

Attachment 2

345-025-0006 - Mandatory Conditions in Site Certificates

The Council must impose the following conditions in every site certificate. The Council may impose additional conditions.

- (1) The Council may not change the conditions of the site certificate except as provided for in OAR chapter 345, division 27.
- (2) The certificate holder must submit a legal description of the site to the Department within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identify the outer boundaries that contain all parts of the facility.
- (3) The certificate holder must design, construct, operate and retire the facility:
 - (a) Substantially as described in the site certificate;
 - (b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and
 - (c) In compliance with all applicable permit requirements of other state agencies.
- (4) The certificate holder must begin and complete construction of the facility by the dates specified in the site certificate.
- (5) For the purpose of this rule, “construction rights” means the legal right to engage in construction activities (i.e., the certificate holder has authority to construct in the area, e.g., in the form of a deed, lease or court-approved condemnation right). For all energy facilities, ~~transmission lines or pipelines, if regardless of whether~~ the certificate holder ~~does not have~~has construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site, is in compliance with the site certificate conditions applicable to that part of the site and:
 - (a) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line or pipeline occurs during the certificate holder’s negotiations to acquire construction rights on another part of the site; or
 - (b) The certificate holder would construct and operate part of an energy facility on that part of the site even if other parts of the facility were modified by amendment of the site certificate or were not built.

(6) The rule in section (5) applies retroactively to all site certificate and site certificate amendments previously approved by Council and, notwithstanding OAR 345-025-0006(1), takes precedence over any conditions contained in site certificate and site certificate amendments that state or suggest a certificate

holder must have construction rights on all parts of the site before creating a clearing or beginning construction on any part of the site.

~~(76)~~ If the certificate holder becomes aware of a significant environmental change or impact attributable to the facility, the certificate holder must, as soon as possible, submit a written report to the Department describing the impact on the facility and any affected site certificate conditions.

~~(87)~~ The certificate holder must prevent the development of any conditions on the site that would preclude restoration of the site to a useful, non-hazardous condition to the extent that prevention of such site conditions is within the control of the certificate holder.

~~(98)~~ Before beginning construction of the facility, the certificate holder must submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder must maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility.

~~(109)~~ The certificate holder must retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder must retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0410. The certificate holder must pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council's approval in the site certificate of an estimated amount required to restore the site.

~~(110)~~ The Council must include, as conditions in the site certificate, all representations in the site certificate application and supporting record the Council deems to be binding commitments made by the applicant.

~~(121)~~ Upon completion of construction, the certificate holder must restore vegetation to the extent practicable and must landscape all areas disturbed by construction in a manner compatible with the surroundings and proposed use. Upon completion of construction, the certificate holder must remove all temporary structures not required for facility operation and dispose of all timber, brush, refuse and flammable or combustible material resulting from clearing of land and construction of the facility.

~~(132)~~ The certificate holder must design, engineer and construct the facility to avoid dangers to human safety and the environment presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule "seismic hazard" includes ground shaking, ground failure, landslide, liquefaction triggering and consequences (including flow failure, settlement buoyancy, and lateral spreading), cyclic softening of clays and silts, fault rupture, directivity effects and soil-structure interaction. For coastal sites, this also includes tsunami hazards and seismically-induced coastal subsidence.

~~(143)~~ The certificate holder must notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if site investigations or trenching reveal that conditions in the foundation rocks differ significantly from those described in the application for a site certificate. After the Department receives the notice, the Council may require the certificate holder to

consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions.

(154) The certificate holder must notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site. After the Department receives notice, the Council may require the certificate holder to consult with the Department of Geology and Mineral Industries and the Building Codes Division to propose and implement corrective or mitigation actions.

(165) Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder must inform the Department of the proposed new owners. The requirements of OAR 345-027-0400 apply to any transfer of ownership that requires a transfer of the site certificate.

(176) If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0410, the Council must notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Department within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed final retirement plan for the Council's approval. Upon the Council's approval of the final retirement plan, the Council may draw on the bond or letter of credit described in section (98) of this rule to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR chapter 345, division 29. If the amount of the bond or letter of credit is insufficient to pay the actual cost of retirement, the certificate holder must pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council must issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.

STATUTORY/OTHER AUTHORITY: ORS 469.470

STATUTES/OTHER IMPLEMENTED: ORS 469.401, 469.501