

# Attachment 1

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

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

### **DIVISION 21 - APPLICATION FOR SITE CERTIFICATE**

#### **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-~~00140403~~, 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.

**Commented [TJ1]:** Fixing outdated rule reference.

(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 27 - SITE CERTIFICATE CONDITIONS, AMENDMENT, TRANSFER AND TERMINATION AND DEPARTMENT OF ENERGY APPROVAL OF GAS STORAGE TESTING PIPELINES

#### **345-027-0311001 - Applicability**

(1) The rules in this division apply to all requests for amendment to a site certificate and amendment determination requests for facilities under the Council's jurisdiction that are submitted to, or were already under review by, the Council on or after the effective date of the rules. The Department and Council will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the effective date of these rules, without requiring the certificate holder to resubmit the request or certificate holder or the Department to repeat or redo any steps taken as part of the request prior to the effective date of these rules.

(2) Notwithstanding section (1) of this rule, these rules do not apply to facilities described in ORS 469.410(1).

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.501

#### **345-027-0110 — Termination or Partial 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.

(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;

**Commented [TJ2]:** Moving rule to a more logical location and updating rule language to reflect new amended version.

**Commented [TJ3]:** Removing printed copy requirements.

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(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(1)(f-); and

(6)(e) Identify the qualifications of the contractor(s) to conduct the retirement of the facility.

(5) Within 15 days after receiving an the Department determines that the application for termination of a site certificate is complete, the Department must:

(a) Send a notice of the application, by mail or email, specifying a date by which deadline for comments on the application are due, by mail or email whether the retirement plan and cost estimate allow for restoration of the site to a useful, nonhazardous condition 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

(C) The property owners on the updated list submitted as designated by the certificate holder under section (5)(4)(d) 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)(6) 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 retain an independent evaluator to assist in conducting this review and 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.

(7) When a certificate holder completes retirement of the facility, it shall promptly submit documentation to the Department demonstrating the retirement was conducted in compliance with the Council-approved final retirement plan.

(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.

(10) A certificate holder may apply to Council to release a portion of the site from the terms and conditions of the site certificate by following the procedures set forth in sections (4) to (7) of this rule

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**Commented [TJ4]:** Updating language for clarity.

**Commented [TJ5]:** Adding documentation requirement to help the Department track facility retirement.

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with respect to the portion in question. When the Council finds that the certificate holder has completed partial retirement of the facility in compliance with the Council-approved partial retirement plan, the Council must issue an order amending the site certificate to remove any components that have been retired in compliance with the Council-approved partial retirement plan and make any other changes necessary to reflect the retirement of those components.

Commented [TJ6]: Providing direction for partial retirement.

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;

(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;

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- (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);

(M) Wildfire Prevention and Risk Mitigation, OAR 345-022-0115.

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(h) "Information requirements" means information that would support the findings described in OAR 345-024-0030(2) and the information described in OAR 345-~~021-0010(1)(h), (i), (j), (l), (m), (p), (q), (r), (s), (t), (u), (v) and (w).~~ division 22 for the standards listed above.

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.

(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

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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.

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.



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(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.

(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:

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- (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;
- (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

### **345-027-0311 – Applicability**

~~(1) The rules in this division apply to all requests for amendment to a site certificate and amendment determination requests for facilities under the Council's jurisdiction that are submitted to, or were already under review by, the Council on or after the effective date of the rules. The Department and Council will continue to process all requests for amendment and amendment determination requests submitted on or after October 24, 2017 for which Council has not made a final decision prior to the~~

**Commented [TJ7]:** Moved applicability rule to a more logical location.

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effective date of these rules, without requiring the certificate holder to resubmit the request or to repeat any steps taken as part of the request prior to the effective date of these rules.

~~(2) Notwithstanding section (1) of this rule, these rules do not apply to facilities described in ORS 469.410(1).~~

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.50

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### 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.

(2) The ~~type A standard amendment~~ review process, ~~consisting of set forth in~~ OAR 345-027-0359, ~~345-027-0360, 345-027-0363, 345-027-0365, 345-027-0367, 345-027-0371 and through~~ 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), or (5).~~

Commented [TJ8]: Removing type A/B amendment process (replacing it with a single approach) and renaming type C.

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~~(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(3) A pre-operational request for amendment~~ 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-a pre-operational request for amendment~~ review under OAR 345-027-0380.

~~(45)~~ 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 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.

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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.~~

(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.

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~~(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).~~

Commented [TJ9]: Removed to reflect loss of type A/B.

~~(4) A request described in section (1), (2), or (3) of this rule~~ (3) An amendment determination request 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. If the Department needs more information to complete its evaluation, it must promptly identify what information it needs and request the certificate holder provide it. 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.

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:

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- (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) ~~(e)~~ References to any The request for amendment analysis areas ("RFA analysis areas"), which are based on the following:

(A) If a Project Order was issued for the facility, the area within the distances for analysis areas specified in the Project Order; or

(B) If a Project Order was not issued for the facility, the area within the distances for study areas specified in OAR 345-001-0010.

(C) If applicable, a modified site boundary, which reflects that:

(i) A proposed amendment is not contained by the existing site boundary. In this case, the RFA analysis areas would extend from the portions of the site boundary that are the subject of the amendment request; or

(ii) A proposed amendment is a subset of the existing site boundary.

(d) Any specific ~~Division 21~~ information that may be required for the Department to make its findings;

(de) The specific language of the site certificate, including conditions, that the certificate holder proposes to change, add, or delete through the amendment;

(ef) A list of all Council standards and other laws, including statutes, rules and ordinances, applicable to the proposed change, ~~and an analysis~~ identification of any changes in facts or law relevant to the proposed change since the date the current site certificate was executed, and an analysis supported by evidence 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

(fg) 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

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(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(51); 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(59), 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.~~

(4) The certificate holder may ~~incorporate, by specific reference, rely upon~~ evidence previously submitted to the Department in the application for site certificate ~~and/or~~ previous request for amendment, or evidence that is otherwise included in the Department's record on the facility ~~if:~~

~~(a) The certificate holder explains how the evidence is relevant to and remains accurate for purposes of the requested amendment;~~

~~(b) The certificate holder updates the evidence and related analysis regarding any data, facts or additional information obtained or learned since the evidence was last submitted to the Department; and~~

~~(c) The certificate holder submits the previously relied upon evidence and any updates to the Department with its preliminary request for amendment.~~

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.405

**Commented [TJ10]:** Removed as analysis area is defined above.

**Commented [TJ11]:** Making it clear how evidence previously submitted may be utilized in a pending amendment request.

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### 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.

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(2) Unless the certificate holder agrees to additional time, within ~~60~~45 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~~45 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).

(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.

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(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~~21 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 ~~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.

**Commented [TJ12]:** Removing mention of "Draft" as there will only be a proposed order, not a draft proposed order.

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(2) The public hearing should take place in the vicinity of the facility, unless the Council or Council Chair determines that doing so is unnecessary given the limited scope of the amendment or a lack of public interest or that an in-person hearing would result in a heightened risk to public health and safety.

(3) The public hearing must be held at least 20 days after the proposed order is issued and no less than 7 days before the end of the public comment period.

(4) 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 (35) of this rule by mail or email to:

(A) All persons on the Council's general mailing list as defined in OAR 345-011-0020;

(B) All persons on any special mailing list established for the facility;

(C) The reviewing agencies for the facility, as defined in OAR 345-001-0010(52); and

(D) The property owners on the list provided under OAR 345-027-0360(1)(f);

(b) Post the complete request for amendment, ~~draft~~ proposed order, and the notice of the ~~draft~~ proposed order and public hearing on the Department website; and

(c) MakeUpon request, make physical copies of the ~~draft~~ proposed order available to the public for inspection.

(35) 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)(b)~~ 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 length of~~ the public ~~to submit comment period, during which the public may provide~~ written comments, ~~if not made orally at the public hearing to be included in the record of the public hearing, 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 ~~(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;

**Commented [TJ13]:** Ensuring that the public comment period does not close until at least a week after the public hearing.

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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~~(f) A description of the scope and nature of public participation in a review on an amendment as outlined in sections (6), (7), and (8) of this rule, including all applicable deadlines. -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;

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~~(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)~~(6) To timely raise an issue regarding the request for amendment or proposed order on the record, a person must raise the issue in person at the public hearing or in a written comment submitted before the conclusion of the public comment period.

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~~(a) The Council will not accept or consider any further public comment on the request for amendment or on the proposed order after the close of the public comment period on the proposed order.~~

~~(b) Notwithstanding (a), the Council will consider and include in the decision record for the request for amendment all timely responses, replies, and sur-replies relating to public comments as outlined in section (8) of this rule.~~

~~(7) Comments – both written and oral – submitted during the public comment period must be made with sufficient specificity to afford the Council, the Department, and the certificate holder an opportunity to respond to the issue(s) raised in the comment.~~

~~(a) To raise an issue with sufficient specificity, a person must in their comment:~~

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~~(A) Identify the recommended findings of fact, conclusions of law or conditions of approval identified in the proposed order to which they object;~~

~~(B) Specify the Council standard or other applicable state and local requirements on which their objection is based; and~~

~~(C) Present facts or statements supporting that objection.~~

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(b) If a comment is not made with sufficient specificity, the Department will not make any revisions to the draft of the final order based on that comment.

(8) All timely comments submitted during the public comment period will be subject to the following process:

(a) The certificate holder must provide a written response to written and verbal comments on the request for amendment or the proposed order;

(b) The Department can choose, but is not required to respond to written or verbal comments on the request for amendment or the proposed order;

(c) The response(s) in (a) can be limited to a statement that the public comment in question does not allow the certificate holder to substantively respond, as the comment fails to meet the sufficient specificity standard as described in (7);

(d) Reviewing agencies and members of the public may submit written replies to the responses to their own respective comments in (c);

(e) The certificate holder and Department may submit a sur-reply to the replies described in (d); and

(f) Participants to the public comment process may request more time to submit their response, reply, and sur-reply to the Council or Council Chair, who shall grant the extension on a showing of good cause.

(9) 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 via a written handout.

(510) At the commencement of the public hearing, the presiding officer must read aloud the following:

(a) A person who intends to contend Council should reject a request a contested case on the to amend a site certificate or that Council in its final order should reject or revise certain aspects of a Department proposed order for a site certificate amendment must comment;

(A) Comment in person or in writing on prior to the record close of the public hearing; and comment period;

(b) A person who intends to raise an (B) Raise their issue that may be the basis for granting a contested case proceeding must raise that issue on the record of the public hearing(s) with sufficient specificity to afford the Council, the Department, and the certificate holder an adequate opportunity to respond to the issue-(s). To raise an issue with sufficient specificity, a person must, in their comment, identify the recommended findings of fact, conclusions of law or conditions of approval identified in the proposed order to which they object, specify the Council standard or other applicable state and local requirements on which their objection is based, and present facts, on the record of the public hearing, or statements supporting that objection; and

(b) If a comment is not made with sufficient specificity, the Council will not make any changes in its final order based on that support the person's position on the issue comment.

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**Commented [TJ14]:** Providing an enhanced process for public participation, which allows for the public to receive immediate feedback on the nature of the public comment and an opportunity to remedy any issues with their comments.

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(611) At the public hearing, any person may [make comments and](#) 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 12) At~~ 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 pose questions~~ 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, [the Department](#) or [members of](#) 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

~~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(52); 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:~~

~~(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 [who](#) submitted; and [comments](#).~~

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~~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~~

~~(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 3021 days after the Council has reviewed the draft deadline for possible sur-replies related to the proposed order and considered all comments received on the record of the public hearing under discussed in 345-027-0367;(7)(e), the Department must issue a draft of the final order with written analysis of any comments on the proposed order-recommending approval, modification or denial of the request for amendment to the site certificate. The , including analysis of any responses, replies and sur-replies, and indicate whether, in light of those comments it recommends any changes to the proposed order. If 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-recommends any changes, it will include them in a draft of the final order.

(2) The Department may issue the proposeddraft of the final order at a later date, but the Department must, no later than 30 days after post an update of the Council has revieweddate by which it will issue the draft proposedof the final order and considered all comments received on the record of the public hearing, notify the certificate holder in writing of the reasons for the delayDepartment's webpage for the facility.

(2) Concurrent with issuing the proposed order, the3) The Department must issue public notice of a draft of the proposedfinal order by:

(a) Sending public notice of the proposeddraft of the final order by mail or email to: all persons, agencies, or organizations who commented during the public comment period; and

~~(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(52); and~~

~~(D) The property owners on the updated list provided under OAR 345-027-0360(1)(f); and~~

**Commented [TJ16]:** Updating to reflect enhanced public participation process and the removal of the contested case.

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(b) Posting an announcement of the ~~proposed~~draft of the final order on the Department's ~~website~~webpage for the facility.

(34) Notice of the ~~proposed order~~draft 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)~~(b) The physical address and website where the public may review copies of the ~~proposed~~draft of the final order; ~~and~~

~~(d)~~(c) The name, address, email address and telephone number of the Department representative to contact for more information-; ~~and~~

~~(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.~~

~~(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~~



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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.

(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

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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 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.  
(d) The date of the Council's review of the draft final order and all related comments, responses, replies, and sur-replies.

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(5) The Department may summarize the analysis it conducted to produce the draft of the final order at Council's review of the draft of the final order.

(6) The Council, at its discretion, may pose questions to the Department, the Department of Justice, persons who commented on the proposed order, and/or the certificate holder.

(7) After reviewing the written analysis of the comments, responses, replies, and sur-replies, along with the draft of the final order, the Council, 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 in a written final order. The Council's final order may adopt, modify or reject the Department's draft of the final order. 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 then issue an amended site certificate, which is effective upon execution by the Council Chair and by the certificate holder.

(128) Judicial review of the Council's final order either granting or denying an amended site certificate is as provided in ORS 469.403.(3).

Statutory/Other Authority: ORS 469.470  
Statutes/Other Implemented: ORS 469.405

### 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(52); and
- (d) The property owners on the updated list provided under OAR 345-027-0360(1)(f).

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Commented [TJ17]: Removed as part of loss of Type A/B review process.

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~~(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

### 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~~The facility ~~within the area added to the site by the amendment~~as amended complies with all applicable 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 relevant to the proposed amendment 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;

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(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;~~

~~(c)~~ For a request for amendment to a site certificate for a fossil-fueled power plant, Council must also find 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.

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~~(c) For all requests for amendment, the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate;~~

Commented [TJ18]: Removed as duplicative of (b), above – which incorporates this same information.

(3) In making findings under section (12) of this rule, the Council must apply the applicable laws and Council standards in effect on the following dates, regardless of when the site certificate was previously approved or amended:

(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

Commented [TJ19]: Updating name for Type C amendments given the loss of the Type A/B distinction.

(1) A certificate holder may only request the type C review for a pre-operational 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 pre-operational 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);

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- (b) The reasons why the certificate holder needs [type-Ca pre-operational request for amendment](#) 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-Ca pre-operational request for amendment~~ 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-Ca pre-operational request for amendment](#) review. Upon issuance, the Department must post the written determination on its website.
- (5) If the Department denies [type-Ca pre-operational request for amendment](#) 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;
  - (b) The request for amendment is complete;
  - (c) [Type-CA pre-operational request for amendment](#) 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(f) A pre-operational request for amendment~~ 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 standard amendment](#) review process [set forth in OAR 345-027-0360 through 345-027-0375](#); and
  - (b) Post the draft temporary order on the Department's website.

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(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 standard amendment](#) 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 standard amendment](#) 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 standard amendment](#) 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 standard amendment](#) review process, review proceeds as described in OAR 345-027-0367, ~~345-027-0371, and 0360 through~~ 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)~~ (12) 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

### 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

**Commented [TJ20]:** Removing the requirement for providing a need reason.

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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: no more than three years from the deadlines in effect before the Council grants the amendment.~~

**Commented [TJ21]:** Clarifying timing of extension requests.

~~(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 requests 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 ~~for a period of time not to exceed nine years, calculated from the granting of the original site certificate.~~

**Commented [TJ22]:** Modifying given a longer initial period for an extension is required.

~~(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:~~

**Commented [TJ23]:** Clarifying that 9 years is the maximum time allotted for a construction deadline.

~~(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.~~

**Commented [TJ24]:** Removing as no longer needed.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.370, 469.405 & 469.503

### 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.

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(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;

(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

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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.

(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-~~021~~~~022~~-0010~~(1)(a), (d), (f) and (m)~~; OAR 345-022-0050, 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

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applicable, the new owner must include in the request the information described in ~~OAR 345-021-0010(1)(y)~~~~024-0500(4)(b)~~(O)(iv).

**Commented [TJ25]:** Updating rule references given recent amendments.

(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(52); 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:

- (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

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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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