Division 26

~~CONSTRUCTION AND OPERATION RULES FOR FACILITIES~~

~~345-026-0005~~
~~Purpose~~

~~The purpose of the rules in this division is to ensure that the construction, operation and retirement of facilities are accomplished in a manner consistent with the protection of the public health, safety and welfare and the protection of the environment.~~

~~Statutory/Other Authority: ORS 469.470~~

~~Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507~~

~~History:~~
~~EFSC 1-2007, f. & cert. ef. 5-15-07~~
~~EFSC 2-1999, f. & cert. ef. 4-14-99~~
~~EFSC 5-1994, f. & cert. ef. 11-30-94~~
~~EFSC 3-1994, f. & cert. ef. 6-28-94~~
~~NTEC 9, f. 2-13-75, ef. 3-11-75~~

~~345-026-0010~~
~~Legislative Authority~~

~~(1) Under ORS 469.430, the Council has continuing authority over the site for which a site certificate is issued and may inspect, direct the Department of Energy to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the certificate holder is operating the facility in compliance with the terms and conditions of the site certificate.~~

~~(2) For facilities subject to ORS 469.410 as having been built prior to July 2, 1975, the Council has continuing authority over the site for which a site certificate is issued and may inspect, or direct the Department to inspect, or ask another state agency or local government to inspect, the site at any time to ensure that the facility is being operated in compliance with the terms and conditions of the site certificate and any applicable health or safety standards.~~

~~(3) According to ORS 469.410, the Council shall establish programs for monitoring the environmental and ecological effects of the operation and decommissioning of energy facilities subject to site certificates issued prior to July 2, 1975, to ensure continued compliance with the terms and conditions of the site certificate and any applicable health or safety standards.~~

~~Statutory/Other Authority: ORS 469.470~~
~~Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507~~
~~History:~~
~~EFSC 1-2007, f. & cert. ef. 5-15-07~~
~~EFSC 2-1999, f. & cert. ef. 4-14-99~~
~~EFSC 3-1995, f. & cert. ef. 11-16-95~~
~~EFSC 5-1994, f. & cert. ef. 11-30-94~~
~~EFSC 3-1994, f. & cert. ef. 6-28-94~~

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~~EFSC 1-1985, f. & ef. 1-7-85~~
~~NTEC 9, f. 2-13-75, ef. 3-11-75~~

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SITE CERTIFICATE COMPLIANCE

345-026-0015 - Applicability, Scope and Construction

(1) To the extent that any rules in this division conflict or are inconsistent with administrative rules lawfully adopted by other state agencies, these rules are controlling, except as prohibited by law. The Council shall resolve such conflicts in consultation with the affected agencies and in a manner consistent with the public interest.

(2) It is the intent of the Energy Facility Siting Council that these Division 26 rules, including the revisions adopted on [insert adoption date], apply to site certificates and site certificate amendments issued thereafter and also apply retroactively to site certificates and site certificate amendments issued prior to [insert adoption date], except ~~To~~ to the extent that any rules in this division conflict or are inconsistent with a condition contained in a site certificate (or amendment thereto), the ~~latter~~condition is controlling.

~~(3) Certificate holders shall comply with all applicable lawful rules and requirements of federal agencies.~~

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Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.401, 469.503 & 469.504
History:
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 3-1994, f. & cert. ef. 6-28-94
EFSC 1-1985, f. & ef. 1-7-85
NTEC 9, f. 2-13-75, ef. 3-11-75

345-026-0048 - Pre-Construction Compliance Plans and Construction Commencement Notification

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~~Following receipt~~(1) Pre-Construction Compliance Plan. Before construction of a ~~site certificate~~facility, facility component, or ~~an amended site certificate~~phase, the certificate holder ~~shall implement a plan that verifies~~must demonstrate compliance with all pre-construction site certificate terms and conditions ~~and~~ applicable ~~statutes and rules. As~~to the facility component or phase under review.

(a) If a ~~part~~certificate holder proposes to construct portions of the facility in phases, the certificate holder must demonstrate compliance ~~plan, to verify~~by each facility component or phase prior to initiating construction on that component or phase. The certificate holder must identify all site certificate conditions applicable to each component or phase, as well as any site certificate conditions related to compliance on a facility-wide basis.

(b) The Department may require a condition to be addressed on a facility-wide basis if phased review would result in duplicative review, fragmented mitigation or monitoring, incomplete evaluation of the condition, or insufficient information to determine compliance.

(2) Construction Commencement Notification. To demonstrate compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the Department of Energy when construction begins. Construction is defined in ~~OAR 345-001-0010.~~ORS 469.300(6). In reporting the beginning of construction, the certificate holder shall describe all proposed work on the site ~~performed~~ before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For ~~the purpose of~~ this ~~exhibit~~rule, "work on the site" means any work within a site or corridor, other than surveying, exploration, or other activities to define or characterize the site or corridor~~. The certificate holder shall document the compliance plan and maintain it for inspection by the Department or the Council~~.

(3) Construction cannot begin until the certificate holder receives written authorization from the Department approving the component or phase that was the subject of the review.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507
History:
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 2-2000, f. & cert. ef. 11-20-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 5-1994, f. & cert. ef. 11-30-94

345-026-0050 - Inspections and Compliance Review

(1) General provisions:

(a) Each certificate holder ~~shall~~must allow properly identified representatives of the Council or Department of Energy to inspect the facility during construction, operation, and retirement, including all materials, activities, related or supporting facilities, premises, and records ~~pertaining~~ to ~~design, construction, operation~~the extent reasonably related to determining compliance with the site certificate, a Council order, applicable provisions of ORS chapter 469, or ~~retirement of the facility at any time~~OAR chapter 345.

(b) The certificate holder's representative may accompany Council or Department inspectors during an inspection.

(c) Council or Department inspectors may refuse to permit any individual who deliberately interferes with a fair and orderly inspection to be present during an inspection.

(d) The Department ~~shall~~must maintain written records of facility inspections~~.~~ and issue inspection reports to the certificate holder. If the inspector finds any potential violations of ~~state, federal or local law, Council rules, a Council order or~~ site certificate conditions, the inspector ~~shall~~must promptly notify the certificate holder's onsite manager or designee~~.~~

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~~(e) If the inspector finds any actual or~~ and summarize the potential violations ~~of state, federal or local law, Council rules, a Council order, or~~ in the inspection report.

(e) If the inspector identifies a potential violation of a site certificate ~~conditions or warranties, the inspector shall~~term or condition, a Council order, an applicable provision of ORS chapter 469, or OAR chapter 345, the Department must notify the Council Secretary, the Council, and the certificate holder. The Department may identify potential violations of site certificate construction and operational conditions regardless of whether the certificate holder has reported beginning commercial operation under OAR 345-026-0080. The Council secretary~~, the Council and the certificate holder. The Council secretary shall be responsible for reporting~~ must report all pertinent or meaningful findings to the Council at its next scheduled meeting.

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(2) Requests for ~~inspections~~compliance review:

(a) Any person may request that the Department ~~inspection of~~review a ~~facility~~certificate holder's compliance with its site certificate if the requestor believes:

(A) That a violation of a Council order or a site certificate term or condition ~~or warranty~~ has occurred or may imminently occur; or

(B) A situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions.

(b) The person submitting a request for ~~inspection~~a compliance review shall describe, in writing, the specific grounds for the request. The ~~requestor shall submit the~~ request ~~to~~ must include the following:

(A) The site certificate condition or requirement that is allegedly not being followed;

(B) Any supporting facts; and

(C) Whether the request for compliance includes a request for a site inspection.

(c) Failure to properly submit a request as described in (b) may result in the Department~~, or, during an inspection, to the Department's representative.~~ rejecting the request.

(d) A requestor who is employed directly or indirectly by the certificate holder may ask that ~~his or her~~their name not be disclosed in any manner except where disclosure is required by law.

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(~~c~~e) The Department shall promptly notify the certificate holder of the request and nature of the alleged violation or other basis for the ~~inspection~~compliance review.

(~~d~~f) If the request concerns matters of state, federal or local law or rule not administered by the Council, the Department shall forward the request to the appropriate agency.

(~~e~~g) The Department shall ~~make a prompt evaluation of~~promptly evaluate allegations related to matters under Council jurisdiction~~. If~~ and give the ~~Department concludes that there are reasonable grounds to believe that~~requestor written notice of its determination, including the ~~alleged violation has occurred or is imminent or that a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or to unsafe or dangerous conditions,~~ reasons for the ~~Department~~

~~shall cause an~~determination, and whether a site inspection ~~to be made as soon as practicable~~is warranted.

(~~f~~h) The requestor may ~~then submit a written request for review to~~petition the Council~~.~~ to review the Department's determination by submitting a request to the Department. The Council shall then send a copy of the request to the certificate holder ~~by certified mail~~. The certificate holder may submit a written statement of its position to the Council, and the Council shall provide a copy of the statement, if any, to the requestor ~~by certified mail.~~ At its discretion, the Council may hold an informal conference to discuss the merits of the request. The Council shall affirm, modify or reverse the determination made by the Department. The Council shall send written notification of its decision and reasoning to the requestor and the certificate holder.

(~~g~~i) Inspections conducted under subsection (~~e~~g) need not be limited to matters referred to in the request for ~~inspection~~compliance review.

(j) If, after a compliance review, the Department identifies a potential site certificate compliance issue or a potential threat to public health and safety, the Department may require the certificate holder to submit a corrective action plan. The corrective action plan must detail the compliance issue identified by the Department, describe interim measures necessary to protect public health and safety or to come into compliance with applicable conditions, identify the cause of the issue to the extent known, describe the actions the certificate holder will take to correct the condition, provide a schedule for completing those actions, and describe the reporting the certificate holder will provide to verify completion.

(A) The Department may require the certificate holder to implement interim protective measures pending completion of the corrective action plan, including but not limited to inspections, monitoring, notices, restricted access, operational limitations, repair protocols, or other measures reasonably necessary to protect public health and safety.

(B) A requirement imposed under this section does not limit the Council's or Department's authority to pursue enforcement under OAR chapter 345, division 29, if the Department determines that a violation has occurred or is reasonably likely to occur.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507
History:
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 3-1995, f. & cert. ef. 11-16-95
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 3-1994, f. & cert. ef. 6-28-94
NTEC 9, f. 2-13-75, ef. 3-11-75

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~~(h) No certificate holder shall discharge or in any manner discriminate against any employee because he or she submitted a request for inspection, provided information to a Council or Department representative or otherwise exercised options afforded to the worker under these rules.~~

~~Statutory/Other Authority: ORS 469.470~~
~~Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507~~
~~History:~~
~~EFSC 1-2007, f. & cert. ef. 5-15-07~~

~~EFSC 2-1999, f. & cert. ef. 4-14-99~~
~~EFSC 3-1995, f. & cert. ef. 11-16-95~~
~~EFSC 5-1994, f. & cert. ef. 11-30-94~~
~~EFSC 3-1994, f. & cert. ef. 6-28-94~~
~~NTEC 9, f. 2-13-75, ef. 3-11-75~~

345-026-0080 - Reporting Requirements for Energy Facilities

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~~(1) General reporting obligation for energy facilities under construction or operating:~~

~~(a)~~(1) **Construction compliance reports.** Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder ~~shall submit a semiannual construction progress report to the Department of Energy. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall report on the progress of construction and shall address the subjects listed in subsections (2)(a), (d), (f) and (g). When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule~~must submit a semiannual construction compliance report to the Department of Energy.

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(a) Each construction compliance report must describe the progress of construction during the reporting period.

(b) Each construction compliance report must provide sufficient documentation and evidence to demonstrate compliance with all site certificate terms and conditions applicable during the reporting period.

(c) Each construction compliance report must identify any change to the facility made during the reporting period without an amendment of the site certificate under OAR 345-027-0350, including any written evaluation required under OAR 345-027-0355.

(d) The certificate holder is not required to duplicate information previously submitted to the Department if the construction compliance report clearly identifies the previous submission and provides reasonable explanation of why the information remains current and applicable. A construction compliance report that relies on a previous submission must identify the specific document, date of submittal, applicable condition, and location within the prior submittal where the information can be found.

(2) **Final construction compliance and facility design report.** Before beginning operation of the facility, the certificate holder must submit a final construction compliance report to the Department.

(a) The final construction compliance report must demonstrate compliance with all site certificate terms and conditions required to be satisfied before operation.

(b) The final construction compliance report must include the date the facility began, or is expected to begin, operation. If the final construction compliance report identifies an expected date of operation, the certificate holder must notify the Department of the actual date of operation no later than 10 days after operation begins.

(c) The final construction compliance report must include a final facility design report in the form and manner requested by the Department.

(d) The Department may approve a later date for submittal of one or more portions of the final facility design report if the Department determines that the delayed information is not necessary to determine compliance with site certificate terms and conditions required to be satisfied before operation.

(e) The final facility design report must include:

(A) A narrative description of the facility, as constructed;

(B) A table identifying each constructed facility component and each constructed related or supporting facility, including the component name, final location, final dimensions or capacity, applicable site certificate description, and any difference from the site certificate description;

(C) A description of any facility component, route, corridor, alternative, or related or supporting facility approved in the site certificate but not constructed;

(D) A description of any site certificate condition that applies solely to a facility component, route, corridor, alternative, activity, or impact that was approved in the site certificate but not constructed or implemented;

(E) Maps showing the site boundary and the final locations of all significant components of the energy facility and related or supporting facilities; and

(F) Geospatial data for the site boundary and all significant components of the energy facility and related or supporting facilities, in a format requested by the Department.

(f) The Department may use the final facility design report to evaluate whether an administrative update of the facility description is appropriate under OAR 345-026-0088.

(3) **Annual reports.** After January 1 but no later than ~~April 30~~March 31 of each year after beginning operation of the facility, the certificate holder ~~shall~~must submit an annual report to the Department ~~addressing the subjects listed in subsection (2).~~for the preceding calendar year.

(a) For ~~the~~ purposes of this rule, ~~the~~ beginning ~~of~~ operation ~~of the facility~~ means the date when ~~construction of a significant portion of the facility is substantially complete and~~ the certificate holder begins commercial operation of the facility, as reported by the certificate holder and accepted by the Department.

(b) The Council Secretary and the certificate holder may, by mutual agreement, change the annual reporting date.

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~~(c) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, the certificate holder may submit excerpts from such~~

~~other reports to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.~~

~~(2) In the~~(c) The certificate holder is not required to address a reporting category in section (4) of this rule if the category does not apply to the facility for the reporting period.

(4) **Annual report contents.** The annual report~~, the certificate holder shall~~ must include the following information for the calendar year preceding the date of the report:

~~(a) Facility Status: An overview of site conditions, the status of facilities under construction and a summary of the operating experience of facilities that are in operation. The certificate holder shall describe any unusual events, such as earthquakes, extraordinary windstorms, major accidents or the like that occurred during the year and that had a significant adverse impact on the facility.~~

~~(b) Reliability and Efficiency of Power Production: For electric power plants, the plant availability and capacity factors for the reporting year. The certificate holder shall describe any equipment failures or plant breakdowns that had a significant impact on those factors and shall describe any actions taken to prevent the recurrence of such problems.~~

~~(c)~~ (a) **Fuel** ~~Use:~~**use.** For thermal power plants:

(A) The efficiency with which the power plant converts fuel into electric energy. If the fuel~~-~~chargeable~~-~~to~~-~~power heat rate was evaluated when the facility was sited, the certificate holder ~~shall~~must calculate efficiency using the same formula and assumptions, but using actual data; and

(B) The facility's annual hours of operation by fuel type and, every five years after beginning operation, a summary of the annual hours of operation by fuel type as described in OAR 345-024-0590(5).

~~(d) Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are~~(b) **Financial assurance.** If the site certificate requires a bond, letter of credit, parent guarantee, or other financial assurance, documentation demonstrating that the required financial assurance is in full force and effect and will remain in full force and effect for the term of the next reporting period.

~~(e) Monitoring Report: A list and description of all significant monitoring and mitigation activities performed during the previous year in accordance with site certificate terms and conditions, a summary of the results of those activities and a discussion of any significant changes to any monitoring or mitigation program, including the reason for any such changes.~~

~~(f)~~(c) **Compliance** ~~Report:~~**report.** A report describing the certificate holder's compliance with all site certificate conditions ~~that are~~ applicable during the reporting period.

(A) The compliance report must describe how the certificate holder implemented each monitoring plan and mitigation plan required by the site certificate.

(B) The compliance report must provide supporting documentation and rationale showing the goals, performance standards, or success criteria in each monitoring plan or mitigation plan are being met.

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(C) The compliance report must describe any significant change to a monitoring or mitigation program, including the reason for the change.

(D) For ease of review, the certificate holder ~~shall, in~~ must organize this section of the annual report~~, use~~ using numbered subparagraphs corresponding to the applicable sections of the site certificate, unless the Department requests a different format.

(~~g~~d) **Facility** ~~Modification Report:~~**modification report.** A summary of changes to the facility that the certificate holder ~~has~~ made during the reporting period without an amendment of the site certificate ~~in accordance with~~under OAR 345-027-~~0050~~0350, including any written evaluation required under OAR 345-027-0355.

~~(h)~~ (A) For any change that modifies, relocates, removes, or replaces a facility component, the facility modification report must describe the affected component, explain the reason for the change, identify the final or proposed location of the component, and include any geospatial information requested by the Department.

(B) If the certificate holder determines that a change does not require an amendment of the site certificate, the facility modification report must include or identify the certificate holder's written evaluation supporting that determination.

(C) The Department may use information in the facility modification report to evaluate whether an administrative update of the facility description is appropriate under OAR 345-026-0088.

(e) **Nongenerating** ~~Facility Carbon Dioxide Emissions:~~**facility carbon dioxide emissions.** For nongenerating facilities that emit carbon dioxide, a report of the annual fuel use by fuel type and annual hours of operation of ~~the~~ carbon dioxide emitting equipment as described in OAR 345-024-0630(4).

(5) **Mixed phasing or stages.** If different facility components are in pre-construction, construction, operation, or retirement during the same reporting period, the certificate holder may identify the status of each component and address the site certificate conditions applicable to each component during that reporting period.

(6) **Use of reports submitted to other agencies or the Department.** To the extent that information required by this rule is contained in reports the certificate holder submits to another state, federal, or local agency, or to the Department under another requirement, the certificate holder may submit excerpts from those reports to satisfy this rule.

(a) The certificate holder must identify the source of each excerpted report and explain how the excerpt satisfies the applicable requirement of this rule.

(b) The certificate holder must provide a citation, page reference, table reference, or other clear cross-reference sufficient for the Department to locate the information relied upon.

(c) The Department or Council may request a full copy of any excerpted report.

(d) The certificate holder is not required to duplicate information submitted to another agency or to the Department under another requirement if the excerpted report provides the information

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required by this rule in a form that allows the Department to determine compliance with the site certificate, Council standards, Council rules, or a Council order.

(7) **Form and manner of submittals.** The certificate holder must submit reports, plans, tables, geospatial data, supporting documentation, and other information required under this division, a site certificate, or a Council order in the form and manner requested by the Department.

(a) The Department may require use of templates, tables, file-naming conventions, electronic formats, geospatial data formats, or other standardized submission requirements reasonably necessary to support efficient review, inspection, compliance tracking, or maintenance of the site certificate record.

(b) The Department's requested form and manner must be reasonably related to determining compliance with the site certificate, Council standards, Council rules, or a Council order, or to maintaining the site certificate record.

(8) **Department review of reports.** The Department may review any report submitted under this rule for completeness, consistency with the site certificate, and adequacy of supporting documentation.

(a) The Department may require the certificate holder to submit additional information, revised information, or information in a different format if the Department determines that the submission is incomplete, unclear, inconsistent with the site certificate, or insufficient to demonstrate compliance.

(b) A request under this section does not, by itself, constitute a notice of violation or pre-enforcement notice under OAR chapter 345, division 29.

(c) Nothing in this rule limits the authority of the Department or Council to inspect a facility, request information, require reports, require corrective action, issue a pre-enforcement notice, issue a notice of violation, assess a civil penalty, or take any other action authorized by ORS chapter 469, OAR chapter 345, a Council order, or a site certificate.

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Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.310, 469.410, 469.430, 469.501 & 469.507
History:
EFSC 1-2012, f. & cert. ef. 5-15-12
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2003, f. & cert. ef. 9-3-03
EFSC 1-2002, f. & cert. ef. 4-3-02
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 3-1994, f. & cert. ef. 6-28-94
EFSC 1-1985, f. & ef. 1-7-85
NTEC 9, f. 2-13-75, ef. 3-11-75

345-026-0088 - Administrative Update of the Facility Description

(1) Following receipt of the report of the final facility design required under OAR 345-026-0080(2)(c); or after determining that a change included in a facility modification report under OAR 345-026-0080(4)(d),

a written evaluation under OAR 345-027-0355, or an amendment determination request under OAR 345-027-0357 does not require an amendment, the Department may:

(a) Update the site certificate to accurately describe the facility, as constructed or operated;

(b) Revise or remove any site certificate conditions as needed to reflect the facility as built and to facilitate the Department's future inspections of the facility, subject to the following:

(A) Before expiration of the construction deadline in the site certificate, the Department may revise or remove a site certificate condition under subsection (b) of this section only at the request of the certificate holder.

(B) After expiration of the construction deadline in the site certificate, the Department may revise or remove a site certificate condition under subsection (b) of this section on its own initiative.

(2) The updated facility description under (1) must accurately reflect the facility, as constructed or operated. Any unbuilt facility components or unused corridors must be removed from the facility description once the deadline for their construction has passed and all descriptions of dimensions, quantities, and values must reflect the actual conditions at the site.

(3) An update issued under this rule does not authorize construction or operation of any facility component, structure, corridor, or activity not previously approved by the Council.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.401; 469.405 & 469.430

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~~Correspondence With~~ – Reliance on Federal or Other State ~~or Federal~~ Agencies

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~~The~~(1) If a certificate holder ~~and the Department of Energy shall exchange copies of all~~relies on a permit, approval, report, correspondence, or ~~summaries of correspondence related to~~ other document from another federal, state, or local agency to demonstrate compliance with ~~statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. The~~ a site certificate ~~holder may submit abstracts of reports in place of full reports; however~~condition, Council standard, Council rule, or Council order, the certificate holder ~~shall~~must provide ~~full copies of abstracted reports and any summarized correspondence at the~~ the document or relevant excerpt to the Department upon request ~~of the~~. The Department~~..~~ may rely on another agency's permit, approval, inspection, or compliance determination when the Department determines that the other agency's action provides sufficient information to demonstrate compliance with the applicable site certificate condition, Council standard, Council rule, or Council order.

(2) If a certificate holder asserts that state or federal law restricts the certificate holder from submitting information requested by the Department, including geospatial data or security-sensitive facility information, the certificate holder must identify the specific information, the legal basis for the

restriction, and an alternative form of information sufficient for the Department to determine compliance, if available. The Department may approve an alternative form, scale, format, or level of detail for geospatial data or other facility information when necessary to comply with state or federal confidentiality, security, or critical infrastructure information requirements, provided the alternative submission allows the Department to determine compliance.

Statutory/Other Authority: ORS 469.470

Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507
History:
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 1-1985, f. & ef. 1-7-85
NTEC 9, f. 2-13-75, ef. 3-11-75

345-026-0170 - Notification of Incidents

The certificate holder must notify the Department of Energy within 72 hours of any occurrence involving the facility if:

(1) ~~There is an attempt by anyone~~Anyone attempts to interfere with ~~its~~ safe operation~~.~~ of the facility;

(2) ~~There is a~~A significant natural event ~~such as a~~occurs, including but not limited to fire, earthquake, flood, tsunami, or tornado~~, or~~ ;

(3) A significant human-caused event ~~such as a~~occurs, including but not limited to fire ~~or~~, spill, explosion~~.~~, vandalism, or other event that could affect public health, safety, the environment, or compliance with the site certificate;

(~~3) There is any~~4) A fatal injury occurs at the facility; or

(5) A mechanical failure occurs at the facility that could impact public health, safety or the environment or result in a violation of a site certificate condition.

(6) The initial notice must include, to the extent known at the time of notice:

(a) The date, time, and location of the incident;
(b) A brief description of the incident;
(c) Any immediate actions taken to protect public health, safety, or the environment; and
(d) The name and contact information of a representative who can provide additional information.

(7) If the incident or pattern of incidents may constitute or result in a violation described in OAR 345-029-0003, the certificate holder must comply with OAR 345-029-0010. The written report required under OAR 345-029-0010 must identify any site certificate conditions relevant to the incident, describe any actual or potential violations of the site certificate or other applicable laws, regulations, or ordinances, and describe corrective actions the certificate holder has taken or intends to take to address the incident and prevent recurrence.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.310, 469.410, 469.430 & 469.507

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History:
EFSC 3-2021, amend filed 12/17/2021, effective 12/17/2021
EFSC 1-2012, f. & cert. ef. 5-15-12
EFSC 1-2005, f. & cert. ef. 5-23-05
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 1-1985, f. & ef. 1-7-85
NTEC 9, f. 2-13-75, ef. 3-11-75

345-026-0300 - Regulations Applicable to the Trojan Independent Spent Fuel Storage Installation

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(1) The requirements of OAR 345-026-0300 through 345-026-0390 apply exclusively to the Trojan Independent Spent Fuel Storage Installation (ISFSI).

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(2) The purpose of these rules is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

(3) References to the Code of Federal Regulations in these rules refer to regulations in place as of August 9, 2019.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.410 & 469.501
History:
EFSC 3-2021, amend filed 12/17/2021, effective 12/17/2021
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 3-1994, f. & cert. ef. 6-28-94

345-026-0340 - Security Plans

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(1) The certificate holder must establish and maintain a security plan that complies with 10 CFR 72.44(e).

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(2) The certificate holder must make the security plan, and any revisions, available for inspection by authorized representatives of the Council and Director upon request. The certificate holder, Department, and Council must protect information in the plan that falls within the definitions of "security program" or “safeguards information” in OAR 345-070-0015 from unauthorized disclosure in accordance with 10 CFR 73.21, 73.22 and OAR chapter 345, division 070.

(3) The certificate holder may not make changes to the security plan that could: reduce the ability to detect or prevent unauthorized entry, reduce the ability to detect or prevent the introduction of unauthorized material into a Protected Area, or otherwise reduce the effectiveness of the plan without prior written approval from the Council and Director, as required by ORS 469.530.

(4) The certificate holder may make changes to the security plan that do not reduce the effectiveness of the plan without prior approval from the Council and Director. The certificate holder must notify the Department of any changes made under this section within 60 days after the implementation date of the changes. The Department must promptly notify the Council of the changes at a scheduled Council meeting, subject to the provisions of OAR chapter 345, division 070.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.410, 469.501 & 469.530
History:
EFSC 3-2021, amend filed 12/17/2021, effective 12/17/2021
EFSC 1-2005, f. & cert. ef. 5-23-05
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 3-1995, f. & cert. ef. 11-16-95
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 3-1994, f. & cert. ef. 6-28-94

345-026-0350 - Emergency Planning

(1) The certificate holder must follow and maintain an emergency plan that is approved by the Council.

(2) The certificate holder may not make changes to the emergency plan that would decrease the effectiveness of the plan or the plan's requirements for notification of off-site agencies without the Council's prior approval.

(3) The certificate holder may make changes to the plan that would not reduce its effectiveness without the Council's prior approval. The certificate holder must notify the Department of any changes made under this section within 30 days after the implementation date of the changes. The Department must promptly notify the Council of the changes at a scheduled Council meeting.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.410, 469.501, 469.530 & 469.533
History:
EFSC 3-2021, amend filed 12/17/2021, effective 12/17/2021
EFSC 1-2005, f. & cert. ef. 5-23-05
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 3-1995, f. & cert. ef. 11-16-95
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 3-1994, f. & cert. ef. 6-28-94

345-026-0370 - ISFSI Decommissioning Plan

(1) The certificate holder must submit a final plan for decommissioning the ISFSI to the Department for Council approval. The plan must be submitted to the Council in a form and in a schedule consistent with that required by the U.S. Nuclear Regulatory Commission. When the Department receives a decommissioning plan, the Department must:

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(a) Issue notice to the Council's mailing list that the decommissioning plan has been submitted. The notice must include:

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(A) The time and place of at least one informational hearing;

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(B) The locations where copies of the proposed plan may be reviewed by the public; and

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(C) A contact name for further information.

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(b) Perform a technical review, and produce a staff report containing the Department's technical conclusions and recommendations on specific issues raised in the proposed plan;

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(c) To the extent practicable, coordinate its technical review with that of the U.S. Nuclear Regulatory Commission;

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(d) Issue notice of availability of the Department report to the Council mailing list. The notice must include:

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(A) A summary of the Department's recommendations;

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(B) Time and place of a hearing on the staff report;

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(C) Places where the Department's staff report may be reviewed by the public; and

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(D) A contact for additional information and copies of the staff report.

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(2) The Council must review the proposed decommissioning plan to verify that the proposed activities will not adversely affect the health and safety of the public or the environment. The Council will ensure the following when evaluating acceptability of a proposed decommissioning plan:

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(a) The plan contains the radiological criteria for unrestricted release and use of the site as set forth in 10 CFR 20.1402.

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(b) The plan contains provisions that require removal from the site of all radioactive waste as defined in ORS 469.300 on a schedule acceptable to the Council.

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(c) The plan contains a program for radiological monitoring to ensure the environment is not being adversely affected. This program may be incorporated by reference if it has previously been approved by the Department.

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(d) The plan contains provisions for removal or control of hazardous waste that are consistent with applicable federal and state regulations.

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(3) The certificate holder must include in the plan an estimate of funding necessary for implementation. The Council must determine whether provisions for funding are adequate to implement the plan.

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(4) The certificate holder must not implement significant revisions to the decommissioning plan unless the Council has reviewed and approved the revisions. A revision is significant if it involves one of the following items:

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(a) The potential to prevent the release of the site for unrestricted use;

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(b) A change in the criteria for site release;

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(c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;

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(d) A change in the provisions made for hazardous or radioactive waste material removal;

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(e) A change in the types or increase in the amounts of any effluents that may be released offsite; or

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(f) An increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.

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(5) The certificate holder must evaluate revisions to the decommissioning plan by the criteria listed in section (4) of this rule. The certificate holder must maintain records of all changes and associated evaluations for audit by the Department. The certificate holder must notify the Department of revisions to the plan that are not significant within 30 days after implementation of the revision. The Department must promptly notify the Council of such revisions at a regularly scheduled meeting.

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(6) Changes to the decommissioning plan that are mandated by the federal government may be implemented without prior Council approval.

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Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.410 & 469.501

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History:
EFSC 1-2005, f. & cert. ef. 5-23-05
EFSC 3-2021, amend filed 12/17/2021, effective 12/17/2021
EFSC 2-2000, f. & cert. ef. 11-20-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 4-1998, f. & cert. ef. 10-26-98
EFSC 3-1995, f. & cert. ef. 11-16-95
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 4-1994, f. & cert. ef. 11-22-94
EFSC 3-1994, f. & cert. ef. 6-28-94

345-026-0390 - Spent Nuclear Fuel Storage

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(1) The certificate holder may store a maximum of 791 complete and partial fuel assemblies and storage of containers with nuclear fuel materials at an Independent Spent Fuel Storage Installation (ISFSI) at the site of the former Trojan Nuclear Plant, subject to the requirements of OAR 345-026-0300 through 345-026-0390.

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(a) The ISFSI must be designed to maintain discharges within the limits specified in applicable licenses authorized under the Atomic Energy Act of 1954, as amended, and any applicable permits issued under the National Pollutant Discharge Elimination System;

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(b) The ISFSI must be designed such that in case of accidents the projected dose to an individual outside of the Controlled Area Boundary will not exceed 1 rem over four days.

(c) The ISFSI may not be used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the former Trojan Nuclear Plant.

(2) Except as required for accident mitigation as described in the Safety Analysis Report, the certificate holder may not remove or transfer a multipurpose canister from its storage cask without the Council's prior approval.

(3) The certificate holder must notify the Department of incidents and accidents in accordance with the Emergency Plan required under OAR 345-026-~~0340~~0350, the Security Plan required under OAR 345-026-~~0350~~0340, and other agreements as established, and must:

(a) Notify the Oregon Emergency Response System immediately upon declaration of an emergency under the approved Emergency Plan for the facility;

(b) Notify the Department of non-emergency incidents or accidents as described in 10 CFR 72.75.

(4) The certificate holder must operate the ISFSI consistent with a Safety Analysis Report submitted in compliance with 10 CFR 72.70 and the following requirements:

(a) The Safety Analysis Report must provide for the following programs:

(A) A Temperature Monitoring and Air Vent Inspection Program. The program must include daily readings of Concrete Cask air outlet and ambient temperatures. The program must include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program must also include a requirement to check air inlet and outlet vents for blockage weekly. The certificate holder may extend individual surveillance intervals by up to 25 percent to accommodate minor variations in work scheduling.

(B) A Radiation Protection Program that complies with 10 CFR 20.1101 and ensures exposures to ISFSI personnel and the public are As Low As Reasonably Achievable as that term is defined in 10 CFR 20.1003.

(C) A Radiological Environmental Monitoring Program that ensures the ISFSI complies with the Radiation Protection Program required under paragraph (4)(a)(B) of this rule.

(D) An Aging Management Program for management of issues associated with aging that could adversely affect ISFSI components that are important to safety.

(E) A program for maintaining equipment onsite and having equipment available to respond to credible accident scenarios as required by the Safety Analysis Report and a plan for construction of new concrete casks.

(b) The certificate holder may not make changes to the ISFSI, or Safety Analysis Report that would require prior approval from the U.S. Nuclear Regulatory Commission (NRC) under 10 CFR 72.48 without requesting the Council's prior approval, unless the proposed change is required for compliance with the regulations or orders of the NRC or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior approval.

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(5) In lieu of the requirements of OAR 345-026-0080 the certificate holder must provide a written report to the Council on the status of the ISFSI biennially. The report must include, at a minimum:

(a) A summary of changes to the ISFSI or Safety Analysis Report since the last report that did not require prior approval from the Council or NRC under section (4)(b) of this rule;

(b) The results of radiation monitoring programs;

(c) A summary of personnel exposure related to ISFSI storage operations;

(d) A statement of expenses related to ISFSI storage operations;

(e) A statement of the estimated costs of continuing ISFSI storage operations through decommissioning and the estimated costs of decommissioning, including a discussion of the methods and assumptions used to estimate operations and decommissioning costs;

(f) An estimate of funds available for continuing ISFSI storage operations through decommissioning and funds available for ISFSI decommissioning; and

(g) A statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility.

(6) Contractors: The certificate holder must require contractors who perform portions of the ISFSI storage or transporting operations to adhere to all applicable provisions of this rule.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.410 & 469.501
History:
EFSC 3-2021, amend filed 12/17/2021, effective 12/17/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2005, f. & cert. ef. 5-23-05
EFSC 1-2003, f. & cert. ef. 9-3-03
EFSC 2-2002, f. & cert. ef. 12-3-02
EFSC 3-1999, f. & cert. ef. 4-21-99
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 2-1995, f. & cert. ef. 11-3-95
EFSC 5-1994, f. & cert. ef. 11-30-94
EFSC 3-1994, f. & cert. ef. 6-28-94

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Division 29
NOTICE OF VIOLATION, CIVIL PENALTIES, REVOCATION OR SUSPENSION

345-029-0000 - Policy

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The purpose of the Council enforcement program is to protect the health and safety of the public and the environment by ensuring compliance with the terms and conditions of site certificates, Department of Energy orders as described in OAR 345-027-0230, Radioactive Materials Transport Permits and applicable statutes, rules and orders of the Director and Council and by obtaining prompt correction of violations.

Statutory/Other Authority: ORS 469.470, 469.607 & 469.992
Statutes/Other Implemented: ORS 469.085, 469.470, 469.607 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2000, f. & cert. ef. 2-2-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

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345-029-0003 - Applicability of OAR 345-029-0005 through 345-029-0100

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(1) OAR 345-029-0005 through OAR 345-029-0100 apply to violations or potential violations involving energy facilities, including:

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(a) A violation of any term or condition of a site certificate;

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(b) Except as described in OAR 345-029-0503, a violation of any applicable provision of ORS Chapter 469, OAR chapter 345, or an order of the Council;

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(c) A violation of an order issued under OAR 345-027-0230; or

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(d) A history of non-compliance by a certificate holder with applicable rules or license requirements of more than one other state agency having enforcement jurisdiction.

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(2) No provision of these rules precludes the Director or Council from taking any actions authorized under ORS Chapter 469 to protect public health and safety or the environment, including, but not limited to the seeking of injunctive relief or the suspension or revocation of permits or site certificates.

(3) It is the intent of the Energy Facility Siting Council that these Division 29 rules, including revisions adopted on [insert adoption date], apply to site certificates and site certificate amendments issued thereafter and also apply retroactively to site certificates and site certificate amendments issued prior to [insert adoption date], except to the extent that any rules in this division conflict or are inconsistent with a condition contained in a site certificate (or amendment thereto), the condition is controlling.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

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345-029-0005
Definitions for OAR 345-029-0005 through 345-029-0100

As used in OAR 345-029-0005 through 345-029-0100:

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(1) "Responsible party" means:

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(a) A certificate holder;

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(b) A person to whom the Council has granted an exemption from the site certificate requirement under OAR 345-015-0350 through 345-015-0370; or

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(c) Any person otherwise subject to the requirements of ORS chapter 469, or OAR chapter 345, related to energy facilities.

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(2) "Compliance audit" means an audit conducted as part of an ongoing comprehensive program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, or site certificate conditions.

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Statutory/Other Authority: ORS 469.470 & 469.605
Statutes/Other Implemented: ORS 469.085 & 469.440

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History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2000, f. & cert. ef. 2-2-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95

345-029-0010 - Report by a Responsible Party

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The responsible party must make reports as specified in these rules and in the site certificate. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms or conditions of a site certificate, the terms or conditions of any order of the Council, or the terms or conditions of an order issued under OAR 345-027-0230, the responsible party must:

(1) Within 72 hours after discovering the conditions or circumstances, notify the Department of the conditions or circumstances that may constitute a violation, giving all pertinent facts including an estimate of how long the conditions or circumstances have existed, how long they are expected to continue before they can be corrected, actions taken or to be taken to correct the potential violation and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit.

(2) As soon as reasonably possible, initiate and complete appropriate action to correct the conditions or circumstances and to minimize the possibility of recurrence.

(3) Submit to the Department a written report within 30 days of discovery. The report must contain:

(a) A discussion of the cause of the reported conditions or circumstances;

(b) The date of discovery of the conditions or circumstances by the responsible party;

(c) A description of immediate actions taken to correct the reported conditions or circumstances;

(d) A description of actions taken or planned to minimize the possibility of recurrence; and

(e) For conditions or circumstances that may violate the terms or conditions of a site certificate, an assessment of the impact on the resources considered under the standards of divisions 22 and 24 of this chapter as a result of the reported conditions or circumstances.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.440

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History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2000, f. & cert. ef. 2-2-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0015 - Pre-Enforcement Notice of Siting Division Violations

(1) The Department has discretion to issue a pre-enforcement notice before issuing a notice of violation under OAR 345-029-0020. The Council may instruct the Department to issue a pre-enforcement notice. Nothing in this rule limits the Department's ability to issue an inspection report, request for information, compliance letter, warning letter, or other informal communication before determining whether to issue a pre-enforcement notice or notice of violation.

(2) In deciding whether conditions or circumstances warrant issuing a pre-enforcement notice, the Department or Council must consider the following factors:

(a) Whether the responsible party reported the conditions or circumstances in reasonable detail in a timely manner;

(b) Whether the conditions or circumstances are limited to the possible violation of a reporting requirement;

(c) Whether the conditions or circumstances are the result of ambiguous language in the requirement in question;

(d) Whether the conditions or circumstances are the result of a change to the design, construction, operation, or retirement of a facility for which a site certificate has been issued, and whether the certificate holder decided that no amendment of the site certificate was required based on a reasonable analysis of the criteria in OAR 345-027-0350(2);

(e) Whether the violation in question has been cited by any other state agency having jurisdiction;

(f) Whether the conditions or circumstances are overseen or within the control of the responsible party;

(g) Whether additional information is needed to determine whether a violation occurred, the classification of any violation, or the appropriate corrective action; and

(h) Whether issuance of a pre-enforcement notice would be consistent with the Council's goals of protecting public health, safety, welfare, and the environment and ensuring compliance with the terms and conditions of site certificates and Council orders.

(3) If the Department determines upon inspection as provided for in OAR 345-026-0050, upon receipt of a report from the responsible party under OAR 345-029-0010, or by other means that a violation described in OAR 345-029-0003 may have occurred, or that additional information is needed to determine whether such a violation occurred, the Department may serve a pre-enforcement notice upon the responsible party. The Department must serve the pre-enforcement notice by personal service, electronic mail, first class mail, certified mail, or registered mail.

(4) In the pre-enforcement notice, the Department must include:

(a) A reference to the statute, administrative rule, order, or site certificate term or condition that may have been violated;

(b) A statement of the facts upon which the Department based its determination that a violation may have occurred, including the date of discovery, if known;

(c) A statement explaining what additional information, if any, the Department requires to determine whether a violation occurred, the classification of any violation, or the appropriate corrective action;

(d) A description of any corrective action the Department believes may be necessary to remedy the conditions or circumstances, mitigate impacts, minimize imminent risk, or minimize the possibility of recurrence;

(e) A requirement for the responsible party to provide a written response to the pre-enforcement notice within 30 days or other specified time;

(f) A statement explaining that the responsible party may request an enforcement conference under OAR 345-029-0050 to present information regarding the conditions or circumstances described in the pre-enforcement notice and to discuss corrective action taken or proposed; and

(g) An explanation that the pre-enforcement notice does not entitle the responsible party to a contested case proceeding.

(5) The responsible party must provide a written response to the Department by the date specified in the pre-enforcement notice. The response must include:

(a) A statement of facts relevant to the Department's determination that a violation may have occurred;

(b) A statement explaining whether the responsible party disputes any material fact, conclusion, or requested corrective action identified in the pre-enforcement notice;

(c) A description of any corrective action the responsible party has taken or proposes to take to remedy the conditions or circumstances, mitigate impacts, or minimize the possibility of recurrence;

(d) The date by which the responsible party expects to complete any proposed corrective action and achieve compliance with all applicable site certificate conditions, Council orders, statutes, rules, permits, approvals, or other requirements.

(e) Any additional information requested by the Department in the pre-enforcement notice;

(f) If the responsible party cannot provide all information required under subsections (a) through (e) of this section by the response deadline, the date by which the responsible party will submit the remaining information and an explanation of why additional time is needed; and

(g) A statement that the responsible party does or does not request an enforcement conference under OAR 345-029-0050.

(6) If the Department receives information that the Department determines is sufficient to demonstrate that the violation identified in the pre-enforcement notice did not occur, the Department must amend or withdraw the pre-enforcement notice, as appropriate.

(7) The Department may issue a notice of violation under OAR 345-029-0020 after considering:

(a) The responsible party's written response;

(b) Information presented at any enforcement conference;

(c) Any corrective action taken or proposed by the responsible party;

(d) The responsible party's cooperativeness and efforts to correct the conditions or circumstances; and

(e) Any other information the Department determines is relevant.

(8) The Department is not required to issue a pre-enforcement notice before issuing a notice of violation under OAR 345-029-0020, assessing a civil penalty under OAR 345-029-0060, or seeking suspension or revocation of a site certificate under OAR 345-029-0100.

(9) Issuance of a pre-enforcement notice does not limit the authority of the Council or the Department to inspect a facility, request information, require reports, issue a notice of violation, assess a civil penalty, seek suspension or revocation of a site certificate, or take any other action authorized by ORS chapter 469, OAR chapter 345, a Council order, or a site certificate.

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Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.405, 469.430, 469.440, 469.540, 469.550, 469.992

345-029-0020
Notice of Violation

(1) The Department has discretion to issue a notice of violation, except that the Council may instruct the Department to issue a notice of violation. Factors the Council or Department must consider in deciding whether conditions or circumstances warrant issuing a notice of violation are:

(a) Did the responsible party report the conditions or circumstances in a timely manner?

(b) Are the conditions or circumstances limited to the possible violation of a reporting requirement?

(c) Are the conditions or circumstances the result of ambiguous language in the requirement in question?

(d) Are the conditions or circumstances the result of a change to the design, construction, operation or retirement of a facility for which a site certificate has been issued, and did the certificate holder decide that no amendment of the site certificate was required, based on a reasonable analysis of the criteria in OAR 345-027-0350(2)?

(e) Has the violation in question been cited by any other state agency having jurisdiction?

(f) Are the conditions or circumstances within the control of the responsible party?

(2) If the Department determines upon inspection as provided for in OAR 345-026-0050, upon receipt of a report from the responsible party under OAR 345-029-0010, or by other means that there has been a violation for which sanctions may be imposed as described in OAR 345-029-0003, the Department may

serve a notice of violation upon the responsible party. The Department must serve the notice of violation by personal service or by first class, certified or registered mail.

(3) In the notice of violation, the Department must include:

(a) A reference to the statute, administrative rule, order, or site certificate term or condition violated as determined by the Department;

(b) A statement of the facts upon which the Department based its determination that a violation occurred, including the date of discovery;

(c) A requirement for the responsible party to provide a written response to the notice of violation within 30 days or other specified time;

(d) A statement of the responsible party's right to a hearing as provided for in OAR 345-029-0070 if the Department later issues a notice of assessment of civil penalty as described under OAR 345-029-0060; and

(e) The Department's classification of the violation, including a statement of the consideration given to the following factors:

(A) The performance of the responsible party in taking necessary or appropriate action to correct or prevent the violation;

(B) Any similar or related violations by the certificate holder in the previous 36 months;

(C) Any adverse impact of the violation on public health and safety; and

(D) For a violation of the terms or conditions of a site certificate, any adverse impact of the violation on resources protected by Council standards or site certificate conditions.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2000, f. & cert. ef. 2-2-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0030
Classification of Violations

The Department must determine the classification of a violation based upon severity and considering the guidelines in this rule. The Department may issue a notice of violation for Class I or Class II violations. The Department may, if special circumstances warrant, determine a classification at variance from the guidelines listed below:

(1) In general, the following violations are classified as Class II violations:

(a) Violation of a term or condition of a site certificate;

(b) Violation of an order of the Council;

(c) Violation of any applicable rule in divisions 22 through 27 of this chapter;

(d) Violation of a Department of Energy order as described in OAR 345-027-0230; or

(e) Violation of any applicable provision of ORS Chapter 469.

(2) In general, the Department may escalate any Class II violation to a Class I violation. Factors the Department may consider in escalating a Class II violation to Class I include whether the responsible party reported the conditions or circumstances of the violation, the duration of the violation, whether the responsible party implemented prompt and effective corrective actions, the impact on public health and safety or on resources protected by Council standards, and the past performance of the responsible party. To escalate a violation to Class I, the Department must find that the violation meets one of the following criteria:

(a) It is a repeated violation. The Department must consider whether the successive violation could reasonably have been prevented by the responsible party by taking appropriate corrective actions for a prior violation;

(b) It resulted from the same underlying cause or problem as a prior violation;

(c) It is a willful violation; or

(d) The violation results in a significant adverse impact on the health and safety of the public or on the environment.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2000, f. & cert. ef. 2-2-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 3-1995, f. & cert. ef. 11-16-95
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0040
Response to Notice of Violation

In the written response required by OAR 345-029-0020(~~2~~3)(c), the responsible party must include, as a minimum, the following:

(1) Admission or denial of the violation;

(2) If the responsible party admits the violation and can determine suitable corrective action:

(a) The corrective action taken, and results achieved;

(b) Corrective action that the responsible party plans to take to minimize the possibility of recurrence; and

(c) The date by which the responsible party expects to achieve full compliance; and

(3) If the responsible party admits the violation and cannot determine suitable corrective actions within the 30-day or other time period specified in the notice of violation, a preliminary response that includes a date by which the responsible party will submit a final response that includes all information described in section (2).

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0050
Enforcement Conference

(1) After issuing a notice of violation for a Class I violation, the Department must provide the responsible party an opportunity for an enforcement conference to discuss the cause and consequences of the violation and to describe the corrective actions taken. The Department may use information discussed at the conference in determining the appropriate enforcement action.

(2) Following the enforcement conference, if any, the Department must confirm or amend the classification of the violation and may issue an amended notice of violation, if appropriate.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.440 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0060
Civil Penalties

(1) Following the responsible party's response to the notice of violation described under OAR 345-029-0040, and any enforcement conference, the Department may assess a civil penalty for a Class I violation. The Department must determine the amount of the civil penalty, if any, as follows:

(a) Base amount:

(A) $1000 per day from the date of discovery for a violation of site certificate terms or conditions or violation of a Department order as described in OAR 345-027-0230, or $2000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months; or

(B) $2000 per day from the date of discovery for a violation of an enforcement order of the Council, or $5000 per day from the date of discovery for such violation if the Department finds that substantially the same violation occurred within the preceding 36 months;

(b) The Department may multiply the base amount by a factor of:

(A) 3.0 if the Department finds the violation was intentional or reckless; or

(B) 5.0 if the Department finds the violation was intentional or reckless and the violation involved a requirement relating to public health, safety or the environment;

(c) The Department may multiply the base amount by either or both of the following factors:

(A) 0.75 if the responsible party corrected the violation within the time required to respond to the notice of violation and the responsible party has submitted a plan adequate to minimize the possibility of recurrence; and

(B) 0.8 if the responsible party reported the conditions or circumstances of the violation as a result of a compliance audit; and

(d) The Department may not reduce the base amount under subsection (c) above if the Department determines an increase in the base amount is warranted under subsection (b).

(2) In a notice of assessment of the civil penalty, the Department must include:

(a) An analysis of the violations in light of the criteria described in section (1);

(b) The amount of the assessment;

(c) A proposed order assessing the civil penalty; and

(d) A statement of the responsible party's right to a contested case proceeding as provided for in OAR 345-029-0070.

(3) The Department must serve the notice of assessment of civil penalty by personal service and by certified or registered mail.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2013, f. & cert. ef. 1-28-13
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2000, f. & cert. ef. 2-2-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0070
Contested Case Proceeding

(1) Within 20 days after the date of mailing of the notice of assessment of a civil penalty, the responsible party may submit to the Department a written request for a contested case proceeding. For the purpose of this rule, the request is submitted when it is received by the Department.

(2) If the responsible party requests a contested case proceeding within the time stated in section (1), the Council must conduct the proceeding under the applicable provisions of OAR 345-015-0002 to 345-015-0085.

(3) If the responsible party does not request a contested case proceeding within the time stated in section (1), the Department's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), automatically becomes final.

(4) If the responsible party requests a contested case proceeding but fails to appear, the Department's proposed order assessing a civil penalty, described under OAR 345-029-0060(2), becomes final upon a prima facie case made on the record of the Department.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 183.415, 469.085 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0080
Payment of Penalty

A civil penalty imposed under this division becomes due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. If the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 183.745, 469.085 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0090
Council Consideration of Mitigating Factors

Notwithstanding OAR 345-029-0080, the Council in its order after a contested case proceeding on a civil penalty imposed under OAR 345-029-0060 may rescind or reduce the penalty upon a showing by the responsible party incurring the penalty that imposition of the penalty would be an unreasonable economic and financial hardship, that the responsible party has taken prompt and effective action to correct the violation and ensure that it will not be repeated, or that the responsible party reported the conditions or circumstances of the violation as a result of a routine compliance audit.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085 & 469.992
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 1-1995, f. & cert. ef. 5-15-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0100
Revocation or Suspension of Site Certificate

The Council may revoke or suspend any site certificate after conducting a contested case proceeding on the revocation or suspension under the provisions of OAR 345-015-0012 through 0085. A majority vote of the Council or a request from the Department initiates a contested case proceeding on a revocation or suspension. The Council may base revocation or suspension on any of the following grounds:

(1) The certificate holder made a material false statement in an application for a site certificate or in supplemental or additional statements of fact or studies required of an applicant when a true answer would have warranted denial of a site certificate by the Council;

(2) The certificate holder failed to comply with a term or condition of the site certificate;

(3) The certificate holder violated a Department order as described in OAR 345-027-0230;

(4) The certificate holder violated any provision of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, any administrative rule adopted under those statutes, including but not limited to rules contained in OAR chapter 345, or any order of the Council; or

(5) For a site certificate subject to ORS 469.410, having been executed prior to July 2, 1975, the certificate holder violated any ~~the~~ provision of ORS 469.300 to 469.520 or failed to comply with applicable health or safety standards.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.440
History:
EFSC 1-2021, amend filed 02/26/2021, effective 02/26/2021
EFSC 1-2007, f. & cert. ef. 5-15-07
EFSC 1-2000, f. & cert. ef. 2-2-00
EFSC 2-1999, f. & cert. ef. 4-14-99
EFSC 3-1995, f. & cert. ef. 11-16-95
EFSC 5-1994, f. & cert. ef. 11-30-94

345-029-0503
Applicability of OAR 345-029-0505 through 345-029-0560

(1) OAR 345-029-0503 through 345-029-0560 apply to violations involving the transport or disposal of radioactive materials or waste, including violation of:

(a) Any applicable provision of ORS 469.525 or OAR chapter 345, division 050; or

(b) Any applicable provision of ORS 469.603 through 469.619, OAR chapter 345, division 060, or any term or condition of a Radioactive Materials Transport Permit.

(2) No provision of these rules ~~preclude~~precludes the Director or Council from taking other actions to protect public health and safety or the environment, including, but not limited to the seeking of injunctive relief or the suspension or revocation of permits or site certificates, authorized under ORS chapters 183 or 469.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.470 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

345-029-0505
Definitions for OAR 345-029-0503 through 345-029-0560

As used in OAR 345-029-0503 through 345-029-0560, the following definitions apply:

(1) "Compliance audit" means an audit conducted as part of an ongoing program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, or Radioactive Materials Transport Permit requirements.

(2) “Director” means the Director of the Oregon Department of Energy, or Department staff authorized to implement these rules under the Director’s authority.

(3) “Reckless” means the responsible party consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

(4) "Responsible party" means any person subject to the provisions of:

(a) ORS 469.525 or OAR chapter 345, division 050; or

(b) ORS 469.603 through 469.619 or OAR chapter 345, division 060.

(5) “Violation” means a transgression of any statute, rule, order, license, permit, permit attachment, or any part thereof and includes both acts and omissions.

(6) "Willful" means the responsible party had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Statutory/Other Authority: ORS 469.470 & 469.605
Statutes/Other Implemented: ORS 469.085 & 469.540
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

345-029-0510
Report by a Responsible Party

(1) Whenever a responsible party becomes aware of conditions or circumstances that may constitute or result in a violation described under OAR 345-029-0503, the responsible party must:

(a) Within 72 hours after discovering the conditions or circumstances, provide written notice of the conditions or circumstances to the Director. The notice must include:

(A) A description of the conditions or circumstances;

(B) The date of discovery of the conditions or circumstances;

(C) A description of the immediate actions the responsible party has taken or intends to take to correct or mitigate conditions or circumstances. The description must explain whether and how the actions have prevented or will prevent a violation from occurring, and when any actions not yet taken are expected to be completed; and

(D) A description of how the conditions or circumstances were discovered, including whether they were discovered as the result of a regularly scheduled compliance audit; and

(b) As soon as reasonably possible, initiate and complete appropriate action to correct or mitigate the conditions or circumstances.

(2) Within 30 days after the date of discovery identified in paragraph (1)(a)(B) of this rule, the responsible party must submit a written report to the Director containing:

(a) A discussion of the cause of the reported conditions or circumstances;

(b) The estimated date when the conditions or circumstances first began;

(c) A description of immediate actions taken to correct or mitigate the conditions or circumstances, including the dates each action was completed; and

(d) A description of actions taken or planned to minimize the possibility of recurrence of the conditions or circumstances.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

345-029-0520
Pre-Enforcement Notice

(1) If the Director determines that a violation described under OAR 345-029-0503 has occurred, the Director may issue a Pre-Enforcement Notice upon the responsible party. The Pre-Enforcement Notice must be served upon the responsible party by personal service or by first class, certified or registered mail and must include:

(a) A description of the alleged violation, including a reference to the statute, administrative rule, order, or permit term or condition determined by the Director to have been violated and the classification of the violation under OAR 345-029-0530;

(b) A statement of the facts upon which the Director based their determination, including the date or dates on which the violation is alleged to have occurred, or the date an ongoing violation was alleged to have begun;

(c) A description of evidence supporting any mitigating or aggravating factors, including, but not limited to:

(A) Whether the responsible party voluntarily reported the conditions or circumstances related to the alleged violation in accordance with OAR 345-029-0510;

(B) The performance of the responsible party in taking necessary or appropriate action to correct the conditions or circumstances that led to the violation and to prevent the violation from recurring;

(C) A history of similar or related violations by the responsible party and the responsible party's efforts in taking all feasible steps or procedures necessary or appropriate to correct or prevent any violation;

(D) Any known or potential adverse impact of the violation on public health and safety;

(E) Whether the violation was willful or the result of reckless behavior;

(d) A statement explaining what additional information the Director requires to determine appropriate enforcement and corrective actions;

(e) The date by which the responsible party must respond to the Pre-Enforcement Notice under section (2) of this rule and a description of the potential consequences of not responding. The date must be at least 30 days after the date of issuance of the Notice;

(f) A statement explaining that the responsible party is entitled to the opportunity to present information regarding the alleged violation and any proposed corrective action at an enforcement conference under OAR 345-029-0550 before the Director issues a Notice of Enforcement Action under OAR 345-029-0555; and

(g) An explanation that the Pre-Enforcement Notice does not entitle the responsible party to a contested case hearing.

(2) The responsible party must provide, to the Director, a written response to the Pre-Enforcement Notice by the date specified under section (1)(e) of this rule. The response must include:

(a) A statement of any facts relevant to the Director's determination that the violation has occurred;

(b) A description of any corrective actions taken or proposed to be taken to mitigate the impacts of the alleged violation and any corrective actions the responsible party proposes to take to minimize the possibility of recurrence;

(c) The date by which the responsible party expects to achieve full compliance with all applicable laws and rules;

(d) Any additional information requested by the Director in the Pre-Enforcement Notice;

(e) If the responsible party cannot provide all the information required under subsection (a) to (d) of this section, the date by which the responsible party will submit all additional required information;

(f) A statement that the responsible party does or does not request an enforcement conference under OAR 345-029-0550 to present information regarding the alleged violation and discuss any proposed corrective action at an enforcement conference under OAR 345-029-0550.

(3) The Director must amend or withdraw the Pre-Enforcement Notice, as appropriate, within 30 days of receiving information that the Director finds sufficient to demonstrate that the violation alleged in the Pre-Enforcement Notice did not occur.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

345-029-0530
Classification of Violations Involving the Transport or Disposal of Radioactive Materials or Wastes

Violations involving the transport or disposal of radioactive materials or wastes are classified as follows:

(1) Class I Violations include:

(a) Any violation of ORS 469.525 or OAR chapter 345, division 050;

(b) A failure to obtain an Oregon Radioactive Waste Material Transport Permit as required by ORS 469.605 or OAR 345-060-0004;

(c) A failure to immediately report an incident as required by OAR 345-060-0030;

(d) A failure to comply with an order of the Director or Council~~;~~.

(2) Class II Violations include:

(a) A failure to route shipments of spent nuclear fuel or placarded shipments of radioactive materials as required by ORS 469.606 or OAR 345-060-0040;

(b) Any violation of OAR 345-060 or an Oregon Radioactive Materials Transport Permit not otherwise described in this rule~~; and~~.

(3) Class III violations include:

(a) A failure to give notice for inspection or schedule change as required by OAR 345-060-0005;

(b) A failure to maintain packaging, placarding, labeling, or shipment documentation as required by OAR 345-060-0025.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

345-029-0550
Enforcement Conference

If requested by the responsible party in its response to the Pre-Enforcement Notice provided under OAR 345-029-0520(2), the Director must provide the responsible party an opportunity for an enforcement conference to present information regarding the alleged violation and to discuss any corrective actions taken or proposed. The Director may use information discussed at the conference in determining the appropriate enforcement action.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

345-029-0555

Enforcement Actions

(1) After considering any information provided in the responsible party's response to the Pre-Enforcement Notice described under OAR 345-029-0520(2), and any enforcement conference under OAR 345-029-0550, the Director may issue a Notice of Enforcement Action containing one or more enforcement actions, including, but not limited to, ordering compliance or corrective actions, imposing safety conditions, and imposing civil penalties.

(2) The Notice of Enforcement Action must include:

(a) The information described under OAR 345-029-0520(1);

(b) A statement assessing the responsible party's cooperativeness and effort to correct the violation;

(c) The amount of the penalty, if any, as calculated under OAR 345-029-0560;

(d) A proposed order assessing a penalty, if any, and ordering compliance or imposing other safety conditions under ORS 469.540(3), as appropriate; and

(e) A notice of the responsible party's right to a contested case hearing under OAR 137-003-0505, including:

(A) The date by which the Director must receive the responsible party's request for a contested case hearing. The date must be at least 20 days after the date of the Notice of Enforcement Action; and

(B) A statement explaining that if the responsible party does not request a contested case hearing by the date specified, or requests a contested case hearing and fails to appear at the hearing, the responsible party waives its right to hearing and the proposed order will become final by default.

(3) The Director must serve the Notice of Enforcement Action upon the responsible party by certified or registered mail.

(4) If the responsible party requests a contested case proceeding by the deadline specified in the Notice of Enforcement Action, the Director must conduct the proceeding in accordance with the applicable provisions of ORS chapter 183. The Director will issue the final order in the contested case.

(5) The Director may agree to an informal disposition or settlement of the contested case if the disposition would be consistent with the Council's goals of protecting public health and the environment and ensuring compliance with the laws, rules and orders of the Department and Council.

(6) If the responsible party does not request a contested case proceeding by the deadline specified in the Notice of Enforcement Action, or if the responsible party requests a contested case proceeding but fails to appear, the Director may issue a final order by default.

(7) Notwithstanding OAR 345-029-0560, the Director may, in its final order issued under this rule, rescind or reduce the amount of penalty upon a showing by the responsible party that:

(a) Imposition of the penalty would be an unreasonable economic and financial hardship on the responsible party, subject to the following:

(A) To make a showing of unreasonable economic or financial hardship, the responsible party must provide documentation determined by the Director to be sufficient to evaluate the responsible party's actual economic or financial condition. Documentation may include, but is not limited to, tax returns and financial statements;

(B) The Director may consider the amount of a penalty issued by another state agency for a violation resulting from the same action, conditions, or circumstances, when evaluating whether the Director's penalty would result in an unreasonable economic or financial hardship on the responsible party; and

(C) The Director may use the U.S. Environmental Protection Agency's ABEL, INDIPAY or MUNIPAY computer models to evaluate a respondent's financial condition or ability to pay the full civil penalty amount. Upon request of the responsible party the Director will provide the respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model; or

(b) The responsible party has provided all information required by the Director's Pre-Enforcement Notice and has taken or is willing to take prompt and effective action to correct the violation and ensure that it will not be repeated.

(8) A civil penalty imposed under this rule becomes due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085, 469.540 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021

345-029-0560
Calculation of Civil Penalty Amount

(1) The Director must determine the base penalty amount for a violation based on the classification and severity of the violation, subject to the following:

(a) The classification of violation is as provided in OAR 345-029-0530;

(b) No severity determination is needed for Class III violations. In making a severity determination for Class I or Class II violations, the Director will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes, rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, quantity, or radioactivity of the materials involved; the availability of potential pathways of exposure; and the duration of the violation.

(A) The severity of the violation is major if the Director finds the violation has caused, or has the potential to cause, a significant adverse impact on public health and safety, or the environment. In making this finding, the Director may describe any of the factors described in subsection (1)(b) to be conclusive.

(B) The severity of a violation is moderate if the Director finds the violation has caused, or has the potential to cause no more than a minimal adverse impact on public health and safety or the environment, but could have the potential to cause a significant adverse impact on public health and safety or the environment if the physical conditions of the disposal did not limit pathways of exposure to human health or the environment.

(C) The severity of a violation is minor if the Director finds the violation has caused, or has the potential to cause, no more than a minimal adverse impact on public health and safety or the environment.

(c) The base penalty for each violation is:

(A) For Class I violations:

(i) $10,000 for a major violation;

(ii) $5,000 for a moderate violation;

(iii) $1,000 for a minor violation;

(B) For Class II violations:

(i) $5,000 for a major violation;

(ii) $2,500 for a moderate violation;

(iii) $500 for a minor violation; and

(C) For Class III violations, $500; and

(d) For the purposes of determining the base penalty amount, violations of more than one law, rule, permit, or order that result from the same actions, conditions, or circumstances, will be treated as a single violation. The base penalty amount will be based on the highest classification and severity applicable to any of the violations.

(2) The Director may adjust the base penalty amount to account for aggravating or mitigating factors by multiplying the base penalty by one or more of the following factors:

(a) 5.0, if the violation was willful or was the result of reckless behavior;

(b) 2.5, if the responsible party has a history of similar or related violations. Similar or related violations are violations that the Director determines to have resulted from the same or similar underlying actions, conditions, or circumstances as the violations addressed in the Notice of Enforcement Action, regardless of whether the Director or Council ever pursued an enforcement action for the previous violations;

(c) 2.5, if the corrective actions taken or proposed to be taken by the responsible party are not sufficient to reverse the conditions or circumstances that constituted the violation;

(d) 0.75, if the responsible party corrected the violation within the time required to respond to the Pre-Enforcement Notice and the responsible party has submitted a plan adequate to minimize the possibility of recurrence; and

(e) 0.8, if the responsible party voluntarily reported the conditions or circumstances of the violation in accordance with OAR 345-029-0510. In determining whether the responsible party voluntarily reported the conditions or circumstances, the Director may consider if the conditions or circumstances were discovered and reported independently from any investigation or inquiry of the Director or Council, or whether the conditions or circumstances were reported as a result of a compliance audit.

(3) The Director may assess the adjusted penalty amount for each occurrence of a violation, or for each day of an ongoing violation, except that the total amount of penalty assessed may not exceed:

(a) $5,000,000 for a moderate violation; or

(b) $25,000 for a minor violation.

(4) In addition to the amount of penalty calculated under sections (1) through (3) of this rule, the Director may assess an additional amount for Economic Benefit. Economic Benefit is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the responsible party's noncompliance. Economic Benefit will be determined using the U.S. Environmental Protection Agency's "BEN" computer model, subject to the following:

(a) The Director may make, for use in the model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent.

(b) Upon request of the responsible party, the Director will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model.

(c) The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply unless the responsible party can demonstrate that the standard value does not reflect the responsible party's actual circumstance.

(d) The Director may assume the economic benefit is zero if the Director makes a reasonable determination that the economic benefit is de minimis or if there is insufficient information to make an estimate under this section.

(5) Notwithstanding any provision of this rule, the total amount of civil penalty assessed may not exceed the maximum civil penalty allowed by ORS 469.992.

Statutory/Other Authority: ORS 469.470
Statutes/Other Implemented: ORS 469.085 & 469.992
History:
EFSC 1-2021, adopt filed 02/26/2021, effective 02/26/2021