

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

345-027-0000

Certificate Expiration

If the certificate holder does not begin construction of the facility, the site certificate expires on the construction beginning date specified by the Council in the site certificate or in an amendment of the site certificate granted according to the rules of this division.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370, ORS 469.501

345-027-0011

Applicability

The rules in this division do not apply to facilities covered by ORS 469.410(1), including the Trojan energy facility.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501

345-027-0020

Mandatory Conditions In Site Certificates

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

(1) The Council shall not change the conditions of the site certificate except as provided for in this division.

(2) The certificate holder shall submit a legal description of the site to the Department of Energy within 90 days after beginning operation of the facility. The legal description required by this rule means a description of metes and bounds or a description of the site by reference to a map and geographic data that clearly and specifically identifies the outer boundaries that contain all parts of the facility.

(3) The certificate holder shall design, construct, operate and retire the facility:

(a) Substantially as described in the site certificate;

(b) In compliance with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances in effect at the time the site certificate is issued; and

(c) In compliance with all applicable permit requirements of other state agencies.

(4) The certificate holder shall begin and complete construction of the facility by the dates specified in the site certificate.

(5) Except as necessary for the initial survey or as otherwise allowed for wind energy facilities, transmission lines or pipelines under this section, the

certificate holder shall not begin construction, as defined in OAR 345-001-0010, or create a clearing on any part of the site until the certificate holder has construction rights on all parts of the site. For the purpose of this rule, “construction rights” means the legal right to engage in construction activities. For wind energy facilities, transmission lines or pipelines, if the certificate holder does not have construction rights on all parts of the site, the certificate holder may nevertheless begin construction, as defined in OAR 345-001-0010, or create a clearing on a part of the site if the certificate holder has construction rights on that part of the site and:

(a) The certificate holder would construct and operate part of the facility on that part of the site even if a change in the planned route of a transmission line or pipeline occurs during the certificate holder’s negotiations to acquire construction rights on another part of the site; or

(b) The certificate holder would construct and operate part of a wind energy facility on that part of the site even if other parts of the facility were modified by amendment of the site certificate or were not built.

(6) If the Council requires mitigation based on an affirmative finding under any standards of Division 22 or Division 24 of this chapter, the certificate holder shall consult with affected state agencies and local governments designated by the Council and shall develop specific mitigation plans consistent with Council findings under the relevant standards. The certificate holder must submit the mitigation plans to the Office and receive Office approval before beginning construction or, as appropriate, operation of the facility.

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

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

(9) The certificate holder shall retire the facility if the certificate holder permanently ceases construction or operation of the facility. The certificate holder shall retire the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110. The certificate holder shall pay the actual cost to restore the site to a useful, non-hazardous condition at the time of retirement, notwithstanding the Council’s approval in the site certificate of an estimated amount required to restore the site.

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

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

(12) The certificate holder shall design, engineer and construct the facility to avoid dangers to human safety presented by seismic hazards affecting the site that are expected to result from all maximum probable seismic events. As used in this rule “seismic hazard” includes ground shaking, landslide, liquefaction, lateral spreading, tsunami inundation, fault displacement and subsidence.

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

(14) The certificate holder shall notify the Department, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if shear zones, artesian aquifers, deformations or clastic dikes are found at or in the vicinity of the site.

(15) Before any transfer of ownership of the facility or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0100 apply to any transfer of ownership that requires a transfer of the site certificate.

(16) If the Council finds that the certificate holder has permanently ceased construction or operation of the facility without retiring the facility according to a final retirement plan approved by the Council, as described in OAR 345-027-0110, the Council shall notify the certificate holder and request that the certificate holder submit a proposed final retirement plan to the Office within a reasonable time not to exceed 90 days. If the certificate holder does not submit a proposed final retirement plan by the specified date, the Council may direct the Department to prepare a proposed a final retirement plan for the Council’s approval. Upon the Council’s approval of the final retirement plan, the Council may draw on the bond or letter of credit described in section (8) to restore the site to a useful, non-hazardous condition according to the final retirement plan, in addition to any penalties the Council may impose under OAR Chapter 345, Division 29. If the amount of the bond or letter of credit is insufficient to pay the

actual cost of retirement, the certificate holder shall pay any additional cost necessary to restore the site to a useful, non-hazardous condition. After completion of site restoration, the Council shall issue an order to terminate the site certificate if the Council finds that the facility has been retired according to the approved final retirement plan.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.501

345-027-0023

Site Specific Conditions

The Council may include the following conditions, as appropriate, in the site certificate:

(1) If the facility uses coal, the certificate holder shall take all necessary steps to ensure that surface and groundwater are not contaminated by run-off or seepage associated with coal or ash storage, transport or disposal. The certificate holder shall handle coal and ash so as to minimize the likelihood of coal dust and ash being windblown and causing an environmental or public health problem. If the certificate holder permanently disposes of ash on the facility site, the certificate holder shall cover the ash with a layer of topsoil and revegetate the area.

(2) If the energy facility or related or supporting facility is a natural gas pipeline, the certificate holder shall submit to the Department copies of all incident reports involving the pipeline required under 49 CFR §191.15.

(3) If the facility includes any pipeline under Council jurisdiction:

(a) The certificate holder shall design, construct and operate the pipeline in accordance with the requirements of the U.S. Department of Transportation as set forth in Title 49, Code of Federal Regulations, Part 192, in effect as of the date of this rule; and

(b) The certificate holder shall develop and implement a program using the best available practicable technology to monitor the proposed pipeline to ensure protection of public health and safety.

(4) If the facility includes any transmission line under Council jurisdiction:

(a) The certificate holder shall design, construct and operate the transmission line in accordance with the requirements of the National Electrical Safety Code (American National Standards Institute, Section C2, 1997 Edition); and

(b) The certificate holder shall develop and implement a program that provides reasonable assurance that all fences, gates, cattle guards, trailers, or other objects or structures of a permanent nature that could become inadvertently charged with electricity are grounded or bonded throughout the life of the line.

(5) If the proposed energy facility is a pipeline or a transmission line or has, as a related or supporting facility, a pipeline or transmission line, the Council shall specify an approved corridor in the site certificate and shall allow the

certificate holder to construct the pipeline or transmission line anywhere within the corridor, subject to the conditions of the site certificate. If the applicant has analyzed more than one corridor in its application for a site certificate, the Council may, subject to the Council's standards, approve more than one corridor.

(6) If the facility is a surface facility related to an underground gas storage reservoir, the Council shall, in the site certificate, specify the site boundary and total permitted daily throughput of the facility.

(7) If the facility is subject to a carbon dioxide emissions standard adopted by the Council or enacted by statute, the Council shall include in the site certificate appropriate conditions as described in OAR 345-024-0550, OAR 345-024-0560, OAR 345-024-0590, OAR 345-024-0600, OAR 345-024-0620, OAR 345-024-0630 and OAR 345-024-0710.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.501, ORS 469.503

345-027-0028

Monitoring Conditions

In the site certificate, the Council shall identify the monitoring programs appropriate to the facility and shall include the following monitoring conditions:

(1) The certificate holder shall consult with affected state agencies, local governments and tribes and shall develop specific monitoring programs for impacts to resources protected by the standards of Divisions 22 and 24 of this chapter and resources addressed by applicable statutes, administrative rules and local ordinances. The certificate holder must submit the monitoring programs to the Department of Energy and receive Department approval before beginning construction or, as appropriate, operation of the facility.

(2) The certificate holder shall implement the approved monitoring programs described in section (1) and monitoring programs required by permitting agencies and local governments.

(3) For each monitoring program described in sections (1) and (2), the certificate holder shall have quality assurance measures approved by the Department before beginning construction or, as appropriate, before beginning commercial operation.

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.501, ORS 469.503, ORS 469.507

345-027-0030

Amendment to Extend Construction Beginning and Completion Deadlines

(1) The certificate holder may request an amendment to extend the deadlines for beginning or completing construction of the facility that the Council has

specified in a site certificate or an amended site certificate. The certificate holder shall submit a request that conforms to the requirements of 345-027-0060 no later than six months before the date of the applicable deadline, or, if the certificate holder demonstrates good cause for the delay in submitting the request, no later than the applicable deadline.

(2) A request within the time allowed in section (1) to extend the deadlines for beginning or completing construction suspends those deadlines until the Council acts on the request.

(3) The Council shall review the request for amendment as described in OAR 345-027-0070.

(4) If the Council grants an amendment under this rule, the Council shall specify new deadlines for beginning or completing construction that are not more than two years from the deadlines in effect before the Council grants the amendment.

(5) To grant an amendment extending the deadline for beginning or completing construction of an energy facility subject to OAR 345-024-0550, OAR 345-024-0590, or OAR 345-024-0620, the Council must find that the facility complies with the carbon dioxide standard in effect at the time of the Council's order on the amendment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.370, ORS 469.405, ORS 469.503

345-027-0050

When an Amendment is Required

(1) Except as allowed under sections (2) and (6), the certificate holder must submit a request to amend the site certificate to design, construct or operate a facility in a manner different from the description in the site certificate if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource protected by Council standards;

(b) Could impair the certificate holder's ability to comply with a site certificate condition; or

(c) Could require a new condition or a change to a condition in the site certificate.

(2) A site certificate amendment is not required if a proposed change in the design, construction or operation of a facility is in substantial compliance with the terms and conditions of the site certificate and is a change:

(a) To an electrical generation facility that would increase the electrical generating capacity and would not increase the number of electric generators at the site, change fuel type, increase fuel consumption by more than 10 percent or enlarge the facility site;

(b) To the number or location of pipelines for a surface facility related to an underground gas storage reservoir that would not result in the facility exceeding permitted daily throughput or enlarge the facility site;

(c) To the number, size or location of pipelines for a geothermal energy facility that would not enlarge the facility site;

(d) To a pipeline or transmission line that is a related or supporting facility that would extend or modify the pipeline or transmission line or expand the right-of-way, when the change is to serve customers other than the energy facility; or

(e) To an aspect or feature of the facility, operating procedures or management structures not addressed in the site certificate.

(3) If the certificate holder concludes that a site certificate amendment is not required based on the criteria in section (2), the certificate holder shall, nevertheless, complete an investigation sufficient to demonstrate that the proposed change in the design, construction or operation of the facility would comply with applicable Council standards. The certificate holder shall complete the investigation before implementing the proposed change. The certificate holder shall prepare a written evaluation describing the investigation and shall make the evaluation available to the Department for inspection at any time.

(4) In the annual report required by OAR 345-026-0080, the certificate holder shall describe all significant changes made to the design, construction and operation of the facility without an amendment of the site certificate. The certificate holder shall keep a written record of the basis for concluding that an amendment of the site certificate was not required. The Department, at any time, may inspect the changes made to the facility and may inspect the certificate holder's written record of the basis for concluding that an amendment of the site certificate was not required.

(5) A certificate holder may ask the Department to determine whether a proposed change requires a site certificate amendment by submitting a written description of the proposed change, the certificate holder's analysis of the proposed change under sections (1) and (2) and the written evaluation described in section (3). The Department shall respond in writing as promptly as possible. The Department may refer its determination to the Council for concurrence, modification or rejection. At the request of the certificate holder or a Council member, the Department must refer its determination to the Council for concurrence, modification or rejection.

(6) A site certificate amendment is not required for the construction of a pipeline less than 16 inches in diameter and less than five miles in length that is proposed to be constructed to test or maintain an underground gas storage reservoir. If the proposed pipeline would connect to a surface facility related to an underground gas storage reservoir for which the Council has issued a site certificate or to a gas pipeline for which the Council has issued a site certificate, the certificate holder must obtain, prior to construction, the approval of the

Department for the construction, operation and retirement of the proposed pipeline. To obtain Department approval, the certificate holder shall submit a request as described in OAR 345-027-0210 through OAR 345-027-0240.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405

345-027-0060

Request to Amend Certificate

(1) To request an amendment of a site certificate, the certificate holder shall submit a written request to the Department of Energy that includes the information described in section (2) and the following:

(a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request.

(b) A description of the facility including its location and other information relevant to the proposed change.

(c) A detailed description of the proposed change and the certificate holder's analysis of the proposed change under the criteria of OAR 345-027-0050(1).

(d) The specific language of the site certificate, including affected conditions, that the certificate holder proposes to change, add or delete by an amendment.

(e) A list of the Council standards relevant to the proposed change.

(f) An analysis of whether the facility, with the proposed change, would comply with the requirements of ORS Chapter 469, applicable Council rules, and applicable state and local laws, rules and ordinances if the Council amends the site certificate as requested. For the purpose of this rule, a law, rule or ordinance is "applicable" if the Council would apply or consider the law, rule or ordinance under OAR 345-027-0070(10).

(g) If the amendment would change the site boundary, extend the deadlines for beginning or completing construction or change the legal description of the facility, an updated list of the owners of property located within or adjacent to the site of the facility, as described in OAR 345-021-0010(1)(f).

(2) In a request to amend a site certificate, the certificate holder shall provide the information described in applicable subsections of OAR 345-021-0010(1). The certificate holder may incorporate by reference relevant information that the certificate holder has previously submitted to the Department or that is otherwise included in the Department's administrative record on the facility.

(3) Before submitting a request to amend a site certificate, the certificate holder may prepare a draft request and may confer with the Department about the content of the request. Although the Council does not require the certificate holder to prepare a draft request and confer with the Department, the Council recommends that the certificate holder follow this procedure.

(4) The certificate holder shall submit an original and ten copies of the amendment request to the Department. In addition to the printed copies, the certificate holder shall submit the text (including appendices and graphical information to the extent practical) of the amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall provide additional copies of the amendment request to the Department upon request and copies or access to copies to any person requesting copies. If requested by the Department, the certificate holder shall send copies of the request to persons on a mailing list provided by the Department.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405

345-027-0070

Review of a Request for Amendment

Except as specified in OAR 345-027-0080, the Council shall review a request for amendment of a site certificate as follows:

(1) Within 15 days after receiving a request to amend a site certificate, the Department of Energy shall determine whether the amendment requires extended review based on the criteria in section (2) and:

(a) Send copies of the request, or instruct the certificate holder to send copies of the request, to the reviewing agencies as defined in OAR 345-001-0010 and ask those agencies to comment on the request by a specified date;

(b) Send a notice of the amendment request to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners or the updated list supplied by the certificate holder under OAR 345-027-0060(1)(g) and specify a date by which comments on the request are due; and

(c) Send a notice to the certificate holder specifying a date for issuance of a proposed order. The Department shall specify a date that is no later than 60 days after the date of the notice unless the Department has determined that the amendment requires extended review. For extended review, the Department shall explain the basis of its determination and specify a date that is not more than 180 days after the date of the notice. Within 10 days after the Department sends notification that an amendment requires extended review, the certificate holder may request Council review of the determination. Upon a request for Council review, the Department shall refer its determination to the Council for concurrence, modification or rejection.

(2) The Department may determine that an amendment requires extended review if:

(a) The certificate holder requests extended review;

(b) The Department finds that the amendment request does not contain the information required by OAR 345-027-0060 or does not contain information sufficient for the Department to prepare a proposed order;

(c) The Department needs to hire a consultant to assist in reviewing the request;

(d) The amendment:

(A) Would require construction on land zoned residential or exclusive farm use;

(B) Would require construction in a zone for which the use is not permitted;

(C) Would require construction on land that may qualify as Habitat Category 1 or 2 land as described in OAR 635-415-0025;

(D) Would result in incremental carbon dioxide emissions that the certificate holder elects to offset, in compliance with the applicable carbon dioxide emissions standard, by a means other than by payments described under OAR 345-024-0560(3), OAR 345-024-0600(3) and (4) or OAR 345-024-0630(2), (4) and (5); or

(E) Could require the Council to determine, according to OAR 345-022-0000(2), that the overall public benefits of the facility outweigh the damage to the resource that is protected by a standard the facility would not meet if the amendment is approved; or

(e) The Department anticipates a high volume of public comment.

(3) The Office may hold one or more public meetings during the review of a request for amendment of the site certificate.

(4) Except as otherwise provided in this section, no later than the date the Department has specified in the notice described in subsection (1)(c), the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department needs additional time to prepare the proposed order, the Department may issue the proposed order at a later date, but the Department shall, no later than the date the Department has specified in the notice, notify the certificate holder in writing of the circumstances that justify the delay.

(5) After issuing the proposed order, the Department shall send a notice of the proposed order to the persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners or the updated list supplied by the certificate holder under OAR 345-027-0060(1)(g). In the notice, the Department shall specify a deadline for submission of written public comments that is at least 30 days from the date of the notice.

(6) Any person may, by written request submitted to the Department no later than the deadline described in section (5), ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address.

(7) To determine that an issue justifies a contested case proceeding under section (8), the Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets an applicable standard. If the Council finds that the request would not affect the Council's determination if the alleged facts were found to be true but that those facts could affect a site certificate condition, the Council may deny the request and may adopt appropriate conditions. If the Council does not have jurisdiction over the issue raised in the request, the Council must deny the request.

(8) The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding, and:

(a) If the Council finds that the request identifies one or more issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to OAR 345-015-0085 limited to the issues that the Council found sufficient to justify the proceeding.

(b) If the Council finds that the request identifies one or more issues that an amendment of the proposed order would settle in a manner satisfactory to the Council, the Council may deny the request as to those issues and direct the Department to amend the proposed order and send a notice of the amended proposed order to the persons described in section (5). Any person may, by written request submitted to the Department within 30 days after the Department issues the notice of the amended proposed order, ask the Council to hold a contested case proceeding limited to issues raised by the amendment to the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address. As described in this section, the Council shall determine whether any issue identified in the request for a contested case proceeding justifies a contested case proceeding.

(c) If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall then adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(9) If there is no request for a contested case proceeding as described in section (6) or subsection (8)(b), the Council, may adopt, modify or reject the proposed order based on the considerations described in section (10). In a written order, the Council shall either grant or deny issuance of an amended site

certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(10) In making a decision to grant or deny issuance of an amended site certificate, the Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council makes its decision. The Council shall consider the following:

(a) For an amendment that would change the site boundary or the legal description of the site, the Council shall consider, for the area added to the site by the amendment, whether the facility complies with all Council standards;

(b) For an amendment that extends the deadlines for beginning or completing construction, the Council shall consider:

(A) Whether the Council has previously granted an extension of the deadline;

(B) Whether there has been any change of circumstances that affects a previous Council finding that was required for issuance of a site certificate or amended site certificate; and

(C) Whether the facility complies with all Council standards, except that the Council may choose not to apply a standard if the Council finds that:

(i) The certificate holder has spent more than 50 percent of the budgeted costs on construction of the facility;

(ii) The inability of the certificate holder to complete the construction of the facility by the deadline in effect before the amendment is the result of unforeseen circumstances that are outside the control of the certificate holder;

(iii) The standard, if applied, would result in an unreasonable financial burden on the certificate holder; and

(iv) The Council does not need to apply the standard to avoid a significant threat to the public health, safety or the environment;

(c) For any amendment not described above, the Council shall consider whether the amendment would affect any finding made by the Council in an earlier order.

(d) For all amendments, the Council shall consider whether the amount of the bond or letter of credit required under OAR 345-022-0050 is adequate.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405

345-027-0080

Review of a Request by a Certificate Holder for Expedited Amendment

(1) A certificate holder may ask the Council Chair to grant expedited review of an amendment request. The certificate holder shall submit a request for expedited review to the Department of Energy in writing and, in addition, the

certificate holder shall submit the text (including appendices and graphical information to the extent practical) of the amendment request in a non-copy-protected electronic format acceptable to the Department. The certificate holder shall include in the request:

(a) The information listed in OAR 345-027-0060(1) and (2), and

(b) Reasons why the certificate holder needs expedited review of its request and an explanation of why the need for expedited review arose and could not have reasonably been foreseen by the certificate holder.

(2) The Chair may grant a request for expedited review if a delay would unduly harm the certificate holder and if the facility, with the proposed change, would not likely result in a significant adverse impact. If the Chair decides not to grant the request for expedited review, the Chair shall issue a written decision as soon as is reasonably practicable. In a written decision denying the request, the Chair shall give an explanation of the reasons for the denial.

(3) Within 7 days after the Chair grants expedited review, the Department shall:

(a) Send copies of the amendment request to the reviewing agencies as defined in OAR 345-001-0010 and ask those agencies to comment on the request within not more than 21 days after the date of the notice.

(b) Send a notice of the amendment request to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners specifying a date, not more than 21 days after the date of the notice, by which comments are due.

(4) Within 60 days after the Chair grants expedited review, the Department shall issue a proposed order, recommending approval, modification or disapproval of the requested amendment. If the Department recommends approval, the Department shall include in the proposed order any new or modified conditions it recommends and shall explain why expedited Council action was warranted.

(5) The Department shall send a notice of the proposed order to the persons on the Council's general mailing list, to any special list established for the facility and to the most recently received list of property owners. In the notice, the Department shall include information on the availability of the proposed order, the date of the Council meeting when the Council will consider the proposed order and issue a temporary order as described in section (5), a date by which comments on the proposed order are due and the deadline for any person to request a contested case proceeding on the Council's temporary order.

(6) After considering the proposed order, the Council may issue an order temporarily amending the site certificate. In making a decision whether to issue a temporary order under this rule, the Council shall consider the factors listed in OAR 345-027-0070(10). The Council shall apply the applicable substantive criteria, as described in OAR 345-022-0030, in effect on the date the certificate

holder submitted the request for amendment and all other state statutes, administrative rules, and local government ordinances in effect on the date the Council issues the temporary order.

(7) Before implementing any change approved by the Council's temporary order, the certificate holder must submit an authorized acknowledgement that the certificate holder accepts all terms and conditions of the temporary order. The acknowledgement may be submitted to the Department by fax if the certificate holder promptly submits a signed original to the Department by mail or hand delivery.

(8) Any person may, by written request submitted to the Department within 15 days after the date the Council issues the temporary order described in section (5), ask the Council to hold a contested case proceeding on the temporary order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the person shall provide a description of the issues to be contested, a statement of the facts believed to be at issue and the person's mailing address.

(9) The Council shall determine whether any issue identified in a request for a contested case proceeding justifies a contested case proceeding.

(a) If the Council finds that the request identifies one or more issues that justify a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to OAR 345-015-0085 limited to the issues that the Council found sufficient to justify the proceeding.

(b) If the Council finds that the request does not identify any issue that justifies a contested case proceeding, the Council shall deny the request. In a written order denying the request, the Council shall state the basis for the denial. The Council shall adopt the temporary order as a final order. In the final order, the Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(10) If there is no request for a contested case proceeding as described in section (8), the Council shall adopt the temporary order as a final order. In the final order, the Council may modify the language of the temporary order, consistent with due process. In the final order, the Council shall either grant or deny issuance of an amended site certificate. If the Council grants issuance of an amended site certificate, the Council shall issue an amended site certificate, which is effective upon execution by the Council Chair and by the applicant.

(11) The certificate holder shall not abuse this rule by failing to make timely application for an amendment and thus creating the need for expedited review.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405

345-027-0090

Request by Any Person for Amendment to Apply Subsequent Laws or Rules

(1) Any person may submit to the Department of Energy a request for an amendment of a site certificate to apply a local government ordinance, statute or Council rule adopted after the date the site certificate was executed. The Department itself may initiate such a request.

(2) In an amendment request under this rule, the person shall include the following:

- (a) The name and address of the person submitting the request;
- (b) The name and address of the certificate holder;
- (c) Identification of the facility for which the site certificate in question was granted and its location;
- (d) Identification of the local government ordinance, statute or Council rule that the person seeks to apply to the facility;
- (e) The particular facts that the person believes demonstrate that failure to apply the ordinance, statute or rule identified in subsection (d) presents a significant threat to the public health or safety or to the environment; and
- (f) The specific language of the site certificate that the person proposes to change, delete or add by an amendment.

(3) If the Department receives a request to amend a site certificate as described in this rule from any person other than the certificate holder, the Department shall send a copy of the request to the certificate holder with a notice stating the date by which the certificate holder must submit a response.

(4) The Council shall review the request for amendment as described in OAR 345-027-0070, except that:

(a) After receiving the certificate holder's response as requested under (3), the Department may ask the Council to determine whether the request demonstrates that failure to apply the ordinance, statute or rule identified in subsection (2)(d) presents a significant threat to the public health or safety or to the environment. If the Council determines that applying the ordinance, statute or rule is not justified by a significant threat to the public health or safety or to the environment, then the Council may deny the amendment request.

(b) Within 15 days after receiving the certificate holder's response as requested under (3) or within 15 days after a Council determination under (a) that applying the ordinance, statute or rule is justified by a significant threat to the public health or safety or to the environment, the Department shall determine whether the amendment request requires expedited review, based on the criteria in OAR 345-027-0070(2), and shall send the notices described in OAR 345-027-0070(1)(a), (b) and (c).

(c) If the Department recommends approval or modification of the requested amendment, the Department shall include in the proposed order described in OAR 345-027-0070(4) any new or modified site certificate

conditions necessary to assure compliance with the statutes, Council rules, and local government ordinances applied to the facility under the proposed order;

(d) Notwithstanding OAR 345-027-0070(7)(c), if the Department in its proposed order recommends approval or modification of the requested amendment, the certificate holder may, by written request submitted to the Department within 30 days after the Department issues the proposed order, ask the Council to hold a contested case proceeding on the proposed order. For the purpose of this rule, the request is submitted when it is received by the Department. In the request, the certificate holder shall provide a description of the issues to be contested and a statement of the facts believed to be at issue. If the site certificate holder requests a contested case proceeding, the Council shall conduct a contested case proceeding according to the applicable provisions of OAR 345-015-0012 to OAR 345-015-0085 limited to the issues stated by the certificate holder; and

(e) The Council shall include new conditions in a site certificate amended under this rule only if the certificate holder agrees to the new conditions or the Council finds that the conditions are necessary based upon a clear showing of a significant threat to the public health, safety or the environment.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.405

345-027-0100

Transfer of a Site Certificate

(1) For the purpose of this rule:

(a) A transfer of ownership requires a transfer of the site certificate when the person who will have the legal right to possession and control of the site or the facility does not have authority under the site certificate to construct, operate or retire the facility;

(b) “Transferee” means the person who will become the new applicant and site certificate holder.

(2) When a certificate holder has knowledge that any transfer of ownership of the facility that requires a transfer of the site certificate is or may be pending, the certificate holder shall notify the Department of Energy. In the notice, the certificate holder shall include, if known, the name, mailing address and telephone number of the transferee and the date of the transfer of ownership. If possible, the certificate holder shall notify the Department at least 60 days before the date of the transfer of ownership.

(3) The transferee is not allowed to construct or operate the facility until an amended site certificate as described in section (10) or a temporary amended site certificate as described in section (11) becomes effective.

(4) To request a transfer of the site certificate, the transferee shall submit a written request to the Department that includes the information described in OAR 345-021-0010(1)(a), (d) and (m), a certification that the transferee agrees to abide by all terms and conditions of the site certificate currently in effect and,

if known, the date of the transfer of ownership. If applicable, the transferee shall include in the request the information described in OAR 345-021-0010(1)(y)(O)(iv).

(5) The Department may require the transferee to submit a written statement from the current certificate holder, or a certified copy of an order or judgment of a court of competent jurisdiction, verifying the transferee's right, subject to the provisions of ORS Chapter 469 and the rules of this chapter, to possession of the site or the facility.

(6) Within 15 days after receiving a request to transfer a site certificate, the Department shall mail a notice of the request to the reviewing agencies as defined in OAR 345-001-0010, to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners. In the notice, the Department shall describe the transfer request, specify a date by which comments are due and specify the date of the Council's informational hearing.

(7) Before acting on the transfer request, the Council shall hold an informational hearing. The informational hearing is not a contested case hearing.

(8) At the conclusion of the informational hearing or at a later meeting, the Council may issue an order approving the transfer request if the Council finds that:

(a) The transferee complies with the standards described in OAR 345-022-0010, OAR 345-022-0050 and, if applicable, OAR 345-024-0710(1); and

(b) The transferee is lawfully entitled to possession or control of the site or the facility described in the site certificate.

(9) Except as described in section (12), the Council shall not otherwise change the terms and conditions of the site certificate in an order approving the transfer request.

(10) Upon issuing the order described in section (8), the Council shall issue an amended site certificate that names the transferee as the new certificate holder. The amended site certificate is effective upon execution by the Council chair and the transferee.

(11) If the Council chair determines that special circumstances justify emergency action, the Council chair may, upon a written request from the transferee that includes a showing that the transferee can meet the requirements of section (8), issue a temporary amended site certificate that names the transferee as the new certificate holder. The temporary amended site certificate is effective upon execution by the Council chair and the transferee. The temporary amended site certificate expires when an amended site certificate as described in section (10) becomes effective or as the Council otherwise orders.

(12) The Council may act concurrently on a request to transfer a site certificate and any other amendment request subject to the procedures described in this rule for the transfer request and:

(a) The procedures described in OAR 345-027-0030 for an amendment to extend construction beginning and completion deadlines.

(b) The procedures described in OAR 345-027-0090 for an amendment to apply subsequent laws or rules.

(c) The procedures described in OAR 345-027-0060 and OAR 345-027-0070 for any amendment request not described in (a) or (b).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.405

345-027-0110

Termination of a Site Certificate

(1) A certificate holder may apply to the Council to terminate a site certificate at any time, subject to the requirements of this rule.

(2) A certificate holder must apply to the Council to terminate a site certificate within two years following cessation of construction or operation of the facility.

(3) If the certificate holder fails to apply to the Council to terminate the site certificate and the Council finds that the certificate holder has permanently ceased construction or operation of the facility, then the Council may terminate the site certificate according to the procedure described in OAR 345-027-0020(16).

(4) In an application for termination of the site certificate, the certificate holder shall include a proposed final retirement plan for the facility and site.

(5) In the proposed final retirement plan, the certificate holder shall include:

(a) A plan for retirement that provides for completion of retirement without significant delay and that protects public health, safety and the environment;

(b) A description of actions the certificate holder proposes to take to restore the site to a useful, non-hazardous condition, including information on how impacts to fish, wildlife and the environment would be minimized during the retirement process;

(c) A current detailed cost estimate and a plan for ensuring the availability of adequate funds for completion of retirement.

(6) Within 15 days after receiving an application for termination of a site certificate, the Department of Energy shall mail a notice of the application to all persons on the Council's general mailing list as defined in OAR 345-011-0020, to any special list established for the facility and to the most recently received list of property owners specifying a date by which comments on the application are due. The Department shall send copies of the application for termination to the reviewing agencies as defined in OAR 345-001-0010 and shall ask those agencies to comment by a specified date.

(7) The Council shall review the proposed final retirement plan and shall consider any comments received from the public and the reviewing agencies. The Council may approve the proposed final retirement plan or modify the plan

to comply with the rules of this chapter and applicable conditions in the site certificate. The Council shall issue an order authorizing retirement according to the approved or modified final retirement plan and subject any conditions the Council finds appropriate. The Council's order may be appealed as described in ORS 183.480.

(8) When the Council finds that the certificate holder has completed the retirement of the facility according to the Council's order authorizing retirement, the Council shall issue an order terminating the site certificate.

(9) When the Council finds that the site certificate has expired as described in OAR 345-027-0000, the Council shall issue an order terminating the site certificate.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.405, ORS 469.501

Department of Energy Approval of Gas Storage Testing Pipelines

345-027-0210

General

(1) A person shall not construct a gas storage testing pipeline unless the certificate holder of the Council certified facility to which the pipeline would connect obtains, before construction, the approval of the Department of Energy for the construction, operation and retirement of the proposed pipeline.

(2) For the purposes of OAR 345-027-0210 through OAR 345-027-0240:

(a) "Gas storage testing pipeline" means a pipeline, but not a temporary pipeline, that is less than 16 inches in diameter and less than five miles in length, that is used to test or maintain an underground gas storage reservoir and that would connect to a Council certified facility if the storage reservoir proves feasible for operational use;

(b) "Temporary pipeline" means a pipeline that has no potential for operational use;

(c) "Council certified facility" means an energy facility for which the Council has issued a site certificate that is either a surface facility related to an underground gas storage reservoir or a gas pipeline;

(d) "Connect" means join for the purpose of operational use;

(e) "Test or maintain" means transporting gas to an underground gas storage reservoir for the purposes of determining whether the reservoir is feasible for operational use or maintaining the gas storage capacity of the reservoir but does not include operational use;

(f) "Operational use" means transporting gas to an underground gas storage reservoir for the purpose of storing gas until it is needed for sale or for withdrawing gas from an underground gas storage reservoir for the purpose of sale;

(g) "Council substantive standards" means the following standards:

(A) Structural Standard, OAR 345-022-0020;

(B) Soil Protection, OAR 345-022-0022;

- (C) Protected Areas, OAR 345-022-0040(1) but excluding (2) and (3);
- (D) Retirement and Financial Assurance, OAR 345-022-0050;
- (E) Fish and Wildlife Habitat, OAR 345-022-0060;
- (F) Threatened and Endangered Species, OAR 345-022-0070
- (G) Scenic Resources, OAR 345-022-0080;
- (H) Historic, Cultural and Archaeological Resources, OAR 345-022-0090;
- (I) Recreation, 345-022-0100;
- (J) Public Services, OAR 345-022-0110;
- (K) Waste Minimization, OAR 345-022-0120; and
- (L) Public Health and Safety, OAR 345-024-0030(2), (3) and (4);

(h) “Information requirements” means information that would support the findings described in OAR 345-024-0030(2) and the information described in OAR 345-021-0010(1)(h), (i), (j), (L), (m), (p), (q), (r), (s), (t), (u), (v), and (w).

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405

345-027-0220

Request for Approval

(1) Before submitting a request for approval to construct, operate and retire a gas storage testing pipeline, the certificate holder shall:

(a) Inform the Department of Energy of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure; and

(b) Provide to the Department a map showing the location of the proposed pipeline.

(2) After receiving the information described in section (1), the Department shall confer with the certificate holder about the Council substantive standards and information requirements that might apply to the proposed pipeline and any extraordinary circumstances that might affect the time requirements for completing the approval process. Within 7 days after conferring with the certificate holder, the Department shall send a letter to the certificate holder that includes the following:

(a) Identification of the Council substantive standards that are applicable to the request for approval of the proposed pipeline;

(b) Identification of the information requirements that are applicable to the request for approval of the proposed pipeline;

(c) The time requirements for the approval process, if different from the time requirements described in OAR 345-027-0230.

(3) The certificate holder shall submit to the Department a written request for approval to construct, operate and retire a gas storage testing pipeline with the fee required by the fee schedule established under ORS 469.441. The certificate holder shall submit the original request and seven copies to the Department. The certificate holder shall provide additional copies to the Department upon request and copies or access to copies to any person requesting copies. In addition to the

printed copies of the request for approval, the certificate holder shall submit the text (and graphical information to the extent practical) in a non-copy-protected electronic format acceptable to the Department.

(4) In a request for approval, the certificate holder shall include:

(a) The name and mailing address of the certificate holder and the name, mailing address and phone number of the individual responsible for submitting the request;

(b) A description of the purpose and operation of the proposed pipeline and a discussion of whether the use of the gas storage testing pipeline for reservoir testing or maintenance will require an increase in the compression available in the Council certified facility to which the proposed pipeline would connect in addition to the compression that is permitted under the site certificate;

(c) Identification of the Council certified facility to which the proposed pipeline would connect;

(d) A description of the proposed pipeline, including its diameter, length, location, capacity and maximum operating pressure;

(e) A map showing the location of the proposed pipeline;

(f) A list of the names and mailing addresses of all owners of record, as shown on the most recent property tax assessment role, of property where the proposed pipeline is located and within 500 feet of the location of the proposed pipeline;

(g) The information that the Department has identified in the letter described in section (2); and

(h) Any other information that the Department requests as needed to make the findings described in the applicable standards.

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405, 469.421, 469.441

345-027-0230

Review of a Request for Approval

(1) Within 7 days after receiving a request for approval to construct, operate and retire a gas storage testing pipeline, the Department of Energy shall:

(a) Send copies of the request to the following agencies with a notice asking the agencies to submit written comments on the request within 14 days from the date of the notice:

(A) Oregon Department of Fish and Wildlife;

(B) Oregon Department of Geology and Mineral Industries;

(C) Oregon Public Utility Commission;

(D) Oregon Department of Agriculture;

(E) Division of State Lands; and

(F) State Historic Preservation Office;

(b) Send a notice of the request, including a map showing the location of the proposed pipeline, to the following stating that the agencies and planning

authority may submit written comments on the request within 14 days from the date of the notice:

- (A) Oregon Department of Forestry;
- (B) Oregon Department of Environmental Quality; and
- (C) The planning authority of the county or counties where the proposed pipeline is located;

(c) Send a notice of the request, including a map showing the location of the proposed pipeline, to the property owners the certificate holder has listed in the request stating that property owners may submit written comments on the request within 14 days from the date of the notice.

(2) Within 21 days from the deadline for comments described in section (1) or such longer period as the Department has specified in the letter described in OAR 345-027-0220(2), the Department shall issue a final order stating its findings on the applicable Council substantive standards and its approval or disapproval of the request. In an order approving a request, the Department shall include conditions that the Department finds necessary to ensure compliance with the applicable standards and conditions required by OAR 345-027-0240.

(3) The Department shall send a notice of the final order to the certificate holder, to the property owners the certificate holder listed in the request and to any person who commented on the request. In the notice, the Department shall state that judicial review of the order is as provided in ORS 469.403.

(4) The Department may amend an order approving the construction, operation and retirement of a gas storage testing pipeline.

(5) Notwithstanding ORS 469.503(3), the Department shall not review the proposed pipeline for compliance with other state standards.

(6) Notwithstanding ORS 469.401(3), the approval of a gas storage testing pipeline by the Department does not bind any state or local agency.

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405, 469.992

345-027-0240

Conditions

In an order approving the construction, operation and retirement of a gas storage testing pipeline, the Department may impose conditions it finds necessary to ensure compliance with the Council substantive standards it identified as applicable in the letter described in OAR 345-027-0220(2). In addition, the Department shall impose the following conditions:

(1) The certificate holder shall design, construct, operate and retire the gas storage testing pipeline in compliance with applicable Council rules and applicable federal, state and local laws, rules and ordinances in effect at the time the Department issues the order;

(2) The certificate shall design, construct, operate and retire the gas storage testing pipeline substantially as described in representations in the request for

approval and supporting record that the Department finds to be binding commitments made by the certificate holder;

(3) The certificate holder shall prevent the development of any conditions in the area of the gas storage testing pipeline that would preclude restoration of the area to a useful, non-hazardous condition to the extent that prevention of such conditions is within the control of the certificate holder;

(4) Upon completion of construction of the pipeline, the certificate holder shall dispose of all refuse and remove all temporary structures not needed to test or maintain an underground gas storage reservoir;

(5) The certificate holder shall notify the Department of Energy, the State Building Codes Division and the Department of Geology and Mineral Industries promptly if investigations or trenching in the area of the pipeline reveal soil or geological conditions that differ significantly from those described in the request for approval;

(6) The certificate holder shall submit to the Department copies of all incident reports involving the gas storage testing pipeline required under 49 CFR §191.15;

(7) The certificate holder shall allow properly identified representatives of the Council or Department of Energy to inspect the pipeline at any time, including all materials, activities, premises and records pertaining to design, construction, operation or retirement of the pipeline;

(8) The certificate holder shall notify the Department when it begins construction, shall keep the Department informed of construction progress and any unusual events or circumstances and shall notify the Department when it begins to use the pipeline for reservoir testing or maintenance;

(9) The certificate holder shall notify the Department if it terminates use of the gas storage testing pipeline; and

(10) If the certificate holder decides to convert the gas storage testing pipeline to operational use, the certificate holder shall notify the Department and, if required under OAR 345-027-0050, submit a request to amend the site certificate.

Stat. Authority: ORS 469.405

Stat. Implemented: ORS 469.405, 469.992