that information. If the energy resource plan or combination of plans contains the information described in OAR 345-023-0030(4), the applicant must provide a list of citations to the sections of the energy resource plan that contain the information.

Statutory/Other Authority: ORS 469.470 & 469.501

Statutes/Other Implemented: ORS 469.501

**345-023-0030 - System Reliability Rule for Electric Transmission Lines**

The Council shall find that the applicant has demonstrated need for an electric transmission line that is an energy facility under the definition in ORS 469.300 if the Council finds that:

(1) The facility is needed to enable the transmission system of which it is to be a part to meet firm capacity demands for electricity or firm annual electricity sales that are reasonably expected to occur within five years of the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the facility;

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(2) The facility is consistent with the applicable mandatory and enforceable North American Electric Reliability Corporation (NERC) Reliability Standards as they apply~~minimum operating reliability criteria contained in the Western System Coordinating Council Bulk Power Supply Program 1997-2007, dated April 1, 1998, as it applies~~, either internally or externally to a utility system; and

**Commented [TJ21]:** Reverting inadvertent rule change.

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(3) Construction and operation of the facility is an economically reasonable method of meeting the requirements of sections (1) and (2) compared to the alternatives evaluated in the application for a site certificate.

(4) If the applicant chooses to demonstrate need for a proposed electric transmission line under OAR 345-023-0030, they must submit the following additional information:

(a) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant must include firm capacity demands and existing and committed firm resources for each of the years from the date of submission of the application to at least five years after the expected in-service date of the facility;

(b) Within the tables described in (a), a forecast of firm capacity demands for electricity and firm annual electricity sales for the area to be served by the proposed facility. The applicant must separate firm capacity demands and firm annual electricity sales into loads of retail customers, system losses, reserve margins and each wholesale contract for firm sale. In the forecast, the applicant must include a discussion of how the forecast incorporates reductions in firm capacity demand and firm annual electricity sales resulting from:

(A) Existing federal, state or local building codes, and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(B) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(C) Conservation that results from responses to price; and

(D) Retail customer fuel choice;

(c) Within the tables described in (a), a forecast of existing and committed firm resources used to meet the demands described in (b). The applicant must include, as existing and committed firm resources, existing generation and transmission facilities, firm contract resources and committed new resources minus expected resource retirements or displacement. In the forecast, the applicant must list each resource separately;

(d) A discussion of the reasons each resource is being retired or displaced if the forecast described in (c) includes expected retirements or displacements;

(e) A discussion of the annual capacity factors assumed for any generating facilities listed in the forecast described in (c);

(f) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the load carrying capability of existing transmission system facilities supporting the area to be served by the proposed facility;

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(g) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described below. In the discussion, the applicant must include a table showing the amounts of firm capacity and firm annual electricity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant must include documentation of assumptions and calculations supporting the table. The applicant must evaluate alternatives to construction and operation of the proposed facility that include, but are not limited to:

(A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(B) Construction and operation of electric generating facilities as a substitute for the proposed facility;

(C) Direct use of natural gas, solar or geothermal resources at retail loads as a substitute for use of electricity transmitted by the proposed facility;

(D) Adding standard sized smaller or larger transmission line capacity;

(h) The earliest and latest expected in-service dates of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.

Statutory/Other Authority: ORS 469.470 & 469.501  
Statutes/Other Implemented: ORS 469.501

**345-023-0040 - Economically Reasonable Rule for Natural Gas Pipelines or Liquefied Natural Gas Storage Facilities**

The Council shall find the applicant has demonstrated need for a natural gas pipeline that is an energy facility under the definition in ORS 469.300 or a facility that stores liquefied natural gas, if the Council finds that:

(1) The facility is needed to enable the natural gas supply system of which it is to be a part to meet firm capacity demands for natural gas that are reasonably expected to occur within five years following the facility's proposed in-service date based on weather conditions that have at least a 5 percent chance of occurrence in any year in the area to be served by the proposed facility; and

(2) Construction and operation of the facility is an economically reasonable method of meeting the demands described in section (1) compared to the alternatives evaluated in the application for a site certificate.

(3) If the applicant chooses to demonstrate need for a proposed natural gas pipeline or a proposed facility for storing liquefied natural gas they must submit the following additional information:

(a) Load-resource balance tables for the area to be served by the proposed facility. In the tables, the applicant must include firm demands and resource availability for each of the years from the date of submission of the application to at least five years after the expected in-service date of the proposed facility. In the tables, the applicant must list flowing supply and storage supply separately;

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(b) Within the tables described in (a), a forecast of firm capacity demands for the area to be served by the proposed facility. The applicant must separate firm capacity demands into firm demands of retail customers, system losses and each wholesale contract for firm sale. The applicant must accompany the tables with load duration curves of firm capacity and interruptible demands for the most recent historical year, the year the facility is expected to be placed in service and the fifth year after the expected in-service date. In the forecast of firm capacity demands, the applicant must include a discussion of how the forecast incorporates reductions in firm capacity demand resulting from:

(A) Existing federal, state or local building codes and equipment standards and conservation programs required by law for the area to be served by the proposed facility;

(B) Conservation programs provided by the energy supplier, as defined in OAR 345-001-0010;

(C) Conservation that results from responses to price; and

(D) Retail customer fuel choice.

(c) Within the tables described in (a), a forecast of existing and committed firm resources used to meet the demands described in (b). The applicant must include, as existing and committed firm capacity resources, existing pipelines, storage facilities, and scheduled and budgeted new facilities minus expected resource retirements or displacement. In the forecast, the applicant must list each committed resource separately;

(d) A discussion of the reasons each resource is being retired or displaced if the forecast described in (c) includes expected retirements or displacements;

(e) A discussion of the capacity factors assumed for any storage facilities listed in the forecast described in (c);

(f) A discussion of the reliability criteria the applicant uses to demonstrate the proposed facility is needed, considering the capacity of existing gas system facilities supporting the area to be served by the proposed facility;

(g) A discussion of reasons why the proposed facility is economically reasonable compared to the alternatives described in (h) or (j). In the discussion, the applicant must include a table showing the amounts of firm capacity available from the proposed facility and each alternative and the estimated direct cost, as defined in OAR 345-001-0010, of the proposed facility and each alternative. The applicant must include documentation of assumptions and calculations supporting the table;

(h) In an application for a proposed natural gas pipeline, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(B) Installation of propane storage systems, facilities to store liquefied natural gas and underground gas storage reservoirs as a substitute for the proposed facility;

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(C) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;

(D) Adding standard sized smaller or larger pipeline capacity;

(i) In an application for a proposed liquefied natural gas storage facility, an evaluation of alternatives to construction and operation of the proposed facility including, but not limited to:

(A) Implementation of cost-effective conservation, peak load management and voluntary customer interruption as a substitute for the proposed facility;

(B) Installation of propane storage systems, natural gas pipelines and underground gas storage facilities as a substitute for the proposed facility;

(C) Direct use of electricity, solar or geothermal resources at retail loads as a substitute for use of natural gas supplied by the proposed facility;

(D) Adding smaller or larger liquefied natural gas storage capacity; and

(j) The earliest and latest expected in-service date of the facility and a discussion of the circumstances of the energy supplier, as defined in OAR 345-001-0010, that determine these dates.

Statutory/Other Authority: ORS 469.470 & 469.501

Statutes/Other Implemented: ORS 469.501

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**DIVISION 24 - SPECIFIC STANDARDS FOR SITING FACILITIES**

**Specific Standards for Wind Facilities**

**345-024-0010 - Public Health and Safety Standards for Wind Energy Facilities**

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant:

- (1) Can design, construct and operate the facility to exclude members of the public from close proximity to the turbine blades and electrical equipment.
- (2) Can design, construct and operate the facility to preclude structural failure of the tower or blades that could endanger the public safety and to have adequate safety devices and testing procedures designed to warn of impending failure and to minimize the consequences of such failure.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-024-0015 - Cumulative Effects Standard for Wind Energy Facilities**

To issue a site certificate for a proposed wind energy facility, the Council must find that the applicant can design and construct the facility to reduce cumulative adverse environmental effects in the vicinity by practicable measures including, but not limited to, the following:

- (1) Using existing roads to provide access to the facility site, or if new roads are needed, minimizing the amount of land used for new roads and locating them to reduce adverse environmental impacts.
- (2) Using underground transmission lines and combining transmission routes.
- (3) Connecting the facility to existing substations, or if new substations are needed, minimizing the number of new substations.
- (4) Designing the facility to reduce the risk of injury to raptors or other vulnerable wildlife in areas near turbines or electrical equipment.
- (5) Designing the components of the facility to minimize adverse visual features.
- (6) Using the minimum lighting necessary for safety and security purposes and using techniques to prevent casting glare from the site, except as otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501



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**Specific Standards for Surface Facilities Related to Underground Gas Storage Reservoirs**

**345-024-0030 - Public Health and Safety Standards for Surface Facilities Related to Underground Gas Storage Reservoirs**

To issue a site certificate for a proposed surface facility related to an underground gas storage reservoir, the Council must make the following findings:

(1) The proposed facility is located at distances in accordance with the schedule below from any existing permanent habitable dwelling:

- (a) Major facilities, such as compressor stations, stripping plants and main line dehydration stations - - 700 feet.
- (b) Minor facilities, such as offices, warehouses, equipment shops and odorant storage and injection equipment -- 50 feet.
- (c) Compressors rated less than 1,000 horsepower -- 350 feet.
- (d) Roads and road maintenance equipment housing -- 50 feet.

(2) The applicant has developed a program using technology that is both practicable and reliable to monitor the facility to ensure the public health and safety.

(3) In addition to the requirements of OAR 345, division 022, in an application for a site certificate for a surface facility related to an underground storage reservoir the applicant shall include the following information:

- (a) The design rates of natural or synthetic gas injection or withdrawal;
- (b) The compression horsepower required to operate at design injection or withdrawal rates;
- (c) The fuel type of the compressor;
- (d) The estimated carbon dioxide emissions from the compressor for the projected life of the facility; and
- (e) The proposed location of all wells.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**Specific Standards for Transmission Lines**

**345-024-0090 - Siting Standards for Transmission Lines**

To issue a site certificate for a facility that includes any transmission line under Council jurisdiction, the Council must find that the applicant:

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(1) Can design, construct and operate the proposed transmission line so that alternating current electric fields do not exceed 9 kV per meter at one meter above the ground surface in areas accessible to the public;

(2) Can design, construct and operate the proposed transmission line so that induced currents resulting from the transmission line and related or supporting facilities will be as low as reasonably achievable.

(3) If the proposed energy facility is a transmission line or has, as a related or supporting facility, a transmission line of any size, the applicant must submit the following:

(a) Information about the expected electric and magnetic fields, including:

(A) The distance in feet from the proposed center line of each proposed transmission line to the edge of the right-of-way;

(B) The type of each occupied structure, including but not limited to residences, commercial establishments, industrial facilities, schools, daycare centers and hospitals, within 200 feet on each side of the proposed center line of each proposed transmission line;

(C) The approximate distance in feet from the proposed center line to each structure identified in (3);

(D) At representative locations along each proposed transmission line, a graph of the predicted electric and magnetic fields levels from the proposed center line to 200 feet on each side of the proposed center line;

(E) Any measures the applicant proposes to reduce electric or magnetic field levels;

(F) The assumptions and methods used in the electric and magnetic field analysis, including the current in amperes on each proposed transmission line; and

(G) The applicant's proposed monitoring program, if any, for actual electric and magnetic field levels; and.

(b) An evaluation of alternate methods and costs of reducing radio interference likely to be caused by the transmission line in the primary reception area near interstate, U.S. and state highways.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**Standards for Energy Facilities That Emit Carbon Dioxide**

**345-024-0500 - Standards for Fossil-Fueled Power Plants and Energy Facilities that Emit Carbon Dioxide**

(1) Notwithstanding OAR 345-024-0503 through 345-024-0720, to issue a site certificate for a fossil-fueled power plant on or after September 25, 2021, the Council must find that the facility will only generate electricity in a manner that does not emit greenhouse gasses into the atmosphere.

(2) If the facility will rely on carbon capture, sequestration, and storage to satisfy the requirements of section (1), the Council must find that the certificate holder has demonstrated that the structures,

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systems, components, and monitoring programs at the facility are reasonably likely to result in the permanent capture, sequestration, and storage of greenhouse gasses that result from the generation of electricity at the facility.

(3) To issue a site certificate for a nongenerating facility that will emit carbon dioxide into the atmosphere, the Council must find that the energy facility complies with the carbon dioxide emissions standard under OAR 345-024-0620.

(4) In addition to the requirements of OAR 345, division 22, in an application for a site certificate for a fossil-fueled power plant, or other facility that will emit carbon dioxide into the atmosphere, the application must include the following:

(a) A description of the means by which the applicant will comply with the applicable carbon dioxide emissions standard under OAR 345-024-0500.

(b) Information about the carbon dioxide emissions that are reasonable likely to result from the operation of the energy facility, including the following:

(A) The maximum hourly fuel use at:

(i) Net electrical power output at average annual conditions for a base load gas plant; or

(ii) Nominal electric generating capacity for a non-base load power plant or a base load gas plant with power augmentation technologies;

(B) The gross capacity as estimated at the generator output terminals for each generating unit.

(i) For a base load gas plant, gross capacity must be estimated based on the average annual ambient conditions for temperature, barometric pressure and relative humidity at the site. For a baseload gas plant with power augmentation, gross capacity for power augmentation mode must be estimated separately based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate with power augmentation; or

(ii) For a non-base load plant, gross capacity must be estimated based on the average temperature, barometric pressure and relative humidity at the site during the times of year when the facility is intended to operate.

(C) A table showing a reasonable estimate of all on-site electrical loads and losses greater than 50 kilowatts, including losses from on-site transformers, plus a factor for incidental loads, that are required for the normal operation of the plant when the plant is at its designed full power operation;

(D) The maximum number of hours per year and energy content (Btu per year, higher heating value) of alternate fuel use;

(E) The total estimated gross carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or nongenerating energy facility proposes to limit operation to a shorter time;

(F) The gross carbon dioxide emissions rate expressed as:

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- (i) Pounds of carbon dioxide per kilowatt-hour of net electric power output for a base load gas plant with power augmentations, the rate for plant operations with and without power augmentation must be reported separately;
- (ii) Pounds of carbon dioxide per horsepower hour for nongenerating facilities for which the output is ordinarily measured in horsepower; or
- (iii) A rate comparable to pounds of carbon dioxide per kilowatt-hour of net electric power output for nongenerating facilities other than those measured in horsepower.
- (G) The total excess carbon dioxide emissions for 30 years, unless an applicant for a non-base load power plant or a nongenerating energy facility proposes to limit operation to a shorter time;
- (H) The excess carbon dioxide emissions rate, using the same measure as required for (F);
- (I) The average annual site conditions, including temperature, barometric pressure and relative humidity, together with a citation of the source and location of the data collection devices;
- (J) For a non-base load power plant (or a base load power plant using power augmentation), the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate, together with a citation of the source and location of the data collection devices;
- (K) The annual fuel input in British thermal units, higher heating value, to the facility for each type of fuel the facility will use, assuming:
  - (i) For a base load gas plant, a 100-percent capacity factor on a new and clean basis and the maximum number of hours annually that the applicant proposes to use alternative fuels;
  - (ii) For a non-base load power plant, the applicant's proposed annual hours of operation on a new and clean basis, the maximum number of hours annually that the applicant proposes to use alternative fuels and, if the calculation is based on an operational life of fewer than 30 years, the proposed operational life of the facility;
  - (iii) For a nongenerating energy facility, the reasonably likely operation of the facility based on one year, 5-year, 15-year, and 30-year averages, unless an applicant proposes to limit operation to a shorter time;
- (L) For each type of fuel a base load gas plant or a non-base load power plant will use, the estimated heat rate and capacity of the facility measured on a new and clean basis with no thermal energy to cogeneration, consistent with the data supplied in 345-021-0010(3)(b);
- (M) For each type of fuel a nongenerating energy facility will use, the estimated efficiency and capacity of the facility with no thermal energy to cogeneration;
- (N) If the facility provides thermal energy for cogeneration to lower its net carbon dioxide emissions rate:

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- (i) The estimated annual useful thermal energy available from the facility for non-electric processes, annual useful thermal energy used by non-electric processes, and annual thermal energy rejected as waste heat;
  - (ii) For a base load gas plant or non-base load power plant, the estimated annual net electric power output and annual fuel input in British thermal units higher heating value for the facility for each type of fuel the facility will use and the basis of such estimates;
  - (iii) A description of the non-electric thermal processes, the names and addresses of the persons intending to use the non-electric thermal energy, and a description and an estimate of the fuel displaced by cogeneration, including supporting assumptions;
  - (iv) A description of the products produced and thermal energy needed for production of the primary products made by the persons intending to use the non-electric thermal energy produced by the proposed facility, supported by fuel use and steam production records or estimates, if the production facility is new;
  - (v) The efficiency of each boiler that the thermal energy will displace;
  - (vi) For each boiler, the annual fossil fuel displaced in million Btu, higher heating value, by type of fuel that will be displaced by the thermal energy;
  - (vii) The annual carbon dioxide offset by the cogeneration host, using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value);
  - (viii) The cumulative carbon dioxide offset by the steam host through the thirtieth year of facility operation, or for a shorter period if an applicant for a nongenerating facility proposes a shorter operational period;
  - (ix) A copy of the contractual agreement between the applicant and the cogeneration host for the use of the thermal energy;
  - (x) A description of the guarantees of offsets that the applicant must provide for cogeneration projects, pursuant to OAR 345-024-0560(1) and 345-024-0600(1);
  - (xi) A proposed monitoring and evaluation plan and an independent verification plan, pursuant to (O)(ixx) and (xx);
  - (xii) A copy of the instrument by which the certificate holder will transfer the offsets to the Council for it to hold in trust;
- (O) If the applicant proposes to offset carbon dioxide emissions as described in OAR 345-024-0550(3), 345-024-0560(2), 345-024-0590(3), 345-024-0600(2), 345-024-0620(3) or 345-024-0630(1):
- (i) A description of each offset project;
  - (ii) A description of who will implement the offset project, including qualifications and experience;

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- (iii) Detailed estimates of the of carbon dioxide offset, measured in short tons, that the offset projects will achieve over the life of the project;
- (iv) For each offset project, an explanation of how the applicant quantified its carbon dioxide estimates to a degree of certainty acceptable to the Council through a transparent and replicable calculation methodology;
- (v) For each offset project, evidence that the offset project would not likely have been implemented if not for the applicant's activities or funding;
- (vi) For each offset project, a description of a "Baseline" projection that does not include the proposed project and a "Project Case" projection that does. The historic Baseline must use reliable emissions data or pre-project data available for the most recent three years unless the applicant can demonstrate that a different period more closely represents historical operations or unless it can demonstrate that another method provides a more reasonable estimate. The applicant must show how the Baseline projection changes over time if changes from business-as-usual could be reasonably anticipated during the project life;
- (vii) For each offset project, a description, in a transparent and realistic manner, of the assumptions and methodologies used to quantify the Baseline and the Project Case projections, including a description of key parameters and data sources. This must include a description of the formulae used to estimate carbon dioxide emissions or sequestration within the project boundary and a net change of carbon dioxide emissions or sequestration that occurs outside of the project boundary that is measurable and attributable to the project activity;
- (viii) For projects that avoid conventional electricity generation, a description of a Baseline that calculates the carbon dioxide emissions per kilowatt hour in two steps:
  - (I) For the first five years of operation, a description of the rate based on dispatch data or models or, absent that, a weighted average of all resources in a power pool except zero-fuel-cost or must-run facilities; and
  - (II) A description of the rate for any subsequent years based on a group of similar facilities built within the prior five years or under construction in the electrical distribution region of the project or the three most recent plants built in the region, whichever rate is lower.
- (ix) For projects that avoid conventional electricity generation, a description of avoided transmission and distribution losses, using average grid area or national losses;
- (x) A description of any guarantee for offsets from projects that the applicant proposes pursuant to OAR 345-024-0560(2), 345-024-0600(2), and 345-024-0630(1), if the applicant chooses to offer a guarantee;
- (xi) A description of the offset project boundary. The boundary must encompass all carbon dioxide emissions under the control of the project that are significant and reasonably attributable to the project activity. If the project is being conducted by one part of a corporation, the boundary must include the emissions and reductions of the whole corporate entity and the carbon dioxide emissions resulting from

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processes and facilities that are related to the project, with identification of subsidiaries that are affected by the project;

(xii) A description of significant risks and risk mitigation strategies, including an estimate of the range of uncertainty around the expected carbon dioxide offsets;

(xiii) For biological sequestration projects, an assessment of the risk of climate change to natural systems that are sequestering the carbon dioxide, including, if appropriate, the risks from forest fires, pest and other unplanned releases of carbon from sequestration;

(xiv) A description of whether the offset project will permanently avoid or displace emissions of carbon dioxide. If a project only temporarily sequesters carbon, an indication of the duration of sequestration or storage;

(xv) A description of the amount of funding the applicant will provide for each offset project it proposes;

(xvi) If the applicant anticipates that a project will have funding sources in addition to itself, identification of the sources of those funds, the amount of other funding that is required to implement a project, the amount of funds other parties have committed, and the risks of other funds not being available;

(xvii) If the applicant proposes that a project will have funding sources in addition to itself, a description of how ownership of the offsets will be allocated among the several funding sources;

(xviii) A copy of the instrument by which the certificate holder will transfer all the offsets to the Council for it to hold in trust;

(xix) A description of a transparent and replicable methodology for the applicant's monitoring and evaluation plan and for an independent verification plan, including:

(I) Procedures the applicant and the independent entity will employ;

(II) How the applicant will assure funds for ongoing monitoring, evaluation and verification;

(III) The time frame and frequency over which the applicant will conduct monitoring and evaluation and over which the independent entity will conduct verification, including the frequency of site visits, if applicable;

(IV) The reporting procedures and guidelines for the plans; and

(V) Whether the applicant has identified the independent entity that will perform the verification;

(xx) The monitoring and evaluation plan and the verification plan must identify the data needs and data quality with regard to accuracy, comparability, completeness and validity. It must include methodologies to be used for data collection, monitoring, storage, reporting and management, including quality assurance and quality control provisions. It must provide complete calculations used to calculate and estimate carbon dioxide emissions from activity within the project boundary. It must show any formulae and assumptions the applicant used to calculate offset project leakage; and

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(xxi) A description of reasonably likely, significant undesirable long-term environmental impacts from the implementation of an offset project.

(P) If the applicant elects to comply with the applicable carbon dioxide emissions standard by using the monetary path under OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2), the applicant must include:

(i) A statement of the applicant's election to use the monetary path;

(ii) The amount of carbon dioxide reduction, in tons, for which the applicant is taking credit by using the monetary path;

(iii) The qualified organization to whom the applicant will provide offset funds and funds for the cost of selecting and contracting for offsets. The applicant must include evidence that the organization meets the definition of a qualified organization under OAR 345-001-0010. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council will not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on September 18, 2015; and

(iv) A statement of whether the applicant intends to provide a bond or letter of credit to secure the funds it must provide to the qualified organization or whether it requests the option of providing either a bond or a letter of credit.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.413(1), 469.501, 469.503

**345-024-0503 – Definitions for OAR 345-024-0500 to 345-024-0720**

In OAR 345-024-0500 to 345-024-0720, unless the context requires otherwise terms have the meaning provided in ORS 469.300, 469.503(2)(e) and the following definitions:

(1) "Gross carbon dioxide emissions" as defined in ORS 469.503(2)(e). The Council must measure the gross carbon dioxide emissions of a fossil-fueled power plant on a new and clean basis. For nongenerating energy facilities that emit carbon dioxide, the Council must measure the gross carbon dioxide emissions as described in OAR 345-024-0620(1).

(2) "Natural gas-fired facility" means an energy facility that is intended to be fueled by natural gas except for infrequent periods when the natural gas supply is interrupted, during which an alternate fuel may be used. Such alternate fuel use may not exceed 10 percent of expected fuel use in British thermal units, higher heating value on an annual basis.

(3) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation. The site certificate holder must determine the new and clean basis:



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(a) By a 100-hour test at full power that the site certificate holder completes during the first 12 months of commercial operation of the energy facility, unless the Council specifies a different testing period for a non-base load power plant (or power augmentation) or a nongenerating energy facility. A 100-hour test performed for purposes of the certificate holder's commercial acceptance of the facility may suffice in lieu of testing after beginning commercial operation;

(b) With the results adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels unless the Council specifies that the results for a non-base load power plant (or power augmentation) or a nongenerating energy facility be adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate;

(c) Using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value); and,

(d) Using a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if such fuel use is proposed by the applicant.

(e) Notwithstanding subsection (a) and including subsections (b) through (d), for a facility that employs major power generating equipment that has previously been used, the new and clean basis means the average carbon dioxide emissions rate and net electric power output for the first use of the equipment at the site, as determined by historical data from the previous usage or by testing on site.

(4) "Non-base load power plant" means a fossil-fueled generating facility that is limited by the site certificate to an average number of hours of operation per year of not more than 6,600 hours. For a non-base load power plant designed to operate at variable loads, the facility's annual hours of operation are determined by dividing the actual annual electric output of the facility in megawatt-hours by the facility's nominal electric generating capacity in megawatts. The Council will assume a 30-year life for the plants for purposes of determining gross carbon dioxide emissions, unless the applicant requests and the Council approves a shorter operational life in the site certificate. If the Council approves a shorter operational life, the certificate holder must operate the facility for no longer than the approved operational life or, before the expiration of the approved operational life, must request an amendment of the site certificate to extend the operational life.

(5) "Offset funds" means the amount of funds determined by the Council to satisfy the applicable carbon dioxide emissions standard pursuant to OAR 345-024-0560(3), 345-024-0600(3) or 345-024-0630(2) and (4).

(6) "Power augmentation" means technologies that increase the capacity and the heat rate of the plant above the capacity and heat rate of the base load gas plant. These include, but are not limited to, duct burning and some forms of steam augmentation.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.413, 469.501 & 469.503

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**345-024-0550 - Standard for Base Load Gas Plants**

To issue a site certificate for a base load gas plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.574 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power augmentation technology as defined in OAR 345-024-0503, the Council shall apply the standard for a non-base load power plant, as described in OAR 345-024-0590, to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. The Council shall determine whether the base load carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis.

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0560, or any combination thereof. The Council shall determine the amount of carbon dioxide or other greenhouse gas emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. The amount of greenhouse gas emissions means the pounds of carbon dioxide and the carbon dioxide equivalent of other greenhouse gases. For methane, one pound of methane is equivalent to 25 pounds of carbon dioxide. For nitrous oxide, one pound of nitrous oxide is equivalent to 298 pounds of carbon dioxide.

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0560(2), the Council shall determine the amount of greenhouse gas emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of greenhouse gas emission reduction on the following criteria and as provided in OAR 345-024-0680:

- (a) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction will be achieved by the offset.
- (b) The ability of the Council to determine the actual quantity of greenhouse gas emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance.
- (c) The extent to which the reduction of greenhouse gas emissions would occur in the absence of the offsets.

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(4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of a gas turbine vendor and shall submit a written design information report to the Department sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. In the report, the certificate holder shall include the proposed limits on the annual average number of hours of facility operation on distillate fuel oil, if applicable. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of greenhouse gas emissions reductions the certificate holder must provide under OAR 345-024-0560.

Stat. Authority: ORS 469.470, ORS 469.501, ORS 469.503  
Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0560 - Means of Compliance for Base Load Gas Plants**

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for base load gas plants. For a base load gas plant designed with power augmentation technology, the applicant shall comply with the standard for a non-base load power plant in the manner as described in OAR 345-024-0600 for the incremental carbon dioxide emissions from the designed operation of the power augmentation technology.

(1) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions from fossil fuel that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(2) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas emissions be achieved.

(3) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets.

(4) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard.

(5) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (2) or (4) of this

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rule, or any combination thereof, and the applicant agrees to meet the requirements of section (3) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Authority: ORS 469.470, ORS 469.503  
Stat. Implemented: ORS 469.503

**345-024-0570 - Modification of the Standard for Base Load Gas Plants**

The Council may by rule modify the carbon dioxide emissions standard for base load gas plants in OAR 345-024-0550 if the Council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than 5,907 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the Council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions and reset the carbon dioxide emissions standard at 17 percent below this rate.

Stat. Authority: ORS 469.470, ORS 469.501, ORS 469.503  
Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0580 - Monetary Offset Rate**

The monetary offset rate is \$6.40 per ton of carbon dioxide emissions.

Stat. Authority: ORS 469.470, ORS 469.503  
Stat. Implemented: ORS 469.503

**345-024-0590 - Standard for Non-Base Load Power Plants**

To issue a site certificate for a non-base load power plant, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.574 pounds of carbon dioxide per kilowatt-hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. For a base load gas plant designed with power augmentation technology as defined in OAR 345-001-0010, the Council shall apply this standard to the incremental carbon dioxide emissions from the designed operation of the power augmentation technology. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility, the limitation on the hours of generation for each fuel type and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. For a base load gas plant designed with power augmentation technology, the Council shall base its determination of the incremental carbon dioxide emissions on the proposed design of the facility, the proposed limitation on the hours of generation using the power augmentation technology and the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate with power augmentation technology. The Council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis; however, the Council

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may modify the parameters of the new and clean basis to accommodate average conditions at the times when the facility is intended to operate and technical limitations, including operational considerations, of a non-base load power plant or power augmentation technology or for other cause.

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0600 or any combination thereof. The Council shall determine the amount of carbon dioxide or other greenhouse gas emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. The amount of greenhouse gas emissions means the pounds of carbon dioxide and the carbon dioxide equivalent of other greenhouse gases. For methane, one pound of methane is equivalent to 25 pounds of carbon dioxide. For nitrous oxide, one pound of nitrous oxide is equivalent to 298 pounds of carbon dioxide.

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0600(2), the Council shall determine the amount of greenhouse gas emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of greenhouse gas emission reduction on the following criteria and as provided in OAR 345-024-0680:

- (a) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction will be achieved by the offset.
- (b) The ability of the Council to determine the actual quantity of greenhouse gas emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance.
- (c) The extent to which the reduction of greenhouse gas emissions would occur in the absence of the offsets.

(4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of an equipment vendor and shall submit a written design information report to the Department sufficient to verify the facility's designed new and clean heat rate and its nominal electric generating capacity at average annual site conditions for each fuel type. For a base load gas plant designed with power augmentation technology, the certificate holder shall include in the report information sufficient to verify the facility's designed new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the nominal electric generating capacity at average site conditions during the intended use for each fuel type from the operation of the proposed facility using the power augmentation technology. The certificate holder shall include the proposed limit on the annual average number of hours for each fuel used, if applicable. The certificate holder shall include the proposed total number of hours of operation for all fuels, subject to the limitation that the total annual

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average number of hours of operation per year is not more than 6,600 hours. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the gross carbon dioxide emissions from the facility and the amount of greenhouse gas emissions reductions the certificate holder must provide under OAR 345-024-0600.

(5) (a) Every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual gross carbon dioxide emissions. The certificate holder shall calculate actual gross carbon dioxide emissions using the new and clean heat rate and the actual hours of operation on each fuel during the five-year period or shall report to the Council the actual measured or calculated carbon dioxide emissions as reported to either the Oregon Department of Environmental Quality or the U.S. Environmental Protection Agency pursuant to a mandatory carbon dioxide emissions reporting requirement.

(b) The certificate holder shall specify its election of method used to measure or calculate carbon dioxide emissions in the notification report described at section (4) of this rule. That election, once made, shall apply for each five year period unless the site certificate is amended to allow a different election. If the certificate holder calculates actual carbon dioxide emissions using the new and clean heat rate and the actual hours of operation, the certificate holder shall also report to the Council the facility's actual annual hours of operation by fuel type. If the actual gross carbon dioxide emissions exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council

(6) For a base load gas plant designed with power augmentation technology, every five years after commencing commercial operation, the certificate holder shall report to the Council the facility's actual hours of operation using the power augmentations technology for each fuel type. If the actual gross carbon dioxide emissions, calculated using the new and clean heat rate, tested under parameters the Council orders pursuant to section (1), and the actual hours of operation using the power augmentation technology on each fuel during the five-year period exceed the projected gross carbon dioxide emissions for the five-year period calculated under section (4), the certificate holder shall offset any excess emissions for that period and shall offset estimated future excess carbon dioxide emissions using the monetary path as described in OAR 345-024-0600(3) and (4) or as approved by the Council.

Stat. Authority: ORS 469.470, ORS 469.501, ORS 469.503

Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0600 - Means of Compliance for Non-Base Load Power Plants**

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for non-base load power plants or for the incremental carbon dioxide emissions from the operation of a base load gas plant with power augmentation technology:

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(1) Designing and operating the facility to produce electrical and thermal energy sequentially from the same fuel source and using the thermal energy to displace another source of carbon dioxide emissions from fossil fuels that would have otherwise continued to occur. The Council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(2) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas emissions be achieved.

(3) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide emissions standard. The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets.

(4) Notwithstanding sections (1), (2) or (3), if the certificate holder exceeds the projected gross carbon dioxide emissions calculated under OAR 345-024-0590(4) during any five-year reporting period described in OAR 345-024-0590(5) and (6), the certificate holder shall offset excess emissions for the specific reporting period according to subsection (a) and shall offset the estimated future excess emissions according to subsection (b). The certificate holder shall offset excess emissions using the monetary path as described in subsection (c) and OAR 345-024-0710 or as approved by the Council.

(a) In determining the excess carbon dioxide emissions that the certificate holder must offset for a five-year period, the Council shall credit the certificate holder with offsets equal to the difference between the carbon dioxide emissions allowed by the site certificate in previous periods and actual emissions, if actual emissions were lower than allowed. Once a certificate holder has used a credit, the certificate holder shall not use it again.

(b) The Council shall specify in the site certificate a methodology for estimating future excess carbon dioxide emissions. The Department of Energy shall calculate estimated future excess emissions. To estimate excess emissions for the remaining period of the deemed life of the facility, the Department shall use the annual average number of hours of operation during the five-year period in which the certificate holder exceeded the estimated gross carbon dioxide emissions described in OAR 345-024-0590(5) and the new and clean heat rate and capacity for the facility, adjusted for the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate. If the annual average hours exceed 6,600, the Department shall estimate emissions at 100 percent capacity for the remaining period of a deemed 30-year life of the facility. At the request of the certificate holder, the Council may, by amendment of the site certificate, use an alternative methodology to estimate future excess carbon dioxide emissions.

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(c) The certificate holder shall pay for the net excess carbon dioxide emissions calculated pursuant to subsections (a) and (b) at the monetary path offset rate in real dollars for the quarter and year in which the Council issued the final order that applied the carbon dioxide standard. The Council shall specify in the site certificate the methodology for calculating the real dollar value of the monetary offset rate. The Department shall calculate the net excess carbon dioxide emissions and notify the certificate holder of the amount of the monetary path payment required to offset them. The certificate holder shall pay fully the required amount to the qualified organization within 60 days of notification by the Department of the amount. The certificate holder shall not be eligible for a refund of any monetary path payments due to the calculations in this rule.

(5) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard.

(6) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (2) or (5) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of sections (3) and (4) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Authority: ORS 469.470, ORS 469.503  
Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0610 - Modification of the Standard for Non-Base Load Power Plants**

The Council may by rule modify the carbon dioxide emissions standard for non-base load power plants in OAR 345-024-0590 so that the standard remains equivalent to the standard for the net carbon dioxide emissions rate of a base load gas plant, subject to the principles described in OAR 345-024-0510.

Stat. Authority: ORS 469.470, ORS 469.503  
Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0620 - Standard for Nongenerating Energy Facilities**

To issue a site certificate for a nongenerating energy facility that emits carbon dioxide, the Council must find that the net carbon dioxide emissions rate of the proposed facility does not exceed 0.428 pounds of carbon dioxide per horsepower hour. The Council shall determine whether the carbon dioxide emissions standard is met as follows:

(1) The Council shall determine the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. The Council shall base such determination on the proposed design of the energy facility. In determining gross carbon dioxide emissions for a nongenerating facility, the Council shall calculate carbon dioxide emissions for a 30-year period unless the applicant requests, and the Council adopts in the site certificate, a different period. The Council shall determine gross carbon dioxide emissions based on its findings of the reasonably likely operation of the energy facility. The Council shall use a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel (higher heating value) and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel (higher heating value), if the applicant proposes to use such fuel. If the applicant proposes to use



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any other fossil fuel, the Council shall adopt by rule an appropriate carbon dioxide content rate for the fuel.

(2) For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of the means described in OAR 345-024-0630 or any combination thereof. The Council shall determine the amount of carbon dioxide or other greenhouse gas emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. The amount of greenhouse gas emissions means the pounds of carbon dioxide and the carbon dioxide equivalent of other greenhouse gases. For methane, one pound of methane is equivalent to 25 pounds of carbon dioxide. For nitrous oxide, one pound of nitrous oxide is equivalent to 298 pounds of carbon dioxide.

(3) If the applicant elects to comply with the standard using the means described in OAR 345-024-0630(1), the Council shall determine the amount of greenhouse gas emissions reduction that is reasonably likely to result from each of the proposed offsets. In making this determination, the Council shall not allow credit for offsets that have already been allocated or awarded credit for greenhouse gas emissions reduction in another regulatory setting. The fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of greenhouse gas emissions is not, by itself, a basis for withholding credit for an offset. The Council shall base its determination of the amount of greenhouse gas emission reduction on the following criteria and as provided in 345-024-0680:

(a) The degree of certainty that the predicted quantity of greenhouse gas emissions reduction will be achieved by the offset.

(b) The ability of the Council to determine the actual quantity of greenhouse gas emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance.

(c) The extent to which the reduction of greenhouse gas emissions would occur in the absence of the offsets.

(4) Before beginning construction, the certificate holder shall notify the Department of Energy in writing of its final selection of an equipment manufacturer and shall submit a written design information report to the Department sufficient to verify the facility's designed rate of fuel use and its nominal capacity for each fuel type. In the site certificate, the Council may specify other information to be included in the report. The Department shall use the information the certificate holder provides in the report as the basis for calculating, according to the site certificate, the amount of greenhouse gas emissions reductions the certificate holder must provide under OAR 345-024-0630.

(5) In the site certificate, the Council shall specify the schedule by which the certificate holder shall provide offsets. In the schedule, the Council shall specify the amount and timing of offsets the certificate holder must provide to an offset credit account. In determining the amount and timing of offsets, the Council may consider the estimate of total offsets that may be required for the facility and the minimum

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amount of offsets needed for effective offset projects. The Department shall maintain the record of the offset credit account.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501

**345-024-0630 - Means of Compliance for Nongenerating Energy Facilities**

The applicant may elect to use any of the following means, or any combination thereof, to comply with the carbon dioxide emissions standard for nongenerating energy facilities:

- (1) Implementing offset projects directly or through a third party, pursuant to OAR 345-024-0680. The Council may adopt site certificate conditions ensuring that the proposed offset projects are implemented by the date specified in the site certificate, but shall not require that predicted levels of avoidance, displacement or sequestration of greenhouse gas emissions be achieved.
- (2) Providing offset funds, directly or through a third party, in an amount deemed sufficient to produce the reduction in greenhouse gas emissions necessary to meet the applicable carbon dioxide emissions standard according to the schedule set forth pursuant to OAR 345-024-0620(5). The applicant or third party shall use the funds as specified in OAR 345-024-0710. The Council shall deem the payment of the monetary offset rate, pursuant to OAR 345-024-0580, to result in a reduction of one ton of carbon dioxide emissions. The Council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If the Council issues a site certificate based on this section, the Council may not adjust the amount of the offset funds based on the actual performance of offsets.
- (3) Any other means that the Council adopts by rule for demonstrating compliance with the carbon dioxide emissions standard.
- (4) Each year after beginning commercial operation, the certificate holder shall report to the Department of Energy data showing the amount and type of fossil fuels used by the facility and its horsepower-hours of operation. The Council shall specify in the site certificate how the Department shall use those data to calculate the gross carbon dioxide emissions from the facility during the report year and the net emissions in excess of the carbon dioxide emissions standard. The Department shall then subtract excess emissions from the offset credit account. The Council shall specify in the site certificate the minimum amount of offset credits that a certificate holder shall provide to establish the offset credit account. The Council may specify an amount of offset credits equal to the total offsets required for the facility. The Council shall specify the minimum amount of offset credits that a certificate holder must maintain in the account and the minimum amount of offset credits the certificate holder shall provide to replenish the account. The Department shall notify the certificate holder when it must replenish its offset credit account according to the conditions in the site certificate. The certificate holder shall maintain a positive balance in the offset credit account for 30 years, unless the Council specifies a different period in the site certificate.
- (5) If the certificate holder is replenishing its offset credit account by meeting the monetary path payment requirement described in OAR 345-024-710, the certificate holder may replenish its offset

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credit account without amending the site certificate by using the calculation methodology detailed in conditions that the Council adopts in the site certificate.

(6) If the certificate holder proposes to replenish the offset credit account under OAR 345-024-0630(1), the Council may amend the site certificate conditions to ensure that the proposed offset projects are implemented.

(7) If the Council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under sections (1), (3) or (6) of this rule, or any combination thereof, and the applicant agrees to meet the requirements of section (2) for any deficiency, the Council or a court shall find compliance based on such agreement.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0640 - Modification of the Standard for Nongenerating Energy Facilities**

The Council may by rule modify the carbon dioxide emissions standard for nongenerating energy facilities in OAR 345-024-0620 so that it remains equivalent to the standard for the net carbon dioxide emissions rate of a base load power plant.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0680 - Offset Projects**

This rule applies if the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0550(3), OAR 345-024-0560(2), OAR 345-024-0590(3), OAR 345-024-0600(2), OAR 345-024-0620(3), or OAR 345-024-0630(1).

(1) Types of offset projects include, but are not limited to: energy efficiency, including demand-side management measures for electricity and natural gas; electricity generation from renewable energy; fuel switching; carbon dioxide sequestration through afforestation, reforestation, forest management and forest conservation; flue gas carbon dioxide sequestration; methane capture and destruction from landfill and biogas methane (animal waste and waste water) or from fugitive methane emissions from existing or abandoned coal mines; nitrogen fertilizer management in agricultural applications; and vehicle carbon dioxide emissions reductions.

(2) In order to approve an offset project, the Council must find that:

(a) The offset project is likely to result in an avoidance, reduction or displacement of actual greenhouse gas emissions from fossil fuels or the sequestration of greenhouse gas emissions resulting from specific and identifiable actions;

(b) The Council can quantify the amount of greenhouse gas offsets, taking into consideration any proposed measurement, monitoring, evaluation and verification of offset project measure performance;

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(c) The offsets are not susceptible to double-counting. For offsets from demand-side management measures reducing use of utility-provided electricity or natural gas, it may suffice that the certificate holder or its agent notify the utility that the certificate holder claims ownership of the greenhouse gas reductions;

(d) The applicant will own all greenhouse gas offsets that it proposes to provide;

(e) The applicant has provided a form of the instrument, satisfactory to the Council, through which the applicant will transfer all offsets from a project that an applicant will own to the Council for the Council to hold in trust;

(f) The applicant has the financial and institutional capability to deliver the project for its duration; and

(g) The applicant has provided an adequate monitoring and evaluation plan and an adequate plan for independent verification of the offsets. The monitoring and evaluation plan and the verification plan shall detail the record-keeping, data collection, data storage, data management program, and reporting guidelines and procedures.

(3) If the applicant proposes to implement a project in partnership with other parties or through contracts with other parties, the Council must find that:

(a) The other parties have the financial and institutional capability to deliver the project; and

(b) The applicant has a firm commitment from the other parties to participate in the project.

(4) If the applicant is proposing an offset project in another country, the Council must find that the host country has approved the transfer of the ownership of the greenhouse gas offsets to the applicant for the Council to hold in trust.

(5) The Council shall adjust its estimates of offsets to account for leakage, which is the extent to which events occurring outside the offset project boundary affect an offset project's total greenhouse gas emissions.

(6) The Council shall not approve any offsets related to nuclear power.

(7) The Council may reject an offset project based on undesirable long-term environmental impacts from the implementation of the offset project that the Council considers to be significant and reasonably likely to occur.

(8) The applicant may propose offset projects that provide offsets for up to 30 years after beginning commercial operation of a facility, or if an applicant proposes to provide offsets for more than 30 years after the beginning of commercial operation of a facility, the Council must find that:

(a) There will be a viable organization that will continue to manage an offset project for a longer period than the duration of the site certificate;

(b) The Council can maintain oversight of the project and hold the responsible organization to the requirements of the site certificate; and

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(c) The responsible organization will transfer offsets to the Council after the certificate holder retires the energy facility.

(9) The certificate holder shall begin implementation of projects approved in the site certificate before beginning construction of its facility, and:

(a) The certificate holder shall provide the Council copies of executed contracts or binding agreements with offset providers, including steam hosts for cogeneration if proposed, before beginning construction of its facility, and

(b) The certificate holder shall ensure that offset project implementation begins immediately upon execution of a contract or binding agreement with an offset provider and that the measures are fully implemented within five years, unless the Council approves a longer implementation period through a site certificate condition.

(10) The certificate holder shall not sell or trade its offsets or allow any other entity to report or use the offsets.

(11) The Council shall hold the offsets in trust for the benefit of the State of Oregon.

(12) If the Council approves, a certificate holder may use offsets in a future national regulatory regimen if the Council determines that such use does not undermine the integrity of the Council's carbon dioxide standard. Such approval shall not require an amendment of the site certificate.

(13) The site certificate holder shall report to the Council annually on the performance of offset projects, pursuant to the monitoring and evaluation plan and to the verification plan, and shall explain changes from the offset benefits projected in the Council's analysis of the offset projects.

(14) The certificate holder shall provide copies of all monitoring and evaluation reports and any verification reports from the independent entity to the Department of Energy.

(15) The certificate holder shall provide any raw data upon the request of the Department.

(16) The site certificate holder shall make its offset project financial records available for the life of the facility for auditing by the Council or by a party that the Council designates.

Stat. Authority: ORS 469.470, ORS 469.501  
Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0710 - Monetary Path Payment Requirement**

(1) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-0600(3) or OAR 345-024-0630(2), (4) and (5), the applicant shall provide a bond or letter of credit in a form reasonably acceptable to the Council to ensure the payment of the offset funds and the additional funds required under section (4) of this rule. The applicant shall provide such security by the date specified in the site certificate. In the site certificate, the Council shall specify a date no later than the commencement of construction of the facility for base load gas plants and non-base load power plants. For nongenerating facilities, the Council shall specify a date no later than the commencement of construction of the facility for providing the initial bond or

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letter of credit, and the Council shall specify conditions for providing subsequent incremental payments to meeting the monetary path payment requirement. The certificate holder for a nongenerating facility must meet its incremental monetary path payment requirements before exhausting its offset credit account, as described in OAR 345-024-0630(4). In no case shall the applicant diminish the bond or letter of credit or receive a refund from a qualified organization based on the calculations of the facility's emissions on a new and clean basis for a fossil-fueled power plant or any other measure for a nongenerating energy facility. A qualified organization shall not refund any offset funds to a certificate holder based on the operation or performance of a non-base load power plant during any five-year period reported under OAR 345-024-0590(5) or, for a nongenerating facility, on any offset credits the certificate holder provided under OAR 345-024-0620(5).

(2) In the site certificate, the Council shall require the certificate holder to disburse the offset funds and other funds required as specified in sections (3) and (4), unless the Council finds that no qualified organization exists, in which case the Council shall require the certificate holder to disburse the offset funds as specified in OAR 345-024-0720(2).

(3) When the certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case the certificate holder shall make available only the remaining amount of the offset funds. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization shall assess offsets for their potential to qualify in, generate credits in or reduce obligations in other regulatory settings. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

(4) At the request of the qualified organization and in addition to the offset funds, the certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. The certificate holder for a base load gas plant shall pay not less than \$50,000, unless the Council specifies a lesser amount in the site certificate. In the site certificate, the Council may specify a minimum amount that other fossil-fueled power plants or nongenerating energy facilities must pay. This payment compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.

(5) Notwithstanding any provision to the contrary, a certificate holder subject to this rule has no obligation with regard to offsets, the offset funds or the funds required by section (4) other than to make available to the qualified organization the total amount required under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4), OAR 345-024-0630(2), (4) and (5), and section (4) of this rule. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the qualified organization.

(6) For monetary path payments a certificate holder must make before beginning construction, the certificate holder shall make all offset fund payments and all payments required by section (4) to the

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qualifying organization in real dollars of the year in which the Council issues a final order applying the carbon dioxide emissions standard to the energy facility. In the site certificate, the Council shall specify an appropriate inflation index for calculating real dollars. For a non-base load power plant, if a certificate holder must make a payment as described in OAR 345-024-0600(4), the certificate holder shall make a payment that has the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. In the site certificate, the Council shall specify the methodology for calculating present value. If the certificate holder of a nongenerating facility must make payments as described in OAR 345-024-0630(4) and (5), the Council shall specify in the site certificate the method for calculating the rate for the dollar value per ton of carbon dioxide required according to subsection (a) or (b) below:

(a) Unless the applicant and the Council agree to the methodology in subsection (b), the certificate holder shall make payments that have the same present value per ton of carbon dioxide as the monetary path offset rate of the year in which the Council issued the final order applying the carbon dioxide standard. The Council shall set an appropriate discount rate for calculating the present value, using the cost of capital most recently approved by a state utility regulatory commission for that utility or a similar utility as a guide; or

(b) If the applicant requests and the Council agrees, the certificate holder shall make payments at the monetary path offset rate in effect on the date the certificate holder makes the payment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.503

**345-024-0720 - Qualified Organization**

(1) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4), or OAR 345-024-0630(2), (4) and (5), the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the Council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996.

(2) If the Council finds there is no qualified organization, the certificate holder shall disburse the offset funds according to one or more contracts for implementation of offsets as determined by the following process:

(a) The Council shall establish criteria for selection of offsets, based on the reduction of net carbon dioxide emissions and the criteria set forth in OAR 345-024-0550(3) for base load plants, OAR 345-024-0590(3) for non-base load power plants and OAR 345-024-0620(3) for nongenerating facilities. The Council may consider the costs of particular types of offsets in relation to the expected benefits of such offsets. In establishing criteria, the Council shall not require the certificate holder to select particular offsets and shall allow the certificate holder a reasonable range of choices in selecting offsets.

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(b) Based on the criteria established by the Council, the certificate holder shall select one or more offsets. The certificate holder shall give written notice of its selections to the Council and to any person requesting notice. For the purposes of this rule, the date of notice is the date the certificate holder places the notice in the United States mail, with first-class postage prepaid.

(c) On petition by the Department of Energy or by any person adversely affected or aggrieved by the certificate holder's selection of offsets, or on the Council's own motion, the Council may review the selection. The petition must be received by the Council within 30 days of the date of notice.

(d) The Council shall approve the certificate holder's selection unless it finds that the selection is not consistent with criteria established under subsection (a).

(e) The certificate holder shall execute one or more contracts to implement the selected offsets within 18 months after commencing construction of the facility unless the Council allows additional time based on a showing of good cause by the certificate holder. If a certificate holder would have made a payment to a qualified organization as described in OAR 345-024-0600(4) or OAR 345-024-0630(4) or (5), the certificate holder shall instead execute one or more contracts to implement the selected offsets, by a method acceptable to the Council, within 18 months after reporting to the Council as described in OAR 345-024-0590(5) or within 18 months after the Department notifies the certificate holder that the certificate holder must replenish the offset credit account as described in OAR 345-024-0630(4). The certificate holder shall, under such contracts, obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. The certificate holder may spend no more than 15 percent of the offset funds on monitoring, evaluation and enforcement of such contracts.

(f) The certificate holder's financial liability for implementation, monitoring, evaluation and enforcement of offsets under this subsection (2) is limited to the amount of any offset funds not already contractually obligated. The Council shall not base a revocation of the site certificate or any other enforcement action with respect to the certificate holder on any nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the selected offsets.

(3) Every qualified organization that has received funds under this rule shall, at five-year intervals beginning on the date of receipt of such funds, provide the Council with the information the Council requests about the qualified organization's performance. The Council shall evaluate the information requested and, based on such information, shall make recommendations to the Legislative Assembly that the Council deems appropriate.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.503



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**DIVISION 25 - SITE CERTIFICATE CONDITIONS**

**345-025-0006 - Mandatory Conditions in Site Certificates**

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

- (1) The Council may not change the conditions of the site certificate except as provided for in OAR chapter 345, division 27.
- (2) The certificate holder must submit a legal description of the site to the Department 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 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 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 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 an ~~n -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 must, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.

**Commented [TJ23]:** Providing that all energy facilities – not just wind facilities -- can begin preconstruction even if they lack the construction rights to all parts of the site.

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- (7) The certificate holder 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 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 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 must retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder must retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0410. The certificate holder 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 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 must restore vegetation to the extent practicable and must landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder 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 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 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 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

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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 must inform the Department of the proposed new owners. The requirements of OAR 345-027-0400 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 345-027-0410, the Council must notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department 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 must pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council 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

**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 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 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 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 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 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

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(b) The certificate holder 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 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 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 must specify an approved corridor in the site certificate and 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 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 must include in the site certificate appropriate conditions as described in OAR 345-024-0500 to 345-024-0710.

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

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.401, 469.413, 469.501, 469.503

**345-025-0016 - Monitoring and Mitigation Conditions**

In the site certificate, the Council 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, 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 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

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**DIVISION 26 - CONSTRUCTION AND OPERATION RULES FOR FACILITIES**

**345-026-0005 - Purpose**

The purpose of the rules in this division is to ensure that the construction, operation and retirement of facilities are accomplished in a manner consistent with the protection of the public health, safety and welfare and the protection of the environment.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507

**345-026-0010 - Legislative Authority**

(1) Under ORS 469.430, the Council has continuing authority over the site for which a site certificate is issued and may inspect, direct the Department of Energy to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the certificate holder is operating the facility in compliance with the terms and conditions of the site certificate.

(2) For facilities subject to ORS 469.410 as having been built prior to July 2, 1975, the Council has continuing authority over the site for which a site certificate is issued and may inspect, or direct the Department to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the facility is being operated in compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

(3) According to ORS 469.410, the Council shall establish programs for monitoring the environmental and ecological effects of the operation and decommissioning of energy facilities subject to site certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate and any applicable health or safety standards.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507

**345-026-0015 - Scope and Construction**

(1) To the extent that any rules in this division conflict or are inconsistent with administrative rules lawfully adopted by other state agencies, these rules are controlling, except as prohibited by law. The Council shall resolve such conflicts in consultation with the affected agencies and in a manner consistent with the public interest.

(2) To the extent that any rules in this division conflict or are inconsistent with a condition contained in a site certificate (or amendment thereto), the latter is controlling.

(3) Certificate holders shall comply with all applicable lawful rules and requirements of federal agencies.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, ORS 469.503 & ORS 469.504

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**345-026-0048 - Compliance Plans**

Following receipt of a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. As a part of the compliance plan, to verify compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the Department of Energy when construction begins. Construction is defined in OAR 345-001-0010. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, "work on the site" means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. The certificate holder shall document the compliance plan and maintain it for inspection by the Department or the Council.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507

**345-026-0050 - Inspections**

(1) General provisions:

- (a) Each certificate holder shall allow properly identified representatives of the Council or Department of Energy to inspect the facility during construction, operation and retirement, including all materials, activities, related or supporting facilities, premises and records pertaining to design, construction, operation or retirement of the facility at any time.
- (b) The certificate holder's representative may accompany Council or Department inspectors during an inspection.
- (c) Council or Department inspectors may refuse to permit any individual who deliberately interferes with a fair and orderly inspection to be present during an inspection.
- (d) The Department shall maintain written records of facility inspections. If the inspector finds any potential violations of state, federal or local law, Council rules, a Council order or site certificate conditions, the inspector shall promptly notify the certificate holder's onsite manager or designee.
- (e) If the inspector finds any actual or potential violations of state, federal or local law, Council rules, a Council order, or site certificate conditions or warranties, the inspector shall notify the Council secretary, the Council and the certificate holder. The Council secretary shall be responsible for reporting all pertinent findings to the Council at its next scheduled meeting.

(2) Requests for inspections:

- (a) Any person may request Department inspection of a facility if the requestor believes:
  - (A) That a violation of a Council order or a site certificate condition or warranty has occurred or may imminently occur; or

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(B) A situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions.

(b) The person submitting a request for inspection shall describe, in writing, the specific grounds for the request. The requestor shall submit the request to the Department, or, during an inspection, to the Department's representative. A requestor who is employed directly or indirectly by the certificate holder may ask that his or her name not be disclosed in any manner except where disclosure is required by law.

(c) The Department shall promptly notify the certificate holder of the request and nature of the alleged violation or other basis for the inspection.

(d) If the request concerns matters of state, federal or local law or rule not administered by the Council, the Department shall forward the request to the appropriate agency.

(e) The Department shall make a prompt evaluation of allegations related to matters under Council jurisdiction. If the Department concludes that there are reasonable grounds to believe that the alleged violation has occurred or is imminent or that a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or to unsafe or dangerous conditions, the Department shall cause an inspection to be made as soon as practicable.

(f) If the Department determines that an inspection is not warranted, it shall give written notice of that conclusion to the requestor, stating its reasons. The requestor may then submit a written request for review to the Council. The Council shall send a copy of the request to the certificate holder by certified mail. The certificate holder may submit a written statement of its position to the Council, and the Council shall provide a copy of the statement, if any, to the requestor by certified mail. At its discretion, the Council may hold an informal conference to discuss the merits of the request. The Council shall affirm, modify or reverse the determination made by the Department. The Council shall send written notification of its decision and reasoning to the requestor and the certificate holder.

(g) Inspections conducted under subsection (e) need not be limited to matters referred to in the request for inspection.

(h) No certificate holder shall discharge or in any manner discriminate against any employee because he or she submitted a request for inspection, provided information to a Council or Department representative or otherwise exercised options afforded to the worker under these rules.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507

**345-026-0080 - Reporting Requirements for Energy Facilities**

(1) General reporting obligation for energy facilities under construction or operating:

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(a) Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the Department of Energy. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall report on the progress of construction and shall address the subjects listed in subsections (2)(a), (d), (f) and (g). When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule.

(b) After January 1 but no later than April 30 of each year after beginning operation of the facility, the certificate holder shall submit an annual report to the Department addressing the subjects listed in subsection (2). For the purposes of this rule, the beginning of operation of the facility means the date when construction of a significant portion of the facility is substantially complete and the certificate holder begins commercial operation of the facility as reported by the certificate holder and accepted by the Department. The Council Secretary and the certificate holder may, by mutual agreement, change the reporting date.

(c) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, the certificate holder may submit excerpts from such other reports to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.

(2) In the annual report, the certificate holder shall include the following information for the calendar year preceding the date of the report:

(a) Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in operation. The certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility.

(b) Reliability and Efficiency of Power Production: For electric power plants, the plant availability and capacity factors for the reporting year. The certificate holder shall describe any equipment failures or plant breakdowns that had a significant impact on those factors and shall describe any actions taken to prevent the recurrence of such problems.

(c) Fuel Use: For thermal power plants:

(A) The efficiency with which the power plant converts fuel into electric energy. If the fuel chargeable to power heat rate was evaluated when the facility was sited, the certificate holder shall calculate efficiency using the same formula and assumptions, but using actual data; and

(B) The facility's annual hours of operation by fuel type and, every five years after beginning operation, a summary of the annual hours of operation by fuel type as described in OAR 345-024-0590(5).



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(d) Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period.

(e) Monitoring Report: A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with site certificate terms and conditions, a summary of the results of those activities and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes.

(f) Compliance Report: A report describing the certificate holder's compliance with all site certificate conditions that are applicable during the reporting period. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate.

(g) Facility Modification Report: A summary of changes to the facility that the certificate holder has made during the reporting period without an amendment of the site certificate in accordance with OAR 345-027-0050.

(h) Nongenerating Facility Carbon Dioxide Emissions: For nongenerating facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual hours of operation of the carbon dioxide emitting equipment as described in OAR 345-024-0630(4).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430, 469.501 & 469.507

**345-026-0105 - Correspondence With Other State or Federal Agencies**

The certificate holder and the Department of Energy shall exchange copies of all correspondence or summaries of correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. The certificate holder may submit abstracts of reports in place of full reports; however, the certificate holder shall provide full copies of abstracted reports and any summarized correspondence at the request of the Department..

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507

**345-026-0170 - Notification of Incidents**

The certificate holder must notify the Department of Energy within 72 hours of any occurrence involving the facility if:

- (1) There is an attempt by anyone to interfere with its safe operation.
- (2) There is a significant natural event such as a fire, earthquake, flood, tsunami or tornado, or human-caused event such as a fire or explosion.
- (3) There is any fatal injury at the facility.

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Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.310, 469.410, 469.430, 469.507

### **Rules for the Trojan Independent Spent Fuel Storage Installation**

#### **345-026-0300 - Regulations Applicable to the Trojan Independent Spent Fuel Storage Installation**

- (1) The requirements of OAR 345-026-0300 through 345-026-0390 apply exclusively to the Trojan Independent Spent Fuel Storage Installation (ISFSI).
- (2) The purpose of these rules is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.
- (3) References to the Code of Federal Regulations in these rules refer to regulations in place as of August 9, 2019.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.410 & 469.501

#### **345-026-0340 - Security Plans**

- (1) The certificate holder must establish and maintain a security plan that complies with 10 CFR 72.44(e).
- (2) The certificate holder must make the security plan, and any revisions, available for inspection by authorized representatives of the Council and Director upon request. The certificate holder, Department, and Council must protect information in the plan that falls within the definitions of "security program" or "safeguards information" in OAR 345-070-0015 from unauthorized disclosure in accordance with 10 CFR 73.21, 73.22 and OAR chapter 345, division 070.
- (3) The certificate holder may not make changes to the security plan that could: reduce the ability to detect or prevent unauthorized entry, reduce the ability to detect or prevent the introduction of unauthorized material into a Protected Area, or otherwise reduce the effectiveness of the plan without prior written approval from the Council and Director, as required by ORS 469.530.
- (4) The certificate holder may make changes to the security plan that do not reduce the effectiveness of the plan without prior approval from the Council and Director. The certificate holder must notify the Department of any changes made under this section within 60 days after the implementation date of the changes. The Department must promptly notify the Council of the changes at a scheduled Council meeting, subject to the provisions of OAR chapter 345, division 070.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.410, 469.501 & 469.530

#### **345-026-0350 - Emergency Planning**

- (1) The certificate holder must follow and maintain an emergency plan that is approved by the Council.

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(2) The certificate holder may not make changes to the emergency plan that would decrease the effectiveness of the plan or the plan's requirements for notification of off-site agencies without the Council's prior approval.

(3) The certificate holder may make changes to the plan that would not reduce its effectiveness without the Council's prior approval. The certificate holder must notify the Department of any changes made under this section within 30 days after the implementation date of the changes. The Department must promptly notify the Council of the changes at a scheduled Council meeting.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.410, 469.501, 469.530 & 469.533

**345-026-0370 - ISFSI Decommissioning Plan**

(1) The certificate holder must submit a final plan for decommissioning the ISFSI to the Department for Council approval. The plan must be submitted to the Council in a form and in a schedule consistent with that required by the U.S. Nuclear Regulatory Commission. When the Department receives a decommissioning plan, the Department must:

(a) Issue notice to the Council's mailing list that the decommissioning plan has been submitted. The notice must include:

- (A) The time and place of at least one informational hearing;
- (B) The locations where copies of the proposed plan may be reviewed by the public; and
- (C) A contact name for further information.

(b) Perform a technical review, and produce a staff report containing the Department's technical conclusions and recommendations on specific issues raised in the proposed plan;

(c) To the extent practicable, coordinate its technical review with that of the U.S. Nuclear Regulatory Commission;

(d) Issue notice of availability of the Department report to the Council mailing list. The notice must include:

- (A) A summary of the Department's recommendations;
- (B) Time and place of a hearing on the staff report;
- (C) Places where the Department's staff report may be reviewed by the public; and
- (D) A contact for additional information and copies of the staff report.

(2) The Council must review the proposed decommissioning plan to verify that the proposed activities will not adversely affect the health and safety of the public or the environment. The Council will ensure the following when evaluating acceptability of a proposed decommissioning plan:

(a) The plan contains the radiological criteria for unrestricted release and use of the site as set forth in 10 CFR 20.1402.

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(b) The plan contains provisions that require removal from the site of all radioactive waste as defined in ORS 469.300 on a schedule acceptable to the Council.

(c) The plan contains a program for radiological monitoring to ensure the environment is not being adversely affected. This program may be incorporated by reference if it has previously been approved by the Department.

(d) The plan contains provisions for removal or control of hazardous waste that are consistent with applicable federal and state regulations.

(3) The certificate holder must include in the plan an estimate of funding necessary for implementation. The Council must determine whether provisions for funding are adequate to implement the plan.

(4) The certificate holder must not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:

(a) The potential to prevent the release of the site for unrestricted use;

(b) A change in the criteria for site release;

(c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;

(d) A change in the provisions made for hazardous or radioactive waste material removal;

(e) A change in the types or increase in the amounts of any effluents that may be released offsite; or

(f) An increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.

(5) The certificate holder must evaluate revisions to the decommissioning plan by the criteria listed in section (4) of this rule. The certificate holder must maintain records of all changes and associated evaluations for audit by the Department. The certificate holder must notify the Department of revisions to the plan that are not significant within 30 days after implementation of the revision. The Department must promptly notify the Council of such revisions at a regularly scheduled meeting.

(6) Changes to the decommissioning plan that are mandated by the federal government may be implemented without prior Council approval.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.410 & 469.501

**345-026-0390 - Spent Nuclear Fuel Storage**

(1) The certificate holder may store a maximum of 791 complete and partial fuel assemblies and storage of containers with nuclear fuel materials at an Independent Spent Fuel Storage Installation (ISFSI) at the site of the former Trojan Nuclear Plant, subject to the requirements of OAR 345-026-0300 through 345-026-0390.

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- (a) The ISFSI must be designed to maintain discharges within the limits specified in applicable licenses authorized under the Atomic Energy Act of 1954, as amended, and any applicable permits issued under the National Pollutant Discharge Elimination System;
  - (b) The ISFSI must be designed such that in case of accidents the projected dose to an individual outside of the Controlled Area Boundary will not exceed 1 rem over four days.
  - (c) The ISFSI may not be used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the former Trojan Nuclear Plant.
- (2) Except as required for accident mitigation as described in the Safety Analysis Report, the certificate holder may not remove or transfer a multipurpose canister from its storage cask without the Council's prior approval.
- (3) The certificate holder must notify the Department of incidents and accidents in accordance with the Emergency Plan required under OAR 345-026-0340, the Security Plan required under OAR 345-026-0350, and other agreements as established, and must:
- (a) Notify the Oregon Emergency Response System immediately upon declaration of an emergency under the approved Emergency Plan for the facility;
  - (b) Notify the Department of non-emergency incidents or accidents as described in 10 CFR 72.75.
- (4) The certificate holder must operate the ISFSI consistent with a Safety Analysis Report submitted in compliance with 10 CFR 72.70 and the following requirements:
- (a) The Safety Analysis Report must provide for the following programs:
    - (A) A Temperature Monitoring and Air Vent Inspection Program. The program must include daily readings of Concrete Cask air outlet and ambient temperatures. The program must include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program must also include a requirement to check air inlet and outlet vents for blockage weekly. The certificate holder may extend individual surveillance intervals by up to 25 percent to accommodate minor variations in work scheduling.
    - (B) A Radiation Protection Program that complies with 10 CFR 20.1101 and ensures exposures to ISFSI personnel and the public are As Low As Reasonably Achievable as that term is defined in 10 CFR 20.1003.
    - (C) A Radiological Environmental Monitoring Program that ensures the ISFSI complies with the Radiation Protection Program required under paragraph (4)(a)(B) of this rule.
    - (D) An Aging Management Program for management of issues associated with aging that could adversely affect ISFSI components that are important to safety.
    - (E) A program for maintaining equipment onsite and having equipment available to respond to credible accident scenarios as required by the Safety Analysis Report and a plan for construction of new concrete casks.

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(b) The certificate holder may not make changes to the ISFSI, or Safety Analysis Report that would require prior approval from the U.S. Nuclear Regulatory Commission (NRC) under 10 CFR 72.48 without requesting the Council's prior approval, unless the proposed change is required for compliance with the regulations or orders of the NRC or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior approval.

(5) In lieu of the requirements of OAR 345-026-0080 the certificate holder must provide a written report to the Council on the status of the ISFSI biennially. The report must include, at a minimum:

(a) A summary of changes to the ISFSI or Safety Analysis Report since the last report that did not require prior approval from the Council or NRC under section (4)(b) of this rule;

(b) The results of radiation monitoring programs;

(c) A summary of personnel exposure related to ISFSI storage operations;

(d) A statement of expenses related to ISFSI storage operations;

(e) A statement of the estimated costs of continuing ISFSI storage operations through decommissioning and the estimated costs of decommissioning, including a discussion of the methods and assumptions used to estimate operations and decommissioning costs;

(f) An estimate of funds available for continuing ISFSI storage operations through decommissioning and funds available for ISFSI decommissioning; and

(g) A statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility.

(6) Contractors: The certificate holder must require contractors who perform portions of the ISFSI storage or transporting operations to adhere to all applicable provisions of this rule.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.410 & 469.501

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**DIVISION 27 - SITE CERTIFICATE CONDITIONS, AMENDMENT, TRANSFER AND  
TERMINATION AND DEPARTMENT OF ENERGY APPROVAL OF GAS STORAGE  
TESTING PIPELINES**

**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 345-025-0006(16).

(4) In an application for termination of the site certificate, the certificate holder must include a proposed final retirement plan for the facility and site. The certificate holder must submit ~~two printed copies of the application for termination and the proposed final retirement plan, and~~ an electronic version of the application for termination and the proposed final retirement plan in a non-copy-protected electronic format acceptable to the Department. The certificate holder must submit ~~additional~~ printed copies of the application for termination and the proposed final retirement plan to the Department upon request.

**Commented [TJ24]:** Removing default printed copy requirement.

(5) In the proposed final retirement plan, the certificate holder 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 property owners, as described in OAR 345-021-0010(3)(c).

(6) Within 15 days after receiving an application for termination of a site certificate, the Department 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) 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; and

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(C) The property owners on the updated list submitted by the certificate holder under section (5) of this rule;

(b) Send copies of the application for termination by mail or email to the reviewing agencies 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 must review the proposed final retirement plan and 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 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 must issue an order terminating the site certificate.

(9) When the Council finds that the site certificate has expired as described in OAR 345-027-0313, the Council shall issue an order terminating the site certificate.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.405 & 469.501

**345-027-0210 - General**

(1) A person 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 for the construction, operation and retirement of the proposed pipeline as required under ORS 469.405(3).

(2) For the purposes of OAR 345-027-0510 through 345-027-0540:

(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;



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(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 345-022-0020(4), 345-022-0022(2)(b), 345-022-0160(1)(a), 345-022-0040(5), 345-022-0050(4), 345-022-0060(3), 345-022-0070(3), 345-022-0080(5), 345-022-0090(4), 345-022-0100(5), 345-022-0110(4)(a), 345-022-0115, 345-022-120(4).

Statutory/Other Authority: ORS 469.405  
Statutes/Other Implemented: ORS 469.405

**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 must:

(a) Inform the Department 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.

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(2) After receiving the information described in section (1) of this rule, the Department 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 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 345-027-0530.

(3) The certificate holder 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 must submit ~~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 must provide ~~additional~~ printed copies to the Department upon request and copies or access to copies to any person requesting copies.

(4) In a request for approval, the certificate holder 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 that 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.

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Statutory/Other Authority: ORS 469.405

Statutes/Other Implemented: ORS 469.405, 469.421 & 469.441

**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 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 345-027-0520(2), the Department 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 must include conditions that the Department finds necessary to ensure compliance with the applicable standards and conditions required by OAR 345-027-0540.

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(3) The Department 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 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 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

**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 345-027-0520(2). In addition, the Department shall impose the following conditions:

(1) The certificate holder 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 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 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 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 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 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 must allow properly identified representatives of the Council or Department to inspect the pipeline at any time, including all materials, activities, premises and records pertaining to design, construction, operation or retirement of the pipeline;

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(8) The certificate holder must notify the Department when it begins construction, must keep the Department informed of construction progress and any unusual events or circumstances, and must notify the Department when it begins to use the pipeline for reservoir testing or maintenance;

(9) The certificate holder 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 must notify the Department and, if required under OAR 345-027-0350, submit a request to amend the site certificate.

Statutory/Other Authority: ORS 469.405

Statutes/Other Implemented: ORS 469.405 & 469.992

**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

**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 an applicable law or 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

**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.

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(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

**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

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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

**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

**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.

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(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:

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- (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

**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

**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;

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(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) Within 14 days after receiving a preliminary request for amendment, the Department must notify the public that a preliminary request for amendment has been received by:

(a) Sending 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 mailing list established for the facility;

(C) The reviewing agencies for the facility, as defined in OAR 345-001-0010(~~2854~~); and

(D) The property owners on the list provided under subsection (1)(f) of this rule; and

(b) Posting an announcement on the Department's 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(~~3559~~), 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.

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(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

**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).

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(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

**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

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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

**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(~~2852~~); 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;

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(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

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**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(~~2852~~); 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

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(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

**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(~~2852~~); 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.



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(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) Name and address of the person's attorney, if any;
- (f) 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;
- (g) 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;
- (h) 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
- (i) 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.

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(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 is reasonably likely to affect the Council's determination whether 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 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

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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

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**345-027-0372 - Proposed Order and Council's 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(2852); 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

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**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 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 a request for amendment to a site certificate for a fossil-fueled power plant, the proposed change will not increase the gross carbon dioxide emissions that are reasonably likely to result from the operation of the facility by more than three percent (3%) above the estimated gross carbon dioxide emissions used to determine compliance with the applicable carbon dioxide standard in the site certificate or amended site certificate most recently issued before September 25, 2021.

(e) 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 findings under section (1) of this rule, the Council must apply the applicable laws and Council standards in effect on the following dates:

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- (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 issues its final order on the request for amendment.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.401, 469.405, 469.413(2) & 469.504

**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 applicable laws or 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;

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- (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 applicable laws or Council 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

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**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 may 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



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**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 must 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 must 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 must 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;

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(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

**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.

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(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 345-022-0010(5)(a)-(b), OAR 345-021-0010(c), and OAR 345-022-0050(4)(a), 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 345-024-0500(4)(b)(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(2852); 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:

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(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

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**DIVISION 29 - NOTICE OF VIOLATION, CIVIL PENALTIES, REVOCATION OR  
SUSPENSION**

**345-029-0000 - Policy**

The purpose of the Council enforcement program is to protect the health and safety of the public and the environment by ensuring compliance with the terms and conditions of site certificates, Department of Energy orders as described in OAR 345-027-0230, Radioactive Materials Transport Permits and applicable statutes, rules and orders of the Director and Council and by obtaining prompt correction of violations.

Statutory/Other Authority: ORS 469.470, 469.607 & 469.992

Statutes/Other Implemented: ORS 469.085, 469.470, 469.607 & 469.992

**Enforcement of Rules and Laws Related to Energy Facilities**

**345-029-0003 - Applicability of OAR 345-029-0005 through 345-029-0100**

(1) OAR 345-029-0005 through OAR 345-029-0100 apply to violations or potential violations involving energy facilities, including:

- (a) A violation of any term or condition of a site certificate;
- (b) Except as described in OAR 345-029-0503, a violation of any applicable provision of ORS Chapter 469, OAR chapter 345, or an order of the Council;
- (c) A violation of an order issued under OAR 345-027-0230; or
- (d) A history of non-compliance by a certificate holder with applicable rules or license requirements of more than one other state agency having enforcement jurisdiction.

(2) No provision of these rules precludes the Director or Council from taking any actions authorized under ORS Chapter 469 to protect public health and safety or the environment, including, but not limited to the seeking of injunctive relief or the suspension or revocation of permits or site certificates.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992

**345-029-0005 - Definitions for OAR 345-029-0005 through 345-029-0100**

As used in OAR 345-029-0005 through 345-029-0100:

(1) "Responsible party" means:

- (a) A certificate holder;
- (b) A person to whom the Council has granted an exemption from the site certificate requirement under OAR 345-015-0350 through 345-015-0370; or

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(c) Any person otherwise subject to the requirements of ORS chapter 469, or OAR chapter 345, related to energy facilities.

(2) "Compliance audit" means an audit conducted as part of an ongoing comprehensive program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, or site certificate conditions.

Statutory/Other Authority: ORS 469.470 & 469.605  
Statutes/Other Implemented: ORS 469.085 & 469.440

**345-029-0010 - Report by a Responsible Party**

The responsible party must make reports as specified in these rules and in the site certificate. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms or conditions of a site certificate, the terms or conditions of any order of the Council, or the terms or conditions of an order issued under OAR 345-027-0230, the responsible party must:

(1) As soon as reasonably possible, notify the Department of the conditions or circumstances that may constitute a violation, giving all pertinent facts including an estimate of how long the conditions or circumstances have existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit.

(2) As soon as reasonably possible, initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence.

(3) Submit to the Department a written report within 30 days of discovery. The report must contain:

- (a) A discussion of the cause of the reported conditions or circumstances;
- (b) The date of discovery of the conditions or circumstances by the responsible party;
- (c) A description of immediate actions taken to correct the reported conditions or circumstances;
- (d) A description of actions taken or planned to minimize the possibility of recurrence; and
- (e) For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of divisions 22 and 24 of this chapter as a result of the reported conditions or circumstances.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.440

**345-029-0020 - Notice of Violation**

(1) The Department has discretion to issue a notice of violation, except that the Council may instruct the Department to issue a notice of violation. Factors the Council or Department must consider in deciding whether conditions or circumstances warrant issuing a notice of violation are:

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- (a) Did the responsible party report the conditions or circumstances in a timely manner?
- (b) Are the conditions or circumstances limited to the possible violation of a reporting requirement?
- (c) Are the conditions or circumstances the result of ambiguous language in the requirement in question?
- (d) Are the conditions or circumstances the result of a change to the design, construction, operation or retirement of a facility for which a site certificate has been issued, and did the certificate holder decide that no amendment of the site certificate was required, based on a reasonable analysis of the criteria in OAR 345-027-0350(2)?
- (e) Has the violation in question been cited by any other state agency having jurisdiction?
- (f) Are the conditions or circumstances within the control of the responsible party?

(2) If the Department determines upon inspection as provided for in OAR 345-026-0050, upon receipt of a report from the responsible party under OAR 345-029-0010, or by other means that there has been a violation for which sanctions may be imposed as described in OAR 345-029-0003, the Department may serve a notice of violation upon the responsible party. The Department must serve the notice of violation by personal service or by first class, certified or registered mail.

(3) In the notice of violation, the Department must include:

- (a) A reference to the statute, administrative rule, order, or site certificate term or condition violated as determined by the Department;
- (b) A statement of the facts upon which the Department based its determination that a violation occurred, including the date of discovery;
- (c) A requirement for the responsible party to provide a written response to the notice of violation within 30 days or other specified time;
- (d) A statement of the responsible party's right to a hearing as provided for in OAR 345-029-0070 if the Department later issues a notice of assessment of civil penalty as described under OAR 345-029-0060; and
- (e) The Department's classification of the violation, including a statement of the consideration given to the following factors:
  - (A) The performance of the responsible party in taking necessary or appropriate action to correct or prevent the violation;
  - (B) Any similar or related violations by the certificate holder in the previous 36 months;
  - (C) Any adverse impact of the violation on public health and safety; and
  - (D) For a violation of the terms or conditions of a site certificate, any adverse impact of the violation on resources protected by Council standards or site certificate conditions.

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Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992

#### **345-029-0030 - Classification of Violations**

The Department must determine the classification of a violation based upon severity and considering the guidelines in this rule. The Department may issue a notice of violation for Class I or Class II violations. The Department may, if special circumstances warrant, determine a classification at variance from the guidelines listed below:

(1) In general, the following violations are classified as Class II violations:

- (a) Violation of a term or condition of a site certificate;
- (b) Violation of an order of the Council;
- (c) Violation of any applicable rule in divisions 22 through 27 of this chapter;
- (d) Violation of a Department of Energy order as described in OAR 345-027-0230; or
- (e) Violation of any applicable provision of ORS Chapter 469.

(2) In general, the Department may escalate any Class II violation to a Class I violation. Factors the Department may consider in escalating a Class II violation to Class I include whether the responsible party reported the conditions or circumstances of the violation, the duration of the violation, whether the responsible party implemented prompt and effective corrective actions, the impact on public health and safety or on resources protected by Council standards, and the past performance of the responsible party. To escalate a violation to Class I, the Department must find that the violation meets one of the following criteria:

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

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992

#### **345-029-0040 - Response to Notice of Violation**

In the written response required by OAR 345-029-0020(2)(c), the responsible party must include, as a minimum, the following:

- (1) Admission or denial of the violation;
- (2) If the responsible party admits the violation and can determine suitable corrective action:



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- (a) The corrective action taken, and results achieved;
  - (b) Corrective action that the responsible party plans to take to minimize the possibility of recurrence; and
  - (c) The date by which the responsible party expects to achieve full compliance; and
- (3) If the responsible party admits the violation and cannot determine suitable corrective actions within the 30-day or other time period specified in the notice of violation, a preliminary response that includes a date by which the responsible party will submit a final response that includes all information described in section (2).

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992

**345-029-0050 - Enforcement Conference**

- (1) After issuing a notice of violation for a Class I violation, the Department must provide the responsible party an opportunity for an enforcement conference to discuss the cause and consequences of the violation and to describe the corrective actions taken. The Department may use information discussed at the conference in determining the appropriate enforcement action.
- (2) Following the enforcement conference, if any, the Department must confirm or amend the classification of the violation and may issue an amended notice of violation, if appropriate.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992

**345-029-0060 - Civil Penalties**

- (1) Following the responsible party's response to the notice of violation described under OAR 345-029-0040, and any enforcement conference, the Department may assess a civil penalty for a Class I violation. The Department must determine the amount of the civil penalty, if any, as follows:

(a) Base amount:

- (A) \$1000 per day from the date of discovery for a violation of site certificate terms or conditions or violation of a Department order as described in OAR 345-027-0230, or \$2000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months; or
- (B) \$2000 per day from the date of discovery for a violation of an enforcement order of the Council, or \$5000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months;

(b) The Department may multiply the base amount by a factor of:

- (A) 3.0 if the Department finds the violation was intentional or reckless; or
- (B) 5.0 if the Department finds the violation was intentional or reckless and the violation involved a requirement relating to public health, safety or the environment;

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(c) The Department may multiply the base amount by either or both of the following factors:

(A) 0.75 if the responsible party corrected the violation within the time required to respond to the notice of violation and the responsible party has submitted a plan adequate to minimize the possibility of recurrence; and

(B) 0.8 if the responsible party reported the conditions or circumstances of the violation as a result of a compliance audit; and

(d) The Department may not reduce the base amount under subsection (c) above if the Department determines an increase in the base amount is warranted under subsection (b).

(2) In a notice of assessment of the civil penalty, the Department must include:

(a) An analysis of the violations in light of the criteria described in section (1);

(b) The amount of the assessment;

(c) A proposed order assessing the civil penalty; and

(d) A statement of the responsible party's right to a contested case proceeding as provided for in OAR 345-029-0070.

(3) The Department must serve the notice of assessment of civil penalty by personal service and by certified or registered mail.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085 & 469.992

**345-029-0070 - Contested Case Proceeding**

(1) Within 20 days after the date of mailing of the notice of assessment of a civil penalty, the responsible party may submit to the Department a written request for a contested case proceeding. For the purpose of this rule, the request is submitted when it is received by the Department.

(2) If the responsible party requests a contested case proceeding within the time stated in section (1), the Council must conduct the proceeding under the applicable provisions of OAR 345-015-0002 to 345-015-0085.

(3) If the responsible party does not request a contested case proceeding within the time stated in section (1), the Department's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), automatically becomes final.

(4) If the responsible party requests a contested case proceeding but fails to appear, the Department's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), becomes final upon a prima facie case made on the record of the Department.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 183.415, 469.085 & 469.992

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**345-029-0080 - Payment of Penalty**

A civil penalty imposed under this division becomes due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. If the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 183.745, 469.085 & 469.992

**345-029-0090 - Council Consideration of Mitigating Factors**

Notwithstanding OAR 345-029-0080, the Council in its order after a contested case proceeding on a civil penalty imposed under OAR 345-029-0060 may rescind or reduce the penalty upon a showing by the responsible party incurring the penalty that imposition of the penalty would be an unreasonable economic and financial hardship, that the responsible party has taken prompt and effective action to correct the violation and ensure that it will not be repeated, or that the responsible party reported the conditions or circumstances of the violation as a result of a routine compliance audit.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085 & 469.992

**345-029-0100 - Revocation or Suspension of Site Certificate**

The Council may revoke or suspend any site certificate after conducting a contested case proceeding on the revocation or suspension under the provisions of OAR 345-015-0012 through 0085. A majority vote of the Council or a request from the Department initiates a contested case proceeding on a revocation or suspension. The Council may base revocation or suspension on any of the following grounds:

- (1) The certificate holder made a material false statement in an application for a site certificate or in supplemental or additional statements of fact or studies required of an applicant when a true answer would have warranted denial of a site certificate by the Council;
- (2) The certificate holder failed to comply with a term or condition of the site certificate;
- (3) The certificate holder violated a Department order as described in OAR 345-027-0230;
- (4) The certificate holder violated any provision of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, any administrative rule adopted under those statutes, including but not limited to rules contained in OAR chapter 345, or any order of the Council; or
- (5) For a site certificate subject to ORS 469.410, having been executed prior to July 2, 1975, the certificate holder violated any the provision of ORS 469.300 to 469.520 or failed to comply with applicable health or safety standards.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.440

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**Enforcement of Laws and Rules Related to the Transport and Disposal of Radioactive  
Materials or Waste**

**345-029-0503 - Applicability of OAR 345-029-0505 through 345-029-0560**

(1) OAR 345-029-0503 through 345-029-0560 apply to violations involving the transport or disposal of radioactive materials or waste, including violation of:

- (a) Any applicable provision of ORS 469.525 or OAR chapter 345, division 050; or
- (b) Any applicable provision of ORS 469.603 through 469.619, OAR chapter 345, division 060, or any term or condition of a Radioactive Materials Transport Permit.

(2) No provision of these rules preclude the Director or Council from taking other actions to protect public health and safety or the environment, including, but not limited to the seeking of injunctive relief or the suspension or revocation of permits or site certificates, authorized under ORS chapters 183 or 469.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.470 & 469.992

**345-029-0505 - Definitions for OAR 345-029-0503 through 345-029-0560**

As used in OAR 345-029-0503 through 345-029-0560, the following definitions apply:

- (1) "Compliance audit" means an audit conducted as part of an ongoing program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, or Radioactive Materials Transport Permit requirements.
- (2) "Director" means the Director of the Oregon Department of Energy, or Department staff authorized to implement these rules under the Director's authority.
- (3) "Reckless" means the responsible party consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.
- (4) "Responsible party" means any person subject to the provisions of:
  - (a) ORS 469.525 or OAR chapter 345, division 050; or
  - (b) ORS 469.603 through 469.619 or OAR chapter 345, division 060.
- (5) "Violation" means a transgression of any statute, rule, order, license, permit, permit attachment, or any part thereof and includes both acts and omissions.
- (6) "Willful" means the responsible party had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Statutory/Other Authority: ORS 469.470 & 469.605

Statutes/Other Implemented: ORS 469.085 & 469.540

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**345-029-0510 - Report by a Responsible Party**

(1) Whenever a responsible party becomes aware of conditions or circumstances that may constitute or result in a violation described under OAR 345-029-0503, the responsible party must:

(a) Within 72 hours after discovering the conditions or circumstances, provide written notice of the conditions or circumstances to the Director. The notice must include:

(A) A description of the conditions or circumstances;

(B) The date of discovery of the conditions or circumstances;

(C) A description of the immediate actions the responsible party has taken or intends to take to correct or mitigate conditions or circumstances. The description must explain whether and how the actions have prevented or will prevent a violation from occurring, and when any actions not yet taken are expected to be completed; and

(D) A description of how the conditions or circumstances were discovered, including whether they were discovered as the result of a regularly scheduled compliance audit; and

(b) As soon as reasonably possible, initiate and complete appropriate action to correct or mitigate the conditions or circumstances.

(2) Within 30 days after the date of discovery identified in paragraph (1)(a)(B) of this rule, the responsible party must submit a written report to the Director containing:

(a) A discussion of the cause of the reported conditions or circumstances;

(b) The estimated date when the conditions or circumstances first began;

(c) A description of immediate actions taken to correct or mitigate the conditions or circumstances, including the dates each action was completed; and

(d) A description of actions taken or planned to minimize the possibility of recurrence of the conditions or circumstances.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992

**345-029-0520 - Pre-Enforcement Notice**

(1) If the Director determines that a violation described under OAR 345-029-0503 has occurred, the Director may issue a Pre-Enforcement Notice upon the responsible party. The Pre-Enforcement Notice must be served upon the responsible party by personal service or by first class, certified or registered mail and must include:

(a) A description of the alleged violation, including a reference to the statute, administrative rule, order, or permit term or condition determined by the Director to have been violated and the classification of the violation under OAR 345-029-0530;

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(b) A statement of the facts upon which the Director based their determination, including the date or dates on which the violation is alleged to have occurred, or the date an ongoing violation was alleged to have begun;

(c) A description of evidence supporting any mitigating or aggravating factors, including, but not limited to:

(A) Whether the responsible party voluntarily reported the conditions or circumstances related to the alleged violation in accordance with OAR 345-029-0510;

(B) The performance of the responsible party in taking necessary or appropriate action to correct the conditions or circumstances that led to the violation and to prevent the violation from recurring;

(C) A history of similar or related violations by the responsible party and the responsible party's efforts in taking all feasible steps or procedures necessary or appropriate to correct or prevent any violation;

(D) Any known or potential adverse impact of the violation on public health and safety;

(E) Whether the violation was willful or the result of reckless behavior;

(d) A statement explaining what additional information the Director requires to determine appropriate enforcement and corrective actions;

(e) The date by which the responsible party must respond to the Pre-Enforcement Notice under section (2) of this rule and a description of the potential consequences of not responding. The date must be at least 30 days after the date of issuance of the Notice;

(f) A statement explaining that the responsible party is entitled to the opportunity to present information regarding the alleged violation and any proposed corrective action at an enforcement conference under OAR 345-029-0550 before the Director issues a Notice of Enforcement Action under OAR 345-029-0555; and

(g) An explanation that the Pre-Enforcement Notice does not entitle the responsible party to a contested case hearing.

(2) The responsible party must provide, to the Director, a written response to the Pre-Enforcement Notice by the date specified under section (1)(e) of this rule. The response must include:

(a) A statement of any facts relevant to the Director's determination that the violation has occurred;

(b) A description of any corrective actions taken or proposed to be taken to mitigate the impacts of the alleged violation and any corrective actions the responsible party proposes to take to minimize the possibility of recurrence;

(c) The date by which the responsible party expects to achieve full compliance with all applicable laws and rules;

(d) Any additional information requested by the Director in the Pre-Enforcement Notice;

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(e) If the responsible party cannot provide all the information required under subsection (a) to (d) of this section, the date by which the responsible party will submit all additional required information;

(f) A statement that the responsible party does or does not request an enforcement conference under OAR 345-029-0550 to present information regarding the alleged violation and discuss any proposed corrective action at an enforcement conference under OAR 345-029-0550.

(3) The Director must amend or withdraw the Pre-Enforcement Notice, as appropriate, within 30 days of receiving information that the Director finds sufficient to demonstrate that the violation alleged in the Pre-Enforcement Notice did not occur.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992

**345-029-0530 - Classification of Violations Involving the Transport or Disposal of Radioactive Materials or Wastes**

Violations involving the transport or disposal of radioactive materials or wastes are classified as follows:

(1) Class I Violations include:

- (a) Any violation of ORS 469.525 or OAR chapter 345, division 050;
- (b) A failure to obtain an Oregon Radioactive Waste Material Transport Permit as required by ORS 469.605 or OAR 345-060-0004;
- (c) A failure to immediately report an incident as required by OAR 345-060-0030;
- (d) A failure to comply with an order of the Director or Council;

(2) Class II Violations include:

- (a) A failure to route shipments of spent nuclear fuel or placarded shipments of radioactive materials as required by ORS 469.606 or OAR 345-060-0040;
- (b) Any violation of OAR 345-060 or an Oregon Radioactive Materials Transport Permit not otherwise described in this rule; and

(3) Class III violations include:

- (a) A failure to give notice for inspection or schedule change as required by OAR 345-060-0005;
- (b) A failure to maintain packaging, placarding, labeling, or shipment documentation as required by OAR 345-060-0025.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992

**345-029-0550 - Enforcement Conference**

If requested by the responsible party in its response to the Pre-Enforcement Notice provided under OAR 345-029-0520(2), the Director must provide the responsible party an opportunity for an enforcement

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conference to present information regarding the alleged violation and to discuss any corrective actions taken or proposed. The Director may use information discussed at the conference in determining the appropriate enforcement action.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992

**345-029-0555 - Enforcement Actions**

(1) After considering any information provided in the responsible party's response to the Pre-Enforcement Notice described under OAR 345-029-0520(2), and any enforcement conference under OAR 345-029-0550, the Director may issue a Notice of Enforcement Action containing one or more enforcement actions, including, but not limited to, ordering compliance or corrective actions, imposing safety conditions, and imposing civil penalties.

(2) The Notice of Enforcement Action must include:

- (a) The information described under OAR 345-029-0520(1);
- (b) A statement assessing the responsible party's cooperativeness and effort to correct the violation;
- (c) The amount of the penalty, if any, as calculated under OAR 345-029-0560;
- (d) A proposed order assessing a penalty, if any, and ordering compliance or imposing other safety conditions under ORS 469.540(3), as appropriate; and
- (e) A notice of the responsible party's right to a contested case hearing under OAR 137-003-0505, including:
  - (A) The date by which the Director must receive the responsible party's request for a contested case hearing. The date must be at least 20 days after the date of the Notice of Enforcement Action; and
  - (B) A statement explaining that if the responsible party does not request a contested case hearing by the date specified, or requests a contested case hearing and fails to appear at the hearing, the responsible party waives its right to hearing and the proposed order will become final by default.

(3) The Director must serve the Notice of Enforcement Action upon the responsible party by certified or registered mail.

(4) If the responsible party requests a contested case proceeding by the deadline specified in the Notice of Enforcement Action, the Director must conduct the proceeding in accordance with the applicable provisions of ORS chapter 183. The Director will issue the final order in the contested case.

(5) The Director may agree to an informal disposition or settlement of the contested case if the disposition would be consistent with the Council's goals of protecting public health and the environment and ensuring compliance with the laws, rules and orders of the Department and Council.



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(6) If the responsible party does not request a contested case proceeding by the deadline specified in the Notice of Enforcement Action, or if the responsible party requests a contested case proceeding but fails to appear, the Director may issue a final order by default.

(7) Notwithstanding OAR 345-029-0560, the Director may, in its final order issued under this rule, rescind or reduce the amount of penalty upon a showing by the responsible party that:

(a) Imposition of the penalty would be an unreasonable economic and financial hardship on the responsible party, subject to the following:

(A) To make a showing of unreasonable economic or financial hardship, the responsible party must provide documentation determined by the Director to be sufficient to evaluate the responsible party's actual economic or financial condition. Documentation may include, but is not limited to, tax returns and financial statements;

(B) The Director may consider the amount of a penalty issued by another state agency for a violation resulting from the same action, conditions, or circumstances, when evaluating whether the Director's penalty would result in an unreasonable economic or financial hardship on the responsible party; and

(C) The Director may use the U.S. Environmental Protection Agency's ABEL, INDIPAY or MUNIPAY computer models to evaluate a respondent's financial condition or ability to pay the full civil penalty amount. Upon request of the responsible party the Director will provide the respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model; or

(b) The responsible party has provided all information required by the Director's Pre-Enforcement Notice and has taken or is willing to take prompt and effective action to correct the violation and ensure that it will not be repeated.

(8) A civil penalty imposed under this rule becomes due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992

**345-029-0560 - Calculation of Civil Penalty Amount**

(1) The Director must determine the base penalty amount for a violation based on the classification and severity of the violation, subject to the following:

(a) The classification of violation is as provided in OAR 345-029-0530;

(b) No severity determination is needed for Class III violations. In making a severity determination for Class I or Class II violations, the Director will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes, rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, quantity, or

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radioactivity of the materials involved; the availability of potential pathways of exposure; and the duration of the violation.

(A) The severity of the violation is major if the Director finds the violation has caused, or has the potential to cause, a significant adverse impact on public health and safety, or the environment. In making this finding, the Director may describe any of the factors described in subsection (1)(b) to be conclusive.

(B) The severity of a violation is moderate if the Director finds the violation has caused, or has 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.

(C) The severity of a violation is minor if the Director finds the violation has caused, or has the potential to cause, no more than a minimal adverse impact on public health and safety or the environment.

(c) The base penalty for each violation is:

(A) For Class I violations:

- (i) \$10,000 for a major violation;
- (ii) \$5,000 for a moderate violation;
- (iii) \$1,000 for a minor violation;

(B) For Class II violations;

- (i) \$5,000 for a major violation;
- (ii) \$2,500 for a moderate violation;
- (iii) \$500 for a minor violation; and

(C) For Class III violations, \$500; and

(d) For the purposes of determining the base penalty amount, violations of more than one law, rule, permit, or order that result from the same actions, conditions, or circumstances, will be treated as a single violation. The base penalty amount will be based on the highest classification and severity applicable to any of the violations.

(2) The Director may adjust the base penalty amount to account for aggravating or mitigating factors by multiplying the base penalty by one or more of the following factors:

(a) 5.0, if the violation was willful or was the result of reckless behavior;

(b) 2.5, if the responsible party has a history of similar or related violations. Similar or related violations are violations that the Director determines to have resulted from the same or similar underlying actions, conditions, or circumstances as the violations addressed in the Notice of

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Enforcement Action, regardless of whether the Director or Council ever pursued an enforcement action for the previous violations;

(c) 2.5, if the corrective actions taken or proposed to be taken by the responsible party are not sufficient to reverse the conditions or circumstances that constituted the violation;

(d) 0.75, if the responsible party corrected the violation within the time required to respond to the Pre-Enforcement Notice and the responsible party has submitted a plan adequate to minimize the possibility of recurrence; and

(e) 0.8, if the responsible party voluntarily reported the conditions or circumstances of the violation in accordance with OAR 345-029-0510. In determining whether the responsible party voluntarily reported the conditions or circumstances, the Director may consider if the conditions or circumstances were discovered and reported independently from any investigation or inquiry of the Director or Council, or whether the conditions or circumstances were reported as a result of a compliance audit.

(3) The Director may assess the adjusted penalty amount for each occurrence of a violation, or for each day of an ongoing violation, except that the total amount of penalty assessed may not exceed:

(a) \$5,000,000 for a moderate violation; or

(b) \$25,000 for a minor violation.

(4) In addition to the amount of penalty calculated under sections (1) through (3) of this rule, the Director may assess an additional amount for Economic Benefit. Economic Benefit is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the responsible party's noncompliance. Economic Benefit will be determined using the U.S. Environmental Protection Agency's "BEN" computer model, subject to the following:

(a) The Director may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent.

(b) Upon request of the responsible party, the Director will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.

(c) The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply unless the responsible party can demonstrate that the standard value does not reflect the responsible party's actual circumstance.

(d) The Director may assume the economic benefit is zero if the Director makes a reasonable determination that the economic benefit is de minimis or if there is insufficient information to make an estimate under this section.

(5) Notwithstanding any provision of this rule, the total amount of civil penalty assessed may not exceed the maximum civil penalty allowed by ORS 469.992.

Statutory/Other Authority: ORS 469.470

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Statutes/Other Implemented: ORS 469.085 & 469.992

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**DIVISION 30 - RESEARCH REACTORS**

**Reporting of Operating Information from Research and Other Reactors Which Produce Less  
Than 200,000 Thermal Kilowatts**

**345-030-0005 - General**

This rule applies to each research or other reactor in the State of Oregon that is designed to produce less than 200,000 thermal kilowatts. The intent of the rule is to ensure that the Energy Facility Siting Council is advised of the operation of such reactors.

Statutory/Other Authority: ORS 469

Statutes/Other Implemented: ORS 469.300 & 469.470

**345-030-0010 - Reports Required**

(1) Annual Reports of Environmental Effects. By October 1 of each calendar year, the operator of any reactor described in OAR 345-030-0005 shall submit a report to the Council that contains the following information on reactor operation during the previous calendar year:

(a) The total amounts (measured or calculated) of radioactivity released to the environment in gaseous, liquid or solid effluents.

(b) The radionuclides present in these effluents and the quantities of principal radionuclides.

(c) The location and magnitude of the maximum measured or calculated direct radiation level in unrestricted areas from:

(A) Direct radiation from the facility;

(B) Direct radiation from facility effluents.

(d) A description of the general methods and the results of environmental monitoring.

(2) Notification of Incidents

(a) The operator of any reactor described in OAR 345-030-0005 shall promptly (no later than the following working day) notify the Council by telephone of the occurrence of any incident or condition relating to the operation of the reactor that could have prevented a nuclear system from performing its safety functions as described in the Technical Specifications, as set forth at 10 CFR 50.36 in effect January 2006, or in the Safety Analysis Report, as required by 10 CFR 50.34, in effect January 2006. In addition, the operator shall submit a written report within 14 days after the occurrence.

(b) The operator of any reactor described in OAR 345-030-0005 shall notify the Council in writing within 30 days after the occurrence of any substantial variance from performance specifications contained in the Technical Specifications or Safety Analysis Report.

(3) Reports of Overexposures (from the reactor and its effluents) and Excessive Levels or Concentrations

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(a) The operator of any reactor described in OAR 345-030-0005 shall promptly (no later than the following working day) notify the Council by telephone if any of the following events occur:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 25 rems or more of radiation; exposure of the skin of the whole body of any individual of 150 rems or more; or exposure of the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation.

(B) The release of radioactive material in concentrations that, if averaged over a period of 24 hours, would exceed 5,000 times the applicable limits specified for such material in the Technical Specifications for effluents under 10 CFR 50.36a or personnel exposure regulations under 10 CFR 20.

(b) The operator of any reactor described in OAR 345-030-0005 shall notify the Council by telephone within 24 hours if any of the following events occur:

(A) Exposure (from the reactor or its effluents) of the whole body of any individual to 5 rems or more of radiation; exposure of the skin of the whole body of any individual to 30 rems or more of radiation; or exposure of the feet, ankles, hand, or forearms to 75 rems or more of radiation.

(B) The release of radioactive material in concentrations that, if averaged over a period of 24 hours, would exceed 500 times the applicable limits specified for such materials in the Technical Specifications for effluents under 10 CFR 50.36a or personnel exposure regulations under 10 CFR 20.

(c) The operator of any reactor described in OAR 345-030-0005 shall notify the Council in writing within 30 days after occurrence of the events described in subsections (A) and (B) below. Each report required shall describe the extent of exposure of persons to radiation or to radioactive material, including estimates of each individual's exposure; the levels of radiation and concentrations of radioactive material involved; the cause of the exposure, levels or concentrations; and the corrective steps taken or planned to ensure against a recurrence.

(A) Exposure (from the reactor or its effluents) of an individual to radiation or concentrations of radioactive material in excess of any applicable limits specified in U.S. Nuclear Regulatory Commission regulations or in the reactor operating license required under 10 CFR 50.10.

(B) Levels of radiation or concentrations of radioactive material (not involving excessive exposure of any individual) in an unrestricted area in excess of ten times any applicable limit specified in U.S. Nuclear Regulatory Commission regulations or in the operating license for the reactor.

(4) Correspondence with Other State or Federal Agencies. The operator of any reactor described in OAR 345-030-0005 shall provide to the Council a copy of each report related to reactor operations that the operator submits to a state or federal agency, except for material withheld from public disclosure under **10 CFR, Part 2, Section 790**.

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

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Statutory/Other Authority: ORS 469  
Statutes/Other Implemented: ORS 469.470

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**DIVISION 50 - RADIOACTIVE WASTE MATERIALS**

**345-050-0006 - Disposal Prohibited**

Except as provided in ORS 469.525 and this division, a person shall not hold or place discarded or unwanted radioactive material for more than seven days at any geographical site in Oregon except the site at which the radioactive material was used or generated according to a license under ORS 453.635 or a site of a thermal power plant used for the temporary storage of radioactive material from that plant for which the Council issued a site certificate.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525

**345-050-0010 - Purpose and Applicability**

- (1) Because virtually all materials contain some radioactivity, the purpose of the rules in OAR 345-050-0006 through 345-050-0039 is to identify those materials that present such small health hazards that they are not considered to be radioactive waste and may be disposed of within the state.
- (2) OAR 345-050-0040 through 345-050-0130 establish standards for the siting of facilities for disposal of radioactive wastes that were generated before June 1, 1981, through industrial or manufacturing processes and that contain naturally occurring radioactive isotopes. These rules implement the requirements of ORS 469.375, 469.470 and 469.501 to 469.559 for such waste disposal facilities.
- (3) Except as provided in OAR 345-050-0060, these rules do not apply to uranium mine overburden or uranium mill tailings, mill wastes or mill by-product material that are subject to OAR chapter 345, divisions 92 and 95.
- (4) In accordance with ORS 469.525, the Department may establish an enforceable timeline or other requirements to determine whether a material is radioactive waste.
- (5) For the purpose of these rules, disposal does not include:
  - (a) Temporary storage and staging of radioactive waste used or generated and stored or staged in accordance with a state license under ORS 453.635 as part of regular site operations
  - (b) Temporary storage of radioactive waste at the Trojan Spent Fuel Storage Installation until a federal waste repository is operational, subject to the provisions of OAR 345-026-0300 through 345-026-0390
  - (c) Temporary storage of radioactive waste from a reactor for which a site certificate has been issued pursuant to this chapter that is operated by a college, university or graduate center for research purposes and is not connected to the Northwest Power Grid; and
  - (d) Temporary storage of radioactive waste at a facility not licensed under ORS 453.635 pending lawful disposal out of this state, subject to the following:



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(A) Any person that intends to temporarily store radioactive waste must report to the Department and Oregon Health Authority within 10 business days of discovery of such waste. The Department, in consultation with Oregon Health Authority, must determine that temporary storage of radioactive waste presents no significant risk to health and safety of the public and workforce. In order to determine that a radioactive waste presents no significant risk during temporary storage, it must be demonstrated that:

- (i) the waste will be located in an area of a facility that is reasonably expected to be inaccessible to the public;
- (ii) the waste will be clearly marked and cordoned or otherwise isolated from workers, and must be stored in such a manner that minimizes risk of mobilization. This may include cover and/or secondary containment;
- (iii) workers will be informed and instructed on safety related to the waste; and
- (iv) any other requirements as determined by the Department in consultation with Oregon Health Authority and the holder of the waste.

(B) Temporary storage may not exceed 90 days without prior written authorization from the Department. To grant authorization to temporarily store radioactive waste for more than 90 days, the Department, in collaboration with Oregon Health Authority, must be assured that the waste will be properly disposed as soon as reasonably achievable, not to exceed 180 days in total.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525

**345-050-0020 - Exempt Quantities**

(1) Materials that contain radionuclides in concentrations below the applicable concentration identified in Table 1 are not radioactive waste for purposes of ORS 469.525 and these rules. Additionally, wastes with the following characteristics are considered to contain exempt concentrations:

(2) Radium-bearing materials containing less than 5 picocuries of radium-226 per gram of solid, regardless of quantity,

(3) Thorium-bearing materials containing less than 20 picocuries of radium-228 per gram of solid, if the radium-228 is present with the parent thorium-232, regardless of quantity, or

(4) Lead-210-bearing wastes which are not in equilibrium with uranium-238, are the result of fossil fuel-related production including refining, transport, or storage, and contain less than 10 picocuries per gram of solid regardless of quantity.

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.300 & ORS 97.153

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**345-050-0025 - Exempt Concentrations**

(1) Materials that contain radionuclides in individual quantities that do not exceed the applicable quantity identified in Table 2 are not radioactive waste for the purposes of ORS 469.525 and these rules unless the number of individual radionuclides at their maximum allowable activity given in Table 2 exceeds 10. Additionally, wastes with the following characteristics are considered to contain exempt quantities:

(2) Radium-bearing material containing a total radium-226 activity of less than 10 microcuries, regardless of concentration.

(3) Thorium-bearing materials containing a total radium-228 activity of less than 100 microcuries, if the radium-228 is present with the parent thorium-232, regardless of concentration in the solid.

[ED. NOTE: The Table referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Statutory/Other Authority: ORS 469

Statutes/Other Implemented: ORS 469.300, ORS 469.470 & ORS 469.525

**345-050-0030 - Specific Exemptions**

In addition to the exemptions under OAR 345-050-0020 and 345-050-0025, the following materials are exempt from the provisions of ORS 469.525 and OAR 345-050-0006:

(1) Radioactive material that has been incorporated into a consumer product manufactured under a license issued by the Nuclear Regulatory Commission (NRC) or by an Agreement State, if the NRC or the Agreement State that issued the license has determined that the possession, use, transfer and disposal of such consumer product are exempt from regulatory requirements. An "Agreement State" is a state to which the NRC has delegated its authority to license and regulate byproduct materials (radioisotopes), source materials (uranium and thorium) and certain quantities of special nuclear materials in accordance with section 274b of the Atomic Energy Act.

(2) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses that are disposed of or treated at a hazardous waste disposal facility licensed by the U.S. Environmental Protection Agency (U.S. EPA), by the Oregon Department of Environmental Quality, or by another state delegated the responsibility to regulate the disposal or treatment of hazardous waste by the U.S. EPA.

(3) Burial of a human or animal body containing radioactive materials used for diagnostic or therapeutic purposes is exempt from the provisions of ORS 469.525 if the burial is otherwise done in accordance with applicable Oregon law.

(4) Waste that is identified as the result of metabolized isotopes used in medical treatment. A facility may only dispose of such waste in accordance with a facility-specific plan approved by the Department

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in consultation with Oregon Health Authority. The plan must ensure that the material presents no significant risk to the public, workers, or the environment. The plan, at a minimum, should include:

- (a) how the facility will identify and confirm that waste is the result of metabolized isotopes used in medical treatment;
- (b) information regarding worker safety and training;
- (c) how the facility will manage waste that is determined to not be the result of metabolized isotopes used in medical treatment; and
- (d) a tracking and reporting schedule for informing the Department and Oregon Health Authority of actions taken under the plan.

(5) Wastes containing only naturally occurring radioactive isotopes other than those in the uranium and thorium decay series, as long as the isotopes exist in their naturally occurring isotopic concentrations.

(6) Wastes legally disposed before November 17, 2023, provided the waste is not removed from the location of original disposal.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525

**345-050-0035 - Pathway Exemption**

Naturally occurring radioactive materials are exempt from the provisions of OAR 345-050-0006 if the Council or the Department of Energy finds that accumulation of material cannot result in exposures exceeding 500 millirem of external gamma radiation per year, nor in the release of effluents to air and water in annual average concentrations exceeding the values in **Table 3**. The Council or the Department shall base its finding on an evaluation of potential radiation exposures and effluent releases performed under the following conditions:

- (1) The evaluation considers material in the form in which it exists when it is removed from the users' equipment, systems, or settling ponds prior to any dilution or remedial action designed to reduce radiation levels.
- (2) The evaluation does not consider any ameliorating effects of land use restrictions, maintenance operations, or cover material at the disposal site.
- (3) The evaluation covers accumulations of material over the reasonably projected period of waste generation.
- (4) The evaluation bases external gamma radiation exposures on actual measurement with allowance for the degree of equilibrium and for self-shielding.
- (5) The evaluation uses the following premises in computing radon concentrations in the air above a disposal site containing radium-226:
  - (a) The evaluation assumes that any house built on ground contaminated with radium-226 has an 8-foot high ceiling on the first floor, has one complete air change per hour, and has a foundation

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constructed so as to meet the **Structural Specialty Code** (State of Oregon Uniform Building Code) in effect on March 1, 1979 without allowance for any special construction or treatments designed to reduce radon diffusion into the structure;

(b) The evaluation bases the relation between radon-emanation rate and radium concentration upon experimental measurements on material intended for disposal.

[ED. NOTE: Tables referenced are available from the agency.]

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

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525

**345-050-0036 - Gamma Pathway Exemption Interpretive Rule**

(1) In determining compliance with OAR 345-050-0035 when considering external gamma radiation exposure, the Council or the Department of Energy must find that the disposal in Oregon of waste materials containing naturally-occurring radioactive materials (NORM) cannot result in doses to individuals greater than 500 millirem (mrem) per year. If doses could exceed this limit, the Council or the Department shall find that the waste material is radioactive and requires disposal in a licensed radioactive waste disposal site. To find the waste materials exempt, the Council or the Department must find that the waste materials meet air and water (including radon and leaching) pathway exemptions in OAR 345-050-0035. To determine compliance with the gamma pathway exemption in OAR 345-050-0035, the following conditions apply:

(a) "Waste material" means the annual solid waste stream leaving a site for landfill disposal.

(b) Actual field gamma radiation exposures are measured. The exposure readings are compared with the levels given in section (2) of this rule. The levels given in section (2) correspond to a potential 500 mrem dose per year. They are based on the dose a person might receive being 90 percent of the time in a house built on a homogeneous, semi-infinite plane (slab) of NORM assuming the house has a two-inch wooden floor over a two-foot crawl space and assuming exposure is measured at three feet above the floor. Computer modeling was used to correlate the radiation levels measured in the house to radiation from NORM in two container geometries -- a standard 55-gallon steel drum and a box measuring 1.5 x 1 x 2 feet (H x W x L).

(c) Readings are in microRoentgen per hour (uR/hr) using a detection system that is sensitive enough to determine compliance with the gamma radiation levels in section (2). Systems are calibrated according to National Institute of Standards and Technology (NIST) procedures with an NIST-traceable source, or equivalent calibration as judged by the Council Secretary. Measurements are made at a distance of one foot from the waste container. The contents of the container are proportional in composition to the average waste material. The highest reading measured around the container is used.

(2) The following readings correspond to a potential dose of 500 millirem per year for the respective container geometries. Long-lived radionuclides are assumed to be in secular equilibrium. If

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measurements as described in subsection (1)(c) of this rule produce readings below the following levels, the Council or the Department shall find the waste material is exempt based on the gamma pathway only:

- (a) Standard 55-gallon steel drum: 18 uR/hr (above background) at one foot;
- (b) Box (1.5H x 1W x 2L feet): 18 uR/hr (above background) at one foot.

(3) The Department may approve the use of exemption levels corresponding to container types other than those in section (2) to determine compliance if:

- (a) The exemption levels for other container types are derived by the same computer model and assumptions used to calculate the exemption levels for the drum and the box in section (2);
- (b) Measurements are made in compliance with subsections (1)(b) and (c);
- (c) The contents of containers larger than a box or drum are uniformly mixed before readings are taken to determine compliance.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525

**345-050-0038 - Water Pathway Exemption Interpretive Rule**

(1) In determining compliance with OAR 345-050-0035 when considering release of effluents to water, the Council or the Department of Energy must find that the disposal in Oregon of waste materials containing naturally occurring radioactive materials (NORM) cannot result in effluents with annual average concentrations exceeding the values in **Table 3** of this division. If effluent concentrations could exceed this limit, the Council or the Department shall find that the waste material is radioactive and require disposal in a licensed radioactive waste disposal site. To find the waste materials exempt, the Council or the Department must also find that the waste materials meet air and gamma (including radon release) pathway exemptions in OAR 345-050-0035. To determine compliance with the water pathway exemption in OAR 345-050-0035, the following conditions apply:

- (a) "Waste material" means the annual solid waste stream leaving a site for landfill disposal.
- (b) At least four representative samples of the waste stream being evaluated must be tested using EPA Method 1312, "Synthetic precipitation leaching procedure" (SPLP). The resultant extractant must be analyzed for the radioactive constituents in the waste by a procedure of suitable accuracy and specificity that is approved by the Department.
- (c) The results of the analysis of the extractant samples shall be compared to the values for concentrations in water above natural background shown in **Table 3** of this division.

(2) The statistical results of the analyses of the SPLP extractants shall be reported to the Department.

- (a) If the mean of the analytical results from the first sample set multiplied by a factor of 20 is greater than 50 percent of the value for the most restrictive isotope in Table 3 and the coefficient of variation (the standard deviation of the sample divided by the mean of the sample set) is greater

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than 0.25, an additional set of samples must be analyzed to better characterize the waste stream. This statistical evaluation and, if indicated, reanalysis must be made after each set of analyses. No more than 20 analyses are required to characterize the waste stream, but it must be shown that a good faith effort was made to analyze representative samples.

(b) If the mean of the analytical results from the first sample set multiplied by a factor of 20 is less than 50 percent of the value for the most restrictive isotope in **Table 3**, no further analyses are required.

(3) If the mean value from the analyses of the SPLP extractants for a single isotope multiplied by a factor of 20 exceeds the value in Table 3, the waste material is radioactive waste under Oregon law. If more than one radioactive isotope is present and the sum of the ratios of the individual concentrations of those isotopes multiplied by a factor of 20 to the values in **Table 3** for those isotopes is greater than 1, the waste material is radioactive waste under Oregon law. See Note 1 in **Table 3**.

[ED. NOTE: Tables referenced are available from the agency.]

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525

**345-050-0040 - Standards for Waste Disposal Facilities**

OAR 345-050-0040 through 345-050-0130 establish standards for disposal of radioactive waste. The Council shall apply the standards in deciding whether to issue a site certificate for the construction and operation of a waste disposal facility and its related or supporting facilities. If the Council adopts any additional standards, the Council shall do so sufficiently in advance of the close of testimony at a hearing on a site certificate to allow parties to address the standard or if after the close of testimony, in sufficient time to allow the parties an opportunity to supplement their testimony to offer evidence relating to the standard. The Council may use the standards established in OAR 345-050-0040 through 345-050-0130 and any standards adopted under this rule as well as other statutory and regulatory requirements of the Council and federal, state and local agencies in formulating site certificate conditions required by ORS 469.401.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525 & ORS 469.375

**345-050-0050 - Definitions**

The definitions set out in ORS 469.300 apply in interpreting these standards, unless the context requires otherwise or unless a term is specifically defined in this rule. Additional definitions are:

(1) "Area" means all locations adjacent to a facility determined by the Council to be directly affected by a force of nature to the eventual detriment of site integrity.

(2) "500-year flood plain" means the extent of a 500-year flood.

(3) "Active fault" means a fracture along which rocks or soil on one side have been displaced with respect to rocks or soil on the other side in Holocene time (i.e., the most recent epoch of the Quaternary

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period, extending from the end of Pleistocene to the present). "Active fault zone" means an area of one or more active faults.

(4) "Mass movement" means ground surface instabilities that result in land sliding, flow, creep or any other instabilities found by the Council to threaten the integrity of the facility.

(5) "Director" means the Director of the Oregon Department of Energy.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525

**345-050-0055 - Mandatory Site Certificate Conditions**

In addition to any other site certificate conditions the Council may impose under ORS 469.401, the Council shall impose site certificate conditions that require an applicant to design, build and operate a waste disposal facility in accordance with the design standards contained in OAR 345-050-060 and 345-050-0100 and in accordance with any representations the applicant makes in the plan submitted under OAR 345-050-0040 that address compliance with 345-050-0090, 345-050-0110, and 345-050-0130.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.525 & ORS 469.375

**345-050-0060 - Site Suitability**

To issue a site certificate for a waste disposal facility, or to carry out a cooperative agreement or arrangement with an agency of the federal government to clean up radioactive waste, uranium mine overburden or contaminated material pursuant to ORS 469.559(2), the Council must find that the site is suitable for the type and amount of waste the applicant intends to dispose of at the site. For purposes of this rule, uranium mine overburden means earth and other material overlying natural deposits of uranium ore and removed to gain access to the ore, if disposal of the material would result in an exceedance of any of the pathways in OAR 345-050-0035 as in effect on the date of this rule. A site is not suitable if it is located in:

(1) An area determined by the Council to be subject to surface water erosion over the projected life of the facility. In making this determination, the Council shall consider geological evidence of historical erosion, ancient shorelines, stream beds and cutting due to floods as well as impacts from future climate conditions.

(2) The 500-year flood plain of a river, stream or creek, taking into consideration the area the Council determines under section (1) to be potentially subject to erosion within the lifetime of the facility.

(3) A Quaternary-active fault or Quaternary-active fault zone.

(4) An area of ancient, recent, active or potentially active, mass movement or landslide, including the triggering mechanisms such as earthquake shaking.

(5) An area subject to volcanic damage over the past two-million years or that the Council finds to be subject to damage from natural forces of volcanic origin that is sufficient to cause meaningful degradation of facility integrity.

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Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

#### **345-050-0070 - Alternate Site**

A person shall not locate a waste disposal facility at a site unless there is no available alternative site for disposal of such wastes:

(1) A site outside of Oregon is not available unless appropriate local, state and federal regulatory agencies have issued the necessary permits to allow present commercial use of the site for disposal of wastes of the nature produced by the applicant.

(2) A site is not available unless the Council finds it to be the best site reasonably available for the disposal of such wastes. In making this finding, the Council may rely on a report of possible sites provided by the applicant. If the Director or the Council finds the list to be deficient, the Council may consider additional sites. The applicant may either perform the additional site evaluations itself or elect to have the Director perform them. The applicant shall reimburse the Director for all costs of site evaluations done by the Director.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

#### **345-050-0075 - Alternate Technology**

A person shall not locate a waste disposal facility at a site unless there is no available alternative disposal technology that would better protect the health, safety, and welfare of the public and the environment. In making this finding, the Council shall consider proven, demonstrated technology, including but not limited to existing hazardous waste and radioactive waste disposal site technologies.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

#### **345-050-0090 - Adjacent State Compatibility**

A person shall not locate a waste disposal facility at a site unless the person coordinates disposal of the type and amount of such wastes with the regulatory programs of adjacent states for disposal of such wastes. Coordination with the regulatory programs of adjacent states means that radioactive emissions from waste disposal facilities on or near Oregon boundaries comply with regulatory limits of the adjacent states.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

#### **345-050-0100 - Release of Radioactivity**

(1) A person shall not locate a waste disposal facility at a site unless the facility is designed to contain radioactive releases. To issue a site certificate, the Council must find that the applicant has proposed to construct the site using methods that include, but are not limited to, construction of dikes, liners and covers, such that there can be no release of radioactive materials from the facility.



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(2) To find that the proposed radioactive waste disposal facility is designed to contain radioactive releases, the Council shall consider measurements of natural background concentrations of radioactive materials near the facility. For the purpose of this rule, radioactive releases are contained if radiation levels and concentrations of radioactive materials are less than the upper statistical limit of background measurements measured before any waste is placed at the site. In making this finding, the Council shall consider statistical limits determined at the 99 percent confidence level.

(3) The applicant shall take samples to determine background from a minimum of four samples evenly spaced over a period of a year from each monitoring location of air, soil, groundwater and surface water. The applicant shall calculate the average of the measurements from each seasonal period and for each sample type to determine the background concentration. From year to year, the applicant may average the values to increase the statistical base of measurements, but only within the same seasonal period. The applicant shall use a sufficient number of monitoring locations to accurately characterize the area.

(4) After construction of the facility, the certificate holder shall determine compliance with release limits by statistically comparing the average of sample measurements to the upper limit of the range of background values. The certificate holder shall make this determination by comparing measurements from individual locations to the established background levels. The certificate holder may average multiple samples from the same location to determine compliance with release limits, but only within the same seasonal period.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

**345-050-0110 - Compatibility with Federal Programs**

(1) A person shall not dispose of radioactive waste or uranium mine overburden at a site unless the disposal of the type and amount of such wastes is compatible with regulatory programs of the federal government for disposal of such wastes. Regulatory programs of the federal government refers to those programs that are formally adopted as federal laws or regulations but not to statements of policy or future intent.

(2) Commercial Disposal. To issue a site certificate, the Council must find that the disposal facility is designed to meet all applicable federal and state standards for disposal of the type of material involved.

(3) CERCLA Cleanup. If the project is a remedial action undertaken under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for hazardous substances as that term is defined in **42 USC 9601**, the person responsible for cleanup shall also comply with the applicable portions of CERCLA, **42 USC 9601 et. seq.**:

- (a) If disposal will occur off-site, the person responsible for cleanup shall transfer the waste to a facility that is in compliance with any legally applicable federal and state requirements, including but not limited to, those required by sections 3004 and 3005 of the Solid Waste Disposal Act, **42 USC 6924** and **6925**, and with the Toxic Waste Disposal Act, **15 USC 260**;

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(b) If the person responsible for cleanup proposes to construct a disposal facility in connection with an on-site cleanup of hazardous substances, the the person responsible for cleanup must comply with those portions of OAR 345 Divisions 50, 92 and 95 that are legally applicable or relevant and appropriate under the circumstances of the release or threatened release except as provided in **42 USC Section 9621(d)(4)**.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

**345-050-0120 - Bonding and Financial Ability**

(1) A person shall not locate a waste disposal facility at a site unless, if federal funding for remedial actions is not available, the applicant provides a surety bond in the name of the state in an amount determined by the Oregon Department of Energy to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate condition.

(2) The applicant shall estimate the cost of closing the site, including the cost of the effort to comply with the site suitability requirements of OAR 345-050-0060 and the radioactive release limits of OAR 345-050-0100. To determine the cost of monitoring the site, providing for its security after closure and, in the case of a facility with a site certificate, ensuring performance of site certificate conditions, the applicant shall base the estimate on the amount of investment principal that would be required to produce proceeds sufficient to provide for the cost of quarterly visits to the plant site by state regulatory agencies for inspections and environmental sampling.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

**345-050-0130 - Ability to Construct and Operate**

A person shall not locate a waste disposal facility at a site unless the person or firm proposing to dispose of the material has or can acquire the organizational, managerial, and technical expertise to construct, operate and retire the facility.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.375

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**DIVISION 60 - TRANSPORTATION OF RADIOACTIVE MATERIAL**

**345-060-0001 - Definitions**

(1) The definitions set out in ORS 469.300 are the definitions to be used in interpreting the rules in this division, unless the context requires otherwise or unless a term is specifically defined in this rule. Terms not otherwise defined are defined as found in 10 CFR 71 and 49 CFR 171 through 178 in effect as of the date of this rule.

(2) "Radioactive material" is as defined in 49 CFR 173.403 in effect as of the date of this rule.

(3) "Radioactive material shipments" include but are not limited to any number of truck trailers, automobiles, vans or barges, moved by one or interconnected power sources.

(4) "Radiopharmaceuticals" are radioactive materials used in the medical testing or treatment of animals or humans.

(5) "Radiographic materials" include any sealed radioactive source fastened or contained in any instrument used for the examination of the macroscopic structure of materials by nondestructive methods using the source.

(6) "Well-logging radioactive materials" are radioactive sources used in measuring devices or tools used to obtain information about wells or the adjacent soil or geologic formations.

Statutory/Other Authority: ORS 469.470, 469.605 & 469.607

Statutes/Other Implemented: ORS 469.603 - 469.615

**345-060-0003 - Applicability and Scope**

(1) These rules apply to the transportation of radioactive material by means other than railcars in the State of Oregon. The rules contained in OAR 345-060-0001 to 345-060-0055 are auxiliary to and supplemental to the rules of OAR 740-110-0060 to 740-110-0090 for highway transport.

(2) Transport by or under the direction of an agency of the federal government in federal vehicles is exempt. This section does not exempt other shipments:

- (a) That are subject to federal physical security requirements;
- (b) That originate from or are destined for a federal facility; or
- (c) That include material owned by the federal government.

(3) In accordance with ORS 469.603 and 469.607, it is the intent of these rules to be consistent with the United States Department of Transportation and Nuclear Regulatory Commission rules.

Statutory/Other Authority: ORS 469.470, 469.605 & 469.607

Statutes/Other Implemented: ORS 469.603 - 469.615

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**345-060-0004 - Permits**

(1) Persons must obtain an "Oregon Radioactive Material Transport" (RAM) permit from the Oregon Department of Transportation (ODOT) Motor Carrier Transportation Division (MCTD) prior to transport in the State of Oregon of radioactive material that requires a placard on the vehicle according to 49 CFR 172, Subpart F in effect as of the date of this rule.

(2) A carrier shall submit a permit application annually to ODOT MCTD, 3930 Fairview Industrial Dr SE, Salem, OR 97302. A carrier applying for the first time shall submit the application at least 30 days prior to transporting any materials specified in section (1).

(3) ODOT may issue a permit on an emergency basis by telephone when the carrier cannot comply with the 30 day requirement of section (2) as a result of conditions beyond the carrier's control. A carrier acquiring a permit under this section shall provide the information contained in subsections (4)(a) through (d) and (f) of this rule and the name of its insurance company, policy number, minimum levels of coverage and date of policy expiration or verification of self insurance.

(4) In the permit application, the carrier shall include:

- (a) The name and address of the carrier;
- (b) The telephone numbers of the carrier that will be answered at any time for emergencies and a statement that the carrier has a 24-hour telephone number for contacting all shippers;
- (c) A description of the material to be transported, number of shipments and estimated radioactivity per shipment. Precise information is not necessary if unavailable;
- (d) A description of the route or routes to be taken and approximate schedule. Precise information is not necessary if unavailable;
- (e) A description of any violations by the applicant of any local, state or federal regulations within the past two years related to radioactive material transportation. The carrier may satisfy this requirement by submitting copies of the most recent federal or state motor carrier safety or hazardous material audit and inspection reports that include descriptions of those violations, if any;
- (f) ODOT Operating Authority Identification Number, U.S. Department of Transportation Number, and U.S. Environmental Protection Agency Identification Number, when appropriate; and
- (g) Proof of insurance including minimum levels of coverage and policy expiration date or verification of self insurance.

(5) ODOT shall issue a regular permit if the applicant's record of violations of federal and state motor carrier safety and hazardous material requirements indicate that its practices have not and will not create an undue risk to public health, safety, or the environment.

(6) ODOT shall issue a conditional permit, which requires pre trip notification to arrange for inspection, to any carrier who has a "conditional" safety fitness rating pursuant to the authority of Title 49 CFR 385.1 in effect as of the date of this rule.

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(7) ODOT shall not issue an Oregon Radioactive Material Transport permit if the carrier has an “unsatisfactory” safety fitness rating pursuant to the authority of Title 49 CFR 385.1 in effect as of the date of this rule.

(8) For all shipments requiring an Oregon Radioactive Material Transport Permit, the carrier shall have a copy of the permit in the vehicle during shipment.

(9) Any person who has been denied a permit under this rule may submit to the Department of Energy a written request for a contested case proceeding. In the request, the person shall describe the issues to be contested, state the facts believed to be at issue, and include the person's mailing address. The Council shall conduct the proceeding under the provisions of OAR 345-015-0012 to 345-015-0085. After the hearing in the contested case proceeding, the Council, in its final order, shall grant or deny the permit.

(10) Once issued, permits remain valid for one year from the date of issuance unless revoked or suspended under section (11).

(11) ODOT or the Department of Energy may revoke or suspend permits for failure to comply with the conditions named on the permit or violations of the motor carrier safety requirements or hazardous or radioactive materials requirements.

(12) For reinstatement of a permit revoked or suspended under section (11) of this rule, the carrier shall submit a new application and evidence that the carrier has taken remedial actions to prevent recurrence of the violation(s).

(13) Upon entering the State of Oregon with a shipment made under this permit, the driver must either stop at the nearest Oregon Port of Entry and provide specific shipment information in writing by filling out an “Oregon Radioactive Materials Shipment Report” form or provide the same information in electronic format as described below. The Shipment Report is available at all Oregon Ports-of-Entry at all times, open or closed. Information to be provided includes name of carrier; name of shipper; vehicle license plate number; driver's name; RAM permit number; commodity description and UN identification number; whether the shipment is Highway Route Control; shipment origin; and shipment destination. Carriers who elect to submit the information electronically in lieu of stopping at an Oregon Port-of-Entry, must submit the form provided on the ODOT website within 48 hours of entering the state.

(14) Failure to fill out an “Oregon Radioactive Materials Shipment Report” or omitting required information may subject the carrier to civil penalties as described in Division 29 of this chapter.

(15) With prior approval of the Department, carriers that do not pass through an Oregon Port of Entry must self-report each individual shipment on a monthly basis, directly to the Department.

Statutory/Other Authority: ORS 469.470 & 469.607

Statutes/Other Implemented: ORS 469.603, 469.605, 469.607 & 469.615

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**345-060-0005 - Notification for Inspection**

(1) For shipments of irradiated reactor fuel, the shipper shall submit notification pursuant to Nuclear Regulatory Commission rules found in 10 CFR 71.97 and 10 CFR 73.37(f) in effect as of the date of this rule to: Secretary, Energy Facility Siting Council, 550 Capitol St., NE., Salem, Oregon 97301, Telephone: (503) 378-8328.

(2) The carrier shall submit notice to the Oregon Department of Transportation and make arrangements for inspection for all spent nuclear reactor fuel shipments, Highway Route Controlled Quantity Shipments and shipments that require notice and inspection under a conditional Oregon Radioactive Material Transport Permit. The carrier shall submit notice for inspection as follows:

- (a) As soon as practicable but no later than 48 hours before time of shipment in Oregon;
- (b) When, as a result of conditions beyond the control of the carrier, the carrier cannot comply with the 48-hour minimum notification, then the carrier shall give notice immediately by telephone or in any event not later than on the next working day and shall explain why the carrier could not comply with the 48-hour requirement;
- (c) When an inspection has been scheduled, the carrier shall give additional notice if the shipper or carrier cancels the shipment or if the carrier will arrive at the inspection location early or late by two or more hours;
- (d) The carrier shall make all notice for inspection and schedule changes in writing or by telephone between 8 a.m. and 5 p.m. (Pacific time) to ODOT MCTD, 3930 Fairview Industrial Drive SE, Salem, Oregon 97302, Telephone: (503) 378-7481;
- (e) In a notice for inspection, the carrier shall include the following information:
  - (A) The carrier's name, address, telephone number and ODOT MCTC Field Number;
  - (B) The shipper's and receiver's names, addresses and telephone numbers;
  - (C) A description of the material that shall include proper shipping name, hazard class, hazardous material identification number and total quantity by weight or volume and number of curies;
  - (D) A description of the route and approximate schedule; and
  - (E) A description of the transport vehicle(s) and name(s) of driver(s).

Statutory/Other Authority: ORS 469.470 & 469.607

Statutes/Other Implemented: ORS 469.603, 469.605 & 469.607

**345-060-0006 - Fees**

(1) Except as provided in section (2) through (5) of this rule, the carrier shall submit a \$70 fee to the Oregon Department of Energy, 550 Capitol St., NE, Salem, Oregon 97301 for each placarded shipment. The Department invoices motor carriers each three months for shipments recorded at Oregon Ports of

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Entry in the previous quarter. The Department may establish with carriers special invoice procedures for shipments that do not regularly pass through an Oregon Port of Entry.

(2) For placarded shipments of well-logging material, radiographic material and radiopharmaceuticals, the carrier shall submit an annual fee of \$500 or \$70 per shipment, whichever is less.

(3) No additional fee will be charged for shipments for which:

- (a) The cargo is transferred from a previous vehicle for which a fee has been assessed, or
- (b) The vehicle has a number of stops before unloading the radioactive cargo for which a fee has been assessed.

(4) Radioactive material carriers may petition for an alternative fee schedule. The secretary of the Council may grant such a request based on evaluation of whether:

- (a) The carrier demonstrates that the applicable fee schedule severely impacts the cost of the product;
- (b) Other payments or services to the Department support applicable safety programs of the State of Oregon;
- (c) The shipment of the material involves a single radioactive source and frequent movement between sites where the source is used; or
- (d) The carrier is a public university or research organization using the material for public benefit.

(5) The carrier shall pay a \$100 fee for each shipment traveling under a temporary permit, unless the carrier applies for a permit from the Oregon Department of Transportation within two weeks after the carrier first gives notice of the need for a permit.

Statutory/Other Authority: ORS 469.470 & 469.607

Statutes/Other Implemented: ORS 469.603, 469.605, 469.607 & 469.611

**345-060-0007 - Inspections**

The State of Oregon or its agents may inspect shipments under these rules for compliance with applicable rules and regulations. The State shall inspect all irradiated reactor fuel (defined in 10 CFR 73.37 in effect as of the date of this rule) and Highway Route Controlled Quantity shipments (defined in 49 CFR 173.403 in effect as of the date of this rule). The state may choose to waive inspection if the shipment is carrying a current Commercial Vehicle Safety Alliance inspection sticker. The state may inspect samplings of other shipments. The State may inspect highway shipments made under conditional permits described in OAR 345 060 0004(6). The State shall make arrangements for inspection when the carrier gives notice for inspection, as described in 345 060 0005.

Statutory/Other Authority: ORS 469.470, 469.605 & 469.607

Statutes/Other Implemented: ORS 469.603 - 469.615

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**345-060-0015 - Vehicles, Operator, Equipment**

The carrier shall maintain all aspects of vehicles, operators and equipment in accordance with Oregon Administrative Rules Chapter 740, Division 100. These Oregon Department of Transportation rules reference the requirements of 49 CFR 390 through 397 in effect as of the date of this rule.

Statutory/Other Authority: ORS 469.470 & ORS 469.607  
Statutes/Other Implemented: ORS 469.603, ORS 469.605 & ORS 469.607

**345-060-0025 - Packaging, Placarding, Labeling and Documentation**

The shipper shall maintain all packaging, placarding, labeling, shipment documentation and all other aspects of transporting any radioactive material in accordance with 10 CFR 71 and 73, and 49 CFR 171 through 179 in effect as of the date of this rule.

Statutory/Other Authority: ORS 469.470 & 469.607  
Statutes/Other Implemented: ORS 469.607

**345-060-0030 - Reporting and Emergency Response**

The carrier of any radioactive material shall immediately notify local emergency response authorities and the Oregon Emergency Response System (within Oregon call 1-800-452-0311, outside Oregon call 1-503-378-6377) of any of the following:

- (1) Vehicle accidents regardless of whether radioactive material has been damaged or dispersed;
- (2) Loss of any radioactive material;
- (3) Tampering with or obstruction of any shipments.

Statutory/Other Authority: ORS 469.470 & ORS 469.607  
Statutes/Other Implemented: ORS 469.603 - ORS 469.615

**345-060-0040 - Highway Routes**

In Oregon, the carrier shall route all shipments of spent nuclear reactor fuel in accordance with 10 CFR 73.37 in effect as of the date of this rule and all placarded highway shipments of radioactive materials in accordance with 49 CFR 397.101 and 49 CFR 397.103 in effect as of the date of this rule.

Statutory/Other Authority: ORS 469.470 & ORS 469.607  
Statutes/Other Implemented: ORS 469.603 - ORS 469.615

**345-060-0045 - Financial Assurances**

- (1) If required by the Price-Anderson Act (42 USC Section 2210, in effect as of the date of this rule), the carrier or shipper shall maintain insurance on shipments of spent nuclear reactor fuel.
- (2) Carriers of radioactive materials shall comply with applicable federal and Oregon insurance requirements (see Oregon Administrative Rules, chapter 740, division 40, Oregon Department of Transportation rules and Title 49 CFR, Part 387, in effect as of the date of this rule).



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(3) Carriers of radioactive material shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during transportation and pay for the cost of response to an accident.

Statutory/Other Authority: ORS 469.470 & 469.607

Statutes/Other Implemented: ORS 469.603, 469.605, 469.607 & 469.615

**345-060-0050 - Weather and Road Conditions**

The carrier shall avoid movement of motor vehicles during a road condition advisory of the Oregon State Highway Division unless vehicles have the required chains or traction tires specified in OAR Chapter 734, Division 17.

Statutory/Other Authority: ORS 469.470 & ORS 469.607

Statutes/Other Implemented: ORS 469.603 - 469.615

**345-060-0055 - Enforcement**

(1) The Director of the Oregon Department of Energy may issue an order to halt the transport of radioactive material if he or she believes there is a clear and immediate danger to public health or safety. The Director may serve the order without prior hearing or notice.

(2) In accordance with Division 29 of this chapter, the Department of Energy may issue a notice of violation and may assess a civil penalty for violations of the rules of this division or applicable provisions of ORS Chapter 469.

Statutory/Other Authority: ORS 469.470 & 469.607

Statutes/Other Implemented: ORS 469.603 - 469.615

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**DIVISION 70 - CONFIDENTIAL TREATMENT OF SECURITY**

**PROGRAM INFORMATION**

**345-070-0005 - Purpose**

The purpose of these rules is to protect the confidentiality of information submitted to the Energy Facility Siting Council and the Secretary regarding security programs for nuclear-fueled power plants, nuclear installations and the transportation of radioactive materials to and from such facilities.

Stat. Auth. :ORS 469.530  
Statutes/Other Implemented: ORS 469.530

**345-070-0010 - Legislative Authority**

These rules are promulgated concurrently by the Council and the Director pursuant to their respective rulemaking authorities contained in ORS Chapter 183, ORS 469.470, 469.501 to, 469.507, 469.530, 469.560 and ORS 192.500, in order to implement their joint responsibility under ORS 469.530.

Stat. Auth: ORS 469.530  
Statutes/Other Implemented: ORS 469.530

**345-070-0015 - Definitions**

- (1) "Nuclear installation" is defined in ORS 469.300.
- (2) "Security program" means any plan or procedure the primary function of which is to protect nuclear power plants, nuclear installations, transportation and storage of new or irradiated nuclear fuel elements or transportation and storage of fissile material against any deliberate act that could directly endanger the public health and safety including exposure to radiation, including, but not limited to, plans or procedures for:
- (a) Controlling entry to the site or portions of the site of fixed installations;
  - (b) Deterring or discouraging penetrations of sites or carriers by unauthorized persons;
  - (c) Detecting such penetrations in the event they occur;
  - (d) Apprehending in a timely manner unauthorized persons or authorized persons acting in a manner constituting a threat of sabotage or theft;
  - (e) Providing for appropriate authorities to take custody of violators.
- (3) "Fissile material" means fissile plutonium, uranium-233, and uranium-235 in any combination sufficient to cause (gm Pu/200 gm) + (gm U-233/200 gm) + (gm U-235 contained in uranium enriched to more than 20 percent in U-235)/350gm) to be greater than unity.
- (4) "Safeguards information (SI)" means information that specifically identifies:
- (a) Detailed security measures for the protection of special nuclear material; or

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- (b) Detailed security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.530

**345-070-0020 - Confidential Treatment Required**

The Council and the Director shall receive, and maintain as confidential, information submitted by any person pursuant to ORS 469.530 for review and approval to the extent the information falls within the definitions of "security program" or "safeguards information" in OAR 345-070-0015. The Council and Director shall take all reasonable precautions to:

- (1) Limit the number of persons within the Department of Energy having access to such information; and
- (2) Physically safeguard such information.

Stat. Auth: ORS 469.530  
Statutes/Other Implemented: ORS 469.530

**345-070-0025 - Releases of Non-Confidential Information**

In reviewing information submitted to them under ORS 469.530, the Council and Director shall jointly determine whether specific portions of such information are not within the definition of "security program" in OAR 345-070-0015 and shall promptly arrange for the physical segregation and public availability of all information not entitled to confidential treatment.

Stat. Auth: ORS 469.530  
Statutes/Other Implemented: ORS 469.530

**345-070-0030 - Public Statements on the Security Program**

(1) Upon completing their review and approval of a security program and modifications to the program, the Council and Director shall promptly issue a joint statement that describes, without directly or indirectly breaching the confidentiality of the security program:

- (a) The nature and scope of the review conducted;
- (b) The adequacy of the security program; and
- (c) A general description of the security measures.

(2) In the event of discovery of noncompliance with approved security programs, the Council and Director will issue a joint statement describing the general nature of the noncompliance without directly or indirectly breaching the confidentiality of the security program.

Stat. Auth: ORS 469.530  
Statutes/Other Implemented: ORS 469.530

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**DIVISION 76 - SPECIFIC STANDARDS FOR THE SITING OF NUCLEAR POWER  
FACILITIES IN OREGON**

**345-076-0010 - Purpose**

The rules in this division supplement the general standards in OAR chapter 345, division 22, for the siting of energy facilities and apply to any nuclear-fueled thermal power plant or nuclear power plant, as defined in ORS 469.300 and their related and supporting facilities.

Statutory/Other Authority: ORS 469  
Statutes/Other Implemented: ORS 469.470

**345-076-0012 - Rules That Apply to Nuclear Power Facilities**

(1) The rules in this division apply to site certificate applications for nuclear-fueled thermal power plants and nuclear power plants and their related and supporting facilities.

(2) In addition to these rules, the General Standards for Siting Facilities contained in OAR chapter 345, division 22, apply to a decision whether to grant or deny issuance of a site certificate for a nuclear power facility.

(3) The Council may adopt siting standards for nuclear power facilities if the Department receives a notice of intent to apply for a site certificate for such a facility.

(4) The Council shall not issue a site certificate for a nuclear-fueled thermal power plant until the electors of this state have approved the issuance of the certificate as required under ORS 469.597.

Statutory/Other Authority: ORS 469  
Statutes/Other Implemented: ORS 469.300, 469.597

**345-076-0020 - Definitions**

In this division, the following definitions apply:

(1) The term "operation of the nuclear power facility" includes its normal operation and the accumulation and storage of wastes generated thereby.

(2) The term "nuclear power facility" means a nuclear-fueled thermal power plant or a nuclear power plant as defined in ORS 469.300 and their related or supporting facilities.

Statutory/Other Authority: ORS 469  
Statutes/Other Implemented: ORS 469.300

**345-076-0050 - Federal Waste Depository**

To issue a site certificate for a nuclear power facility, the Council must find that there is an adequate federal repository for the disposal of high-level radioactive waste as described in ORS 469.595.

Statutory/Other Authority: ORS 469  
Statutes/Other Implemented: ORS 469.300

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**DIVISION 92 - STANDARDS FOR THE SITING OF URANIUM MILLS IN OREGON**

**345-092-0010 - Purpose**

The purpose of these rules is to establish standards for uranium mills and related and supporting facilities. The Council will apply these standards in reaching a decision for or against issuance of a site certificate for the construction and operation of a uranium mill and its related or supporting facilities, as defined in OAR 345-092-0025. The Council may adopt additional standards.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.553

**345-092-0012 - Applicability and Statutory Authority**

- (1) In addition to the standards in OAR chapter 345, divisions 22, 23 and 24, the standards in this Division are applicable to a site certificate application for a uranium mill and its related or supporting facilities as those terms are defined in OAR 345-092-0025.
- (2) These standards are authorized under ORS 469.553, 469.556 and ORS 183 and should be interpreted so as to carry out the fundamental policy of 469.310.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.553

**345-092-0014 - Mandatory Site Certificate Conditions**

In addition to any other site certificate conditions that the Council may impose, the Council shall impose a site certificate condition that requires the certificate holder to design, build, operate and retire a uranium mill in accordance with the design standards contained in OAR 345-092-0031(l), (5) and (6), 345-092-0040(1), (2) and (3)(c) and 345-092-0050 and in accordance with any representations made in satisfaction of OAR 345-092-0031(6) and (7) and 345-092-0040(3)(a) and (d).

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.553

**345-092-0025 - Definitions**

- (1) The definitions set out in ORS 469.300 apply in interpreting rules in this division, unless the context requires otherwise or unless a term is specifically defined in this rule.
- (2) "Uranium mill" means a site at which ore is milled primarily for the recovery of uranium by conventional methods, which involve the crushing, grinding and leaching (acid or alkaline) of the ore, followed by chemical separation and concentration of uranium. As used in this division, "uranium mill" does not include facilities for the extraction of uranium by in situ mining or heap leaching.
- (3) "Mill tailings" means the residues remaining after extraction of uranium from its ore at a uranium mill.

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(4) "Related or supporting facilities" means, in addition to related or supporting facilities as defined in ORS 469.300, structures adjacent to and associated with a uranium mill including areas from which ore is mined to produce feed material for the mill, ponds designed for the storage of mill tailings or other materials and any sites for the permanent disposal of mill tailings and mine overburden.

(5) The term "facility" means a uranium mill and its related or supporting facilities.

(6) "Facility boundary" means the boundary within which the applicant or site certificate holder has the legal right to control the access of individuals.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.553

**345-092-0031 - Standards Relating to Public Health and Safety of Uranium Mill Operation, Decommissioning and Waste Disposal**

In determining whether a proposed facility satisfies the requirements of this rule, the Council will accept, where applicable, the assumptions and methods used or approved by the federal Nuclear Regulatory Commission (NRC) or the Environment Protection Agency (EPA) in evaluating compliance with their respective regulations, in the absence of clear and convincing evidence that the use of such assumptions and methods will not adequately protect the health and safety of the public. To issue a site certificate for a uranium mill, the Council must find that:

(1) The facility can be designed, constructed and operated such that there is reasonable assurance that:

(a) During normal operations of the facility, the annual radiation dose equivalent to any member of the public will not exceed the limits specified in OAR 345-095-0090(I).

(b) The release of airborne effluents will not result in ambient levels exceeding the limits in OAR 345-095-0090(2).

(c) The facility shall be located at a remote site. To be considered remote, the calculated population doses within a 50-mile radius of the mill resulting from all exposure pathways will not exceed:

(A) Whole Body -- 50 person rem/year;

(B) Lung -- 500 person rem/year;

(C) Bone -- 1250 person rem/year.

(2) (a) The site selected for final disposal is suitable for disposal of uranium mill tailings and wastes from decommissioning the uranium mill and the proposed amount thereof intended for disposal at the site. In order for the Council to find the site to be suitable, the Council must find that the applicant has evaluated reasonable disposal methods for the site including, but not limited to, below ground disposal, fixation of tailings with asphalt or cement, single tailings dam and multiple dams or dikes.

(b) In the evaluation required under (a), the applicant must provide the data needed to determine the effect of the alternate disposal method on the economic viability of the facility. The applicant must demonstrate that reasonably expected wind and water erosion will not uncover uranium mill

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tailings and wastes from decommissioning the uranium mill and that surface and ground waters will not become contaminated with chemicals or radioactivity in excess of those levels specified in OAR 345-092-0040(4). The applicant must demonstrate that water contamination will not occur by use of a transport model that uses the existing aquifer boundaries, hydrogeologic flow rates, soil absorption phenomena (e.g., filtration, ion exchange, precipitation, etc.) and the leachability of materials from the uranium mill tailings under reasonably expected natural conditions at the site. The applicant must consider perturbations caused by reasonably expected hydrogeologic changes at the site.

(3) The amount of uranium mill tailings and waste that would result from decommissioning the uranium mill must be disposed of at the site in Oregon, rather than permitting their uncontrolled abandonment, to protect the environment and the health, safety and welfare of the people of the state from such wastes.

(4) There is no available, economically feasible alternative to the applicant's proposal for disposal of uranium mill tailings and wastes from decommissioning the uranium mill, in the proposed amounts, inside or outside of the state. The applicant must evaluate alternatives including, but not limited to return of tailings to the mine, creation of a regional disposal facility, disposal in an out-of-state commercial disposal site and at least 2 alternative sites within 20 miles. The Council will not consider an alternative to be available unless such alternative provides superior protection to the public health and safety than the proposed site.

(5) The proposed amount of uranium mill tailings and wastes from decommissioning the uranium mill can be disposed of at the site in a manner compatible with the regulatory programs of the federal government in existence on the date of adoption of these standards for disposal of such wastes.

(6) The proposed amount of uranium mill tailings and wastes from decommissioning the uranium mill can be disposed of at the site in a manner that is coordinated with the regulatory programs of adjacent states in existence on the date of adoption of these standards for disposal of such wastes. To support a Council finding that the manner of disposal can be coordinated with regulatory programs of adjacent states, the applicant must demonstrate that radiological impacts in adjacent states from disposal of uranium mill tailings and wastes from decommissioning the uranium mill are not likely to exceed the applicable standards for disposal of these wastes that are in effect in the adjacent state on the effective date of this standard.

(7) After disposal of uranium mill tailings and wastes from decommissioning the uranium mill, the calculated radon emanation rates at the site are likely to be no greater than 2 picocuries per square meter per second above natural background levels that existed at the site prior to disposal of any wastes, and calculated gamma radiation levels are not likely to be statistically different from background levels that existed at the site prior to disposal of any wastes.

(8) The applicant has identified all reasonably expected loads, including but not limited to seismic events and liquification, hydrostatic, flood, wind and ice loads expected to be placed on any dike or dams

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associated with the facility, and the applicant has demonstrated that such dikes and dams can withstand these loads without failure.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.553

**345-092-0040 - Standards Relating to Environmental Impacts of Uranium Mill Operation**

To issue a site certificate for a uranium mill, the Council must find that:

- (1) Release of airborne particulates from the facility can be controlled through the use of baghouses or equivalent methods to the maximum extent consistent with existing milling technology and without increasing occupational health and safety risks.
- (2) All mill ponds used for the collection and storage of mill tailings and chemical agents can be designed or sited in such a manner as to preclude seepage into any groundwater aquifers to the maximum extent consistent with existing impoundment technology.
- (3) Studies have been performed characterizing the relative abundance and diversity of the plant and animal species at the proposed site of the facility and:
  - (a) The proposed facility is not likely to jeopardize the continued wildlife use of deer, elk and antelope wintering ranges or migration routes of migratory wildlife.
  - (b) The above ground portions of the proposed facility are not located on antelope fawning areas, sage grouse strutting and nesting areas or waterfowl nesting and rearing areas that are necessary to sustain the existing local or migratory populations of such species.
  - (c) Areas within the boundary of the facility site with unstable or fragile soils have been satisfactorily identified and available construction techniques can be employed to reduce adverse impacts such as erosion and compaction.
  - (d) The bird species using the area affected by the proposed facility have been identified, and the facility is not likely to jeopardize the continued existence of local or migratory populations of such bird species.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.553  
Hist.: EFSC 2-1980, f. & ef. 2-28-80; EFSC 3-1981, f. & ef. 3-20-81; EFSC 1-2007, f. & cert. ef. 5-15-07

**345-092-0050 - Standards Relating to Beneficial Use of Wastes**

To issue a site certificate for a uranium mill and related and supporting facilities, the Council must find that liquids from the facility can be recycled consistent with existing and economic technology and process requirements.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.553



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**345-092-0110 - Applications and Site Certificate Conditions**

(1) Any person who intends to apply for a site certificate for a uranium mill shall submit a notice of intent subject to the requirements and procedures described in OAR chapter 345, division 20.

(2) An applicant for a site certificate shall submit an application subject to the requirements and procedures of OAR chapter 345, division 21.

(3) The Department of Energy shall apply the requirements and procedures described in OAR chapter 345, division 15, for review of the notice of intent and an application for a site certificate for a uranium mill.

(4) The holder of a site certificate for a uranium mill is subject to the requirements of OAR 345-026-0005 through 345-026-0170 and OAR chapter 345, divisions 27 and 29.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.553

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**DIVISION 95 - CONSTRUCTION, OPERATION, AND DECOMMISSIONING RULES  
FOR URANIUM MILLS**

**345-095-0005 Purpose**

It is the purpose of these rules to ensure that the construction, operation, and decommissioning of uranium mills and related and supporting facilities are accomplished in a manner consistent with ORS 469.310.

Statutory/Other Authority: ORS 469

Statutes/Other Implemented: ORS 469.310, 469.501 & 469.556

**345-095-0015 - Scope and Construction**

(1) The rules in this Division apply to all uranium mills that use conventional alkaline or acid leach technologies, together with their related and supporting facilities, for which the Council has issued a site certificate.

(2) If the Council finds that applicable Oregon statutes and rules, other than those involving federally delegated programs, would impose requirements inconsistent with the rules in this Division, the Council shall resolve the conflict consistent with the public interest. In resolving the conflict, the Council cannot waive any applicable state statute.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.556, 469.505

**345-095-0020 - Definitions**

All definitions in OAR 345-092-0025 apply to the rules in this Division.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.470 & 469.556

**345-095-0040 - Rules that Apply to Construction**

The following rules apply to any ground disturbance activity on the site of a uranium mill:

(1) The certificate holder shall remove native topsoil before excavation for the mine, mill buildings, ponds and tailings disposal sites and shall stockpile the topsoil for later use in site reclamation. The certificate holder shall contour topsoil storage areas to prevent erosion and shall protect the topsoil to retain nutrients needed for subsequent use of the topsoil as a growth medium.

(2) The certificate holder shall not divert or rechannel any perennial streams.

(3) The site certificate holder shall keep the Council informed of drilling or trenching projects conducted to define hydrologic or geologic parameters related to building foundation designs, tailings retention system design, reclamation planning or environmental monitoring. The certificate holder shall notify the Council if site investigations, drillings, trenchings or construction projects including mine development reveal geologic conditions different from those described in the site certificate application. The

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certificate holder shall provide the information described in this rule to the Department of Energy, the Department of Geology and Mineral Industries and the Department of Water Resources on a timely basis so that the Council and other state agencies may inspect the projects.

(4) The certificate holder shall not use radioactive tailings in the construction of tailings dams.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.470 & 469.556

#### 345-095-0045 - Construction Reports

(1) Prior to the initial production of yellowcake, the site certificate holder shall submit ~~copies of monthly~~ construction progress reports to the Council. Such reports shall describe the status of mining activities, building construction and tailings dam and pond construction in sufficient detail to allow the Council or its representatives to observe significant construction progress.

(2) The certificate holder shall notify the Council of any major changes in construction schedules and of any significant changes in process equipment, pollution control equipment or facilities or equipment or facilities designed for the protection of workers.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.470 & 469.556

#### 345-095-0060 - Standards that Apply to Operation

The following rules apply to the operation of a uranium mill:

(1) The certificate holder shall implement a safety and health program covering both occupational and radiological hazards, subject to the approval of the Council and including:

- (a) Identification of an onsite occupational safety officer trained and experienced in the recognition and control of the occupational hazards of milling operations including physical and chemical hazards and the use of respiratory protection equipment.
- (b) Identification of an onsite radiological safety officer trained and experienced in the recognition and control of the radiological hazards associated with uranium milling operations.
- (c) Description of the authority of the safety officers to order immediate correction of safety or health hazards including process modification or cessation if, in the judgment of the safety officer, such action is required to protect workers or the public.
- (d) An occupational radiological dose assessment program.
- (e) A policy stating that personal protective equipment, including respirators, shall not be used routinely in lieu of process modification in order to meet personnel exposure limits.
- (f) An employee training program that includes training in the safety and health hazards of facility operation and the use of personnel protection equipment and procedures.

(2) The site certificate holder shall maintain records of all yellowcake shipments including amounts, routes to be followed, description of packaging, description of labeling and a copy of the information

**Commented [TJ25]:** Removing ambiguity caused by word "copies."

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supplied to the shipper, including instructions to be followed in case of an accident. The certificate holder shall make these records available for review by the Council or its representatives. The certificate holder shall submit an emergency plan for transportation accidents to the Council for approval before beginning operation of the facility. The certificate holder shall submit any later changes in the plan to the Council at least 45 days before they are effective, except that the certificate holder may immediately implement any temporary changes the certificate holder believes are necessary immediately for the protection of the public health and safety or the health and safety of facility personnel.

(3) The certificate holder shall have established written procedures for dealing with off-normal and emergency situations including, but not limited to:

- (a) Failure of yellowcake drying and packaging dust control systems.
- (b) Fire.
- (c) Dam or dike failure.
- (d) Slurry pipeline rupture.
- (e) Hazardous process chemical spills.

(4) The certificate holder shall not use underground injection of solutions for the extraction of minerals including uranium (in situ solution mining).

(5) The certificate holder shall not remove uranium mill tailings from the facility for any purpose other than samples for research or analytical purposes. The site certificate holder shall maintain a permanent record of any tailings transfer for such purposes.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.470 & 469.556

**345-095-0070 - Effluent Release Limits**

The certificate holder shall operate the uranium mill to ensure that, during routine operation of the facility, effluent releases to uncontrolled areas do not exceed limits established by rules of the Public Health Division of the Oregon Department of Human Services or rules of the Oregon Department of Environmental Quality.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.470, 469.525 & 469.556

**345-095-0080 - Effluent Monitoring**

(1) During construction and operation of a uranium mill, the site certificate holder shall implement an effluent monitoring program to evaluate facility effluents compared to effluent releases projected in the site certificate application, to regulatory limits of the rules in this Division and to environmental impacts.

(2) The certificate holder shall submit the effluent monitoring program to the Council for approval. The Council may consult with affected state agencies before approving the program.

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(3) In the effluent monitoring program, the certificate holder shall describe the methods for ensuring the adequacy of control procedures for each point of routine or potential effluent release. The certificate holder shall include in the program a method of determining average release rates, maximum release rates and total releases as well as the physical, chemical and radiological characteristics of the release.

(4) The certificate holder shall submit annual reports to the Council within 90 days of the end of each reporting year and shall include data on all effluent releases, comparison of these releases to those projected in the site certificate application and to regulatory limits, review of the adequacy of the monitoring program and recommendations and justification for any improvements in the program. For the purpose of this rule, reporting year begins upon the initiation of construction at the site and subsequent reporting years begin upon the anniversary of that date.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.470 & 469.507

**345-095-0090 - Public Health Impacts**

The certificate holder shall operate the uranium mill to ensure that, during operation of the uranium mill, public health impacts do not exceed the following limits:

(1) Annual dose equivalent not exceeding 25 millirems to the whole body, 75 millirems to the thyroid and 25 millirems to any other organ of any member of the public as the result of exposures to planned discharges of radioactive materials except radon and its daughters.

(2) Concentrations of total suspended particulates resulting from facility operation at any location that is routinely inhabited or visited by members of the public not exceeding 19 ug/m3 annual geometric means. The 24-hour concentration at these locations must not exceed 37 ug/m3 more frequently than once per year. In any case where measurable impacts might occur in wilderness areas designated by federal or state agencies or in designated national or state parks, the site certificate holder shall determine the concentration of total suspended particulates at the wilderness or park boundary nearest the facility. The concentration limit at that location must not exceed 5 ug/m3 annual geometric mean nor 10 ug/m3 on a 24-hour average more frequently than once per year.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.470 & 469.501

**345-095-0100 - Environmental Monitoring**

(1) During construction and operation of a uranium mill, the site certificate holder shall implement an environmental monitoring program to evaluate all aspects of the environment and to analyze the environment of the site compared to the baseline environmental data presented in the site certificate application and to the projected environmental impacts of facility operation.

(2) The certificate holder shall submit the environmental monitoring program to the Council for approval. The Council may consult with affected state agencies before approving the program.

(3) In the environmental monitoring program, the certificate holder shall address each item discussed in the environmental assessment, including but not limited to the following:

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(a) Geography: The site certificate holder shall determine, evaluate and summarize any changes in land ownership and land use within 5 miles of the mill.

(b) Demography, Sociology and Economics: The site certificate holder shall evaluate any changes in population and nearest residences and the effects of facility operation on public services, demographic characteristics and economic status of the affected communities.

(c) Historic and Cultural Resources: The site certificate holder shall determine any changes, attributable to facility operation, in the status of any resources described in the application.

(d) Meteorology: The site certificate holder shall monitor those parameters necessary to evaluate environmental impacts of mill operation including, but not limited to wind speed and direction.

(e) Hydrology: The site certificate holder shall monitor ground water and surface water sources to determine impacts of the facility on water sources.

(f) Geology: The site certificate holder shall identify any significant geological discoveries and their potential impacts on operation of the facility.

(g) Seismology: The site certificate holder shall identify nearby earthquakes by location and intensity.

(h) Ecology: The site certificate holder shall maintain a program to identify changes in the ecological baseline and determine the extent to which mill operation is responsible for those changes.

(i) Radiological: The site certificate holder shall conduct an operational monitoring program designed to identify impacts on the environment and to allow dose assessments of any affected populations.

(j) Chemical: The site certificate holder shall maintain a monitoring program to assess project related impacts of non-radiological materials on the environment including bioaccumulation or biological effects.

(4) The site certificate holder shall prepare an annual environmental report including data on all parts of the monitoring programs described in section (3), except that the certificate holder may include the information in parts (a), (b), (c), (f) and (g) in the annual report at intervals not to exceed 5 years. The certificate holder shall submit the report to the Council within 90 days after the end of each reporting year, as defined in OAR 345-095-0080(4). The certificate holder shall include in the report: data on each part of the program; analysis of that data compared to baseline monitoring, effluent releases and projected impacts; calculated radiological impacts upon the maximum exposed member of the public and the population; review of the adequacy of the program based on experience gained; and recommendations and justification for any improvements to the monitoring program.

(5) During construction and operation of the facility, the certificate holder shall obtain and maintain control (through ownership, long term lease or other legal means) over all environmental monitoring and sampling sites sufficient to preclude the direct impact on such site of any non-facility related activities (such as logging, plowing, grazing, etc.) that could destroy the usefulness of the monitoring

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program. If loss of control or destruction of a sampling site occurs through no fault of the certificate holder, the certificate holder shall select a replacement sampling site and shall provide to the Council a thorough evaluation of the replacement site compared to the lost or destroyed sampling site. The certificate holder shall use the replacement site subject to Council approval.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.470 & 469.507

**345-095-0115 - Violations**

If air or water pollution control mechanisms malfunction or other factors result in emissions or discharges in violation of applicable standards, the certificate holder shall take the following actions:

(1) For a violation of an emission standard or discharge limit administered by an agency other than the Council, the certificate holder shall submit to the Council copies of all notifications required by the agency at the same time the notifications are submitted to the agency.

(2) For a violation of an emission or discharge standard imposed by the Council, the site certificate holder shall:

- (a) Notify the Department of Energy of the violation as soon as reasonably possible after the occurrence, giving all pertinent facts including the estimated duration of the breakdown.
- (b) Promptly initiate and complete appropriate actions to correct the conditions that resulted in the violation.
- (c) Cease or discontinue operations of those portions of facility operation contributing to the violation, if the violation is not otherwise corrected within 48 hours after it began, except as required under sections (3) and (4).
- (d) Submit to the Council an initial written report of the failure or breakdown within ten days after the occurrence. When the condition has been corrected, the certificate holder shall submit a final written report to the Council describing the causes and the actions taken to prevent similar upsets or breakdown conditions. If more than 45 days elapse between the initial and final reports, the certificate holder shall submit monthly status reports.

(3) The certificate holder shall cease yellowcake drying and packaging operations immediately upon the failure of affected emission control equipment unless alternative licensed emission control equipment, adequate to provide equivalent control of releases, is available and operational.

(4) The certificate holder shall cease the generation of tailings as soon as possible following any dam failure or threatened failure to avoid uncontrolled tailings release inside or outside of the facility and, in the meantime, shall use an unaffected impoundment of sufficient size to contain all tailings generated in that period. The certificate holder shall not restart the generation of tailings without approval by the Council.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.470

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**345-095-0117 - Mill Decommissioning**

Following the operational life of the facility, the certificate holder shall decontaminate the site, except for the tailings disposal area, to permit unrestricted use of the site. Reclamation of the tailings disposal area is subject to the requirements of OAR 345-095-0120.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.470 & 469.501

**345-095-0118 - Mine Reclamation**

Following the operational life of the facility, the certificate holder shall reclaim the mine site by modifying overburden and waste dump slopes to grades favorable to reclamation and by implementing surface water management measures to prevent water collection or erosion in the area and to aid in revegetating the site.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.470

**345-095-0120 - Tailings Disposal**

The certificate holder shall reclaim the final disposal site for uranium mill tailings to meet the following requirements:

- (1) Above grade tailings disposal systems must be constructed to include a secondary dam or dike capable of, and designed to, contain the maximum quantity of tailings which could be released in the case of primary containment failure. Where a multiple dam or dike system is used, secondary dams or dikes must be provided to retain any tailings released in the failure of any section of the primary containment.
- (2) Following abandonment and sufficient drying time to permit satisfactory reclamation, tailings must be covered by sufficient capping material and/or overburden, not less than three meters in thickness, to ensure that radon flux from the surface of the disposal area does not exceed two picocuries per square meter per second above background.
- (3) External gamma radiation levels above background must not be statistically significant.
- (4) The site must be covered with riprap and must be revegetated with plant life compatible with projected site uses.
- (5) Following reclamation, the site certificate holder shall develop and maintain an environmental surveillance program, approved by the Council, to verify the adequacy of reclamation and revegetation methods in complying with requirements of this rule. The certificate holder shall continue to implement the surveillance program until the state or federal government has accepted title to the property and until the certificate holder has completed its financial obligations as required by OAR 345-095-0150.
- (6) All tailings disposal sites must be lined with natural materials selected for their impermeability.

Statutory/Other Authority: ORS 469.556  
Statutes/Other Implemented: ORS 469.470



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**345-095-0150 - Financial Assurance**

(1) Before beginning construction of the uranium mill, the site certificate holder shall provide financial assurance, in a form and amount acceptable to the Council, sufficient to cover the cost of decommissioning the uranium mill and its associated facilities in accordance with OAR 345-095-0117, 345-095-0118, and 345-095-0120 and to provide long term monitoring and maintenance in an amount specified in the site certificate.

(2) When the site certificate holder has completed the decommissioning required in OAR 345-095-0117, 345-095-0118 and 345-095-0120 and the state or federal government has accepted title to the site, the site certificate may be terminated as described in OAR 345-027-0110.

(3) The adequacy of bonding or other funds shall be reviewed and adjusted by the Council annually following receipt of the site certificate holder's financial report described in OAR 345-095-0160.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.470 & 469.501

**345-095-0160 - Financial Report**

The site certificate holder and any parties owning a controlling interest in the site certificate holder and having the power to control the activities of the site certificate holder or successors in ownership shall provide to the Council an annual financial report that demonstrates financial qualifications to construct and operate the facility and that includes a discussion of the adequacy of, and any changes in, the financial assurance required under OAR 345-095-0150.

Statutory/Other Authority: ORS 469.556

Statutes/Other Implemented: ORS 469.470 & 469.501