

DIVISION 26
CONSTRUCTION AND OPERATION RULES FOR FACILITIES

General Rules

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.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

345-026-0010

Legislative Authority

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

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

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

345-026-0015

Scope and Construction

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

(2) To the extent that any rules in this division conflict or are inconsistent with a condition contained in a site certificate (or amendment thereto), the latter is controlling.

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.401, ORS 469.503, ORS 469.504

345-026-0048

Compliance Plans

Following receipt of a site certificate or an amended site certificate, the certificate holder shall implement a plan that verifies compliance with all site certificate terms and conditions and applicable statutes and rules. As a part of the compliance plan, to verify compliance with the requirement to begin construction by the date specified in the site certificate, the certificate holder shall report promptly to the Department of Energy when construction begins. Construction is defined in OAR 345-001-0010. In reporting the beginning of construction, the certificate holder shall describe all work on the site performed before beginning construction, including work performed before the Council issued the site certificate, and shall state the cost of that work. For the purpose of this exhibit, “work on the site” means any work within a site or corridor, other than surveying, exploration or other activities to define or characterize the site or corridor. The certificate holder shall document the compliance plan and maintain it for inspection by the Department or the Council.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

345-026-0050

Inspections

(1) General provisions:

(a) Each certificate holder shall allow properly identified representatives of the Council or Department of Energy to inspect the facility during construction, operation and retirement, including all materials, activities, related or supporting facilities, premises and records pertaining to design, construction, operation or retirement of the facility at any time.

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

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

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

(e) If the inspector finds any actual or potential violations of state, federal or local law, Council rules, a Council order, or site certificate conditions or warranties, the inspector shall notify the Council secretary, the Council and the

certificate holder. The Council secretary shall be responsible for reporting all pertinent findings to the Council at its next scheduled meeting.

(2) Requests for inspections:

(a) Any person may request Department inspection of a facility if the requestor believes:

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

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

(b) The person submitting a request for inspection shall describe, in writing, the specific grounds for the request. The requestor shall submit the request to the Department, or, during an inspection, to the Department's representative. A requestor who is employed directly or indirectly by the certificate holder may ask that his or her name not be disclosed in any manner except where disclosure is required by law.

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

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

(e) The Department shall make a prompt evaluation of allegations related to matters under Council jurisdiction. If the Department concludes that there are reasonable grounds to believe that the alleged violation has occurred or is imminent or that a situation exists that may lead to unnecessary exposure of an individual to hazardous materials or to unsafe or dangerous conditions, the Department shall cause an inspection to be made as soon as practicable.

(f) If the Department determines that an inspection is not warranted, it shall give written notice of that conclusion to the requestor, stating its reasons. The requestor may then submit a written request for review to the Council. The Council shall send a copy of the request to the certificate holder by certified mail. The certificate holder may submit a written statement of its position to the Council, and the Council shall provide a copy of the statement, if any, to the requestor by certified mail. At its discretion, the Council may hold an informal conference to discuss the merits of the request. The Council shall affirm, modify or reverse the determination made by the Department. The Council shall send written notification of its decision and reasoning to the requestor and the certificate holder.

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

(h) No certificate holder shall discharge or in any manner discriminate against any employee because he or she submitted a request for inspection, provided information to a Council or Department representative or otherwise

exercised options afforded to the worker under these rules.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

345-026-0080

Reporting Requirements for Energy Facilities

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

(a) Within six months after beginning construction, and every six months thereafter during construction of the energy facility and related or supporting facilities, the certificate holder shall submit a semiannual construction progress report to the Department of Energy. In each construction progress report, the certificate holder shall describe any significant changes to major milestones for construction. The certificate holder shall include such information related to construction as specified in the site certificate. When the reporting date coincides, the certificate holder may include the construction progress report within the annual report described in this rule.

(b) By April 30 of each year after beginning construction, the certificate holder shall submit an annual report to the Department addressing the subjects listed in this rule. The Council Secretary and the certificate holder may, by mutual agreement, change the reporting date.

(c) To the extent that information required by this rule is contained in reports the certificate holder submits to other state, federal or local agencies, the certificate holder may submit excerpts from such other reports to satisfy this rule. The Council reserves the right to request full copies of such excerpted reports.

(2) In the annual report, the certificate holder shall include the following information for the calendar year preceding the date of the report:

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

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

(c) Fuel Use: For thermal power plants:

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

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

(d) Status of Surety Information: Documentation demonstrating that bonds or letters of credit as described in the site certificate are in full force and effect and will remain in full force and effect for the term of the next reporting period.

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

(f) Compliance Report: A description of all instances of noncompliance with a site certificate condition. For ease of review, the certificate holder shall, in this section of the report, use numbered subparagraphs corresponding to the applicable sections of the site certificate.

(g) Facility Modification Report: A summary of changes to the facility that the certificate holder has determined do not require a site certificate amendment in accordance with OAR 345-027-0050.

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.501, ORS 469.507

345-026-0105

Correspondence With Other State or Federal Agencies

The certificate holder and the Department of Energy shall exchange copies of all correspondence or summaries of correspondence related to compliance with statutes, rules and local ordinances on which the Council determined compliance, except for material withheld from public disclosure under state or federal law or under Council rules. The certificate holder may submit abstracts of reports in place of full reports; however, the certificate holder shall provide full copies of abstracted reports and any summarized correspondence at the request of the Department.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507

345-026-0170

Notification of Incidents

(1) The certificate holder shall notify the Department of Energy within 72 hours of any occurrence involving the facility if:

(a) There is an attempt by anyone to interfere with its safe operation;

(b) A natural event such as an earthquake, flood, tsunami or tornado, or a human-caused event such as a fire or explosion affects or threatens to affect the public health and safety or the environment; or

(c) There is any fatal injury at the facility.

(2) For the Trojan Independent Spent Fuel Storage Installation:

(a) In the event of incidents or accidents requiring notification of the Nuclear Regulatory Commission by telephone, the certificate holder also shall notify the Department on the same time schedule.

(b) The certificate holder shall notify the Department of all incidents in accordance with the Emergency Plan, Security Plan, and other agreements as established.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.310, ORS 469.410, ORS 469.430, ORS 469.507, ORS 469.530

Rules for Nuclear Installations

345-026-0300

Regulations Applicable to Nuclear Installations

(1) The requirements of OAR 345-026-0300 through 0390 apply exclusively to nuclear installations in Oregon as defined in ORS 469.300.

(2) OAR 345-026-0300 through 0390 do not apply to research reactors as described in OAR 345-030-0005.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501

345-026-0330

Radiological Environmental and Effluent Monitoring

(1) The certificate holder shall establish a radiological environmental monitoring program.

(2) The certificate holder shall maintain a written radiological environmental monitoring program that describes applicable quality assurance measures.

(3) The certificate holder shall not make any changes to the radiological environmental monitoring program that involve a reduction in the number of environmental monitoring locations or associated monitoring data collection periodicity as approved in the Department of Energy "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, without Department approval prior to implementation.

(4) Except as required by section (3), the certificate holder may make modifications to the radiological environmental monitoring program without prior Department approval. The certificate holder shall notify the Department of these changes within 60 days after implementation of the change. The Department shall promptly notify the Council of any such changes at a scheduled meeting of the Council.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.507

345-026-0340

Security Plans for Nuclear Installations

(1) The operator of a nuclear installation shall establish and maintain a security plan with capabilities for protection of special nuclear material.

(2) Upon assurance satisfactory to the Council and the certificate holder that confidentiality can be maintained, the certificate holder shall make the security plan for nuclear installations available to authorized Council representatives in accordance with U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(1)(iii).

(3) The certificate holder shall not make modifications to the security plan that involve a reduction in the ability to detect or prevent unauthorized entry, or a reduction in the ability to detect or prevent the introduction of unauthorized material into a Protected Area or otherwise lessen the effectiveness of the physical security plan without written Department approval prior to implementation.

(4) Except as required by section (3), the certificate holder may make modifications to the plan without prior Department approval. The certificate holder shall notify the Department of these modifications within 60 days of their implementation and shall make the revised plan available to authorized Department representatives following implementation of the changes. The Department shall promptly notify the Council of the plan modifications at a scheduled Council meeting, subject to U.S. Nuclear Regulatory Commission regulation 10 CFR §73.21(c)(1)(iii).

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.530

345-026-0350

Emergency Planning for Nuclear Installations

(1) The operator of a nuclear installation shall prepare, comply with, and maintain in readiness an emergency plan. The plan must ensure adequate measures will be taken in the event of a radiological emergency.

(2) Proposed modifications to the emergency plan that involve one of the following require Council approval prior to implementation:

(a) A change (other than editorial) in the Emergency Action Levels; or

(b) A decrease in the planned staff augmentation capabilities; or

(c) A reduction in the plan requirements for notification of off-site agencies.

(3) Except as required by section (2), the certificate holder may make modifications to the plan without prior Council approval. The certificate holder shall submit copies of the revised plan to the Department within 30 days after the implementation date. The Department shall promptly notify the Council of the modifications at a scheduled Council meeting.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.501, ORS 469.530, ORS 469.533

345-026-0370

Standards for Council Approval of the Decommissioning Plan

(1) The operator of the Trojan Independent Spent Fuel Storage Installation (ISFSI) shall submit 15 copies of a plan for decommissioning the ISFSI to the Department for Council approval. The plan shall be submitted to the Council on a schedule consistent with that required by the U.S. Nuclear Regulatory Commission. When the Department receives a decommissioning plan, the Department shall:

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

- (A) The time and place of at least one informational hearing,
- (B) The locations where copies of the proposed plan may be reviewed by the public, and
- (C) A contact name for further information.

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

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

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

- (A) A summary of the Department's recommendations;
- (B) Time and place of a hearing on the staff report;
- (C) Places where the Department's staff report may be reviewed by the public; and
- (D) A contact for additional information and copies of the staff report.

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

(a) The plan contains the radiological criteria for unrestricted release and use of the site as set forth in Title 10 of the Code of Federal Regulations, Part 20, Section 1402 (10 CFR 20.1402) in effect August 20, 1997.

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

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

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

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

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

- (a) The potential to prevent the release of the site for unrestricted use;
- (b) A change in the criteria for site release;
- (c) A departure in the methodology for determining background radiation levels to a method not generally accepted by the industry;
- (d) A change in the provisions made for hazardous or radioactive waste material removal;
- (e) A significant change in the types or significant increase in the amounts of any effluents that may be released offsite; or,
- (f) A significant increase in radiological or hazardous material exposure to site workers or to members of the public, including exposure due to transport of radioactive or hazardous material.

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

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.410, ORS 469.501

345-026-0390

Spent Nuclear Fuel Storage

(1) Purpose:

(a) Storage of spent nuclear fuel and related radioactive material and waste at a nuclear installation is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;

(b) The purpose of this rule 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.

(2) Capacity and Safety Standards: The certificate holder may store a maximum of 791 complete and partial fuel assemblies and storage of containers with nuclear fuel materials. Storage of spent nuclear fuel and related radioactive

material and waste at the site of a nuclear installation by a certificate holder who has executed a contract with the United States of America pursuant to the Nuclear Waste Policy Act, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:

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

(b) Storage facilities are designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions; and

(c) The facility is not 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.

(3) The certificate holder shall perform activities related to transfer, storage and handling of fuel and other radioactive waste in accordance with a radiation protection program that complies with 10 CFR 20, including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in 10 CFR 20.

(4) Except as required for accident mitigation as described in the Safety Analysis Report, the certificate holder shall not transfer spent fuel from an interim spent fuel storage installation to new casks or shipping containers without approval by the Council prior to the transfer.

(5) Reporting Requirements: The operator of an interim spent fuel storage facility shall submit every ten years and, in addition, no later than September 3, 2038, a report containing the actual or expected date when the Federal government will accept the High Level Waste and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent nuclear fuel from the facility will be accepted prior to September 3, 2043.

(6) The Council approves the plan, as may be amended under Part (c) below, for an Independent Spent Fuel Storage Installation (ISFSI) as described in the ISFSI Safety Analysis Report (SAR) (PGE-1069), Revision 2. In addition to the criteria in OAR 345-026-0390(2)(a), (b), and (c), and (3) and (4), the plan is subject to the following criteria:

(a) Programs: Portland General Electric (PGE) shall establish and maintain programs for Temperature Monitoring and Air Vent Inspection and Structural Inspection that are consistent with maintaining exposures to ionizing radiation As Low As Reasonably Achievable (ALARA) and with the assumptions and conclusions in the Department "Staff Evaluation of Holtec

Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002.

(b) Contingency Plans: PGE shall establish and maintain a plan for maintaining equipment onsite and having equipment available within a reasonable time period to respond to credible accident scenarios and a plan for construction of new concrete casks.

(c) Changes to Commitments: PGE may make changes to the ISFSI as described in the Safety Analysis Report without prior Council approval if such changes do not reduce commitments or change the assumptions and conclusions in the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002. If proposed changes would reduce commitments or change the assumptions or conclusions of the Department "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, PGE shall obtain prior approval from the Department. Prior Department approval is not required when the proposed change would not have the above effects, is required for compliance with the regulations or orders of the U.S. Nuclear Regulatory Commission or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior Department approval.

(d) Reporting requirements: In lieu of the requirements described in OAR 345-026-0080, within one year of the first cask loading and biennially thereafter, PGE shall provide a written report to the Council on the status of the ISFSI. The report shall include, at a minimum, the results of radiation monitoring programs, a summary of personnel exposure related to ISFSI storage operations, a statement of expenses related to ISFSI storage operations, 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, an estimate of funds available for continuing ISFSI storage operations through decommissioning and funds available for ISFSI decommissioning, and a statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility.

(e) Frequency of Temperature Monitoring and Air Vent Inspection: The Temperature Monitoring and Air Vent Inspection Program established by PGE pursuant to Section (6)(a) of this rule shall include daily readings of Concrete Cask air outlet and ambient temperatures. The program shall include provisions for more frequent measurements if temperatures approach Technical Specification limits. The program shall also include a requirement to check air inlet and outlet vents for blockage weekly. PGE may reduce these surveillance frequencies with Department approval. PGE may apply extensions of up to 25 percent of individual surveillance intervals to accommodate minor variations in work scheduling.

(f) Contractors: PGE shall require contractors who perform portions of the ISFSI storage or transporting operations to adhere to all applicable provisions of OAR 345-026-0390.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.410, ORS 469.501

[Publications: The publication(s) referred to or incorporated by reference in these rules are available from the Oregon Department of Energy.]