

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

345-029-0000

Policy

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

(a) A violation of any term or condition of a site certificate or a Radioactive Materials Transport permit;

(b) A violation of any applicable provision of ORS Chapter 469, any rule promulgated or administered by the Council, or any order of the Council;

(c) A violation of a Department of Energy order as described in OAR 345-027-0230; or

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

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

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

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

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

(d) Are the conditions or circumstances the result of a change to the design, construction, operation or retirement of a facility for which a site certificate has been issued, and did the certificate holder decide that no amendment of the site certificate was required, based on a reasonable analysis of the criteria in OAR 345-027-0050(2)?

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

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

Stat. Authority: ORS 469.470, ORS 469.607, ORS 469.992

Stat. Implemented: ORS 469.085, ORS 469.470, ORS 469.607, ORS 469.992

345-029-0005

Definitions

As used in this division, the following definitions apply:

- (1) "Responsible party" means:
 - (a) A certificate holder;
 - (b) A radioactive materials transport permit holder;
 - (c) A person to whom the Council has granted an exemption from the site certificate requirement under OAR 345-015-0350 to OAR 345-015-0370; or
 - (d) Any person otherwise subject to the requirements of this chapter.
- (2) "Compliance audit" means a program established by the responsible party to evaluate and ensure compliance with applicable rules, statutes, site certificate conditions or Radioactive Materials Transport Permit requirements.

Stat. Authority: ORS 469.470, ORS 469.605

Stat. Implemented: ORS 469.085, ORS 469.440

345-029-0010

Report by a Responsible Party

The responsible party shall make reports as specified in these rules and in the site certificate or Radioactive Materials Transport Permit. Whenever a responsible party becomes aware of conditions or circumstances that may violate the terms or conditions of a site certificate, the terms or conditions of any order of the Council, the terms or conditions of a Department of Energy order as described in OAR 345-027-0230, the requirements of OAR 345 Division 50 or the requirements of a Radioactive Materials Transport Permit, the responsible party shall:

(1) As soon as reasonably possible, notify the Department of the conditions or circumstances that may constitute a violation, giving all pertinent facts including an estimate of how long the conditions or circumstances have existed, how long they are expected to continue before they can be corrected, and whether the conditions or circumstances were discovered as a result of a regularly scheduled compliance audit.

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

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

- (a) A discussion of the cause of the reported conditions or circumstances;
- (b) The date of discovery of the conditions or circumstances by the responsible party;
- (c) A description of immediate actions taken to correct the reported conditions or circumstances;
- (d) A description of actions taken or planned to minimize the possibility of recurrence; and

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.440

345-029-0020

Notice of Violation

(1) If the Department of Energy determines upon inspection as provided for in OAR 345-026-0050 or OAR 345-060-0007, upon receipt of a report from the responsible party under OAR 345-029-0010 or by other means that there has been a violation for which sanctions may be imposed as described in OAR 345-029-0000, the Department may serve a notice of violation upon the responsible party. The Department shall serve the notice of violation by personal service or by first class, certified or registered mail.

(2) In the notice of violation, the Department shall include:

(a) A reference to the statute, administrative rule, Council order, Department of Energy order, or term or condition of a site certificate or Radioactive Material Transport Permit violated as determined by the Department;

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

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

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

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

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

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

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

and

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.992

345-029-0030

Classification of Violations

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

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

(a) Violation of a term or condition of a site certificate or Radioactive Material Transport Permit;

(b) Violation of an order of the Council;

(c) Violation of any applicable rule in divisions 22 through 60 of this chapter;

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

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

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

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

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

(c) It is a willful violation; or

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.992

345-029-0040

Response to Notice of Violation

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

(1) Admission or denial of the violation;

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

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

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

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

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.992

345-029-0050

Enforcement Conference

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

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.440, ORS 469.992

345-029-0060

Civil Penalties

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

(a) Base amount:

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

(B) \$100 per day from the date of discovery of a violation of a Radioactive Material Transport Permit or of the rules of divisions 50 and 60 of this Chapter; or

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

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

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

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

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

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

(B) 0.8 if the responsible party reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program; and

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

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

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

(b) The amount of the assessment;

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

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

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.992

345-029-0070

Contested Case Proceeding

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

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

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

(4) If the responsible party requests a contested case proceeding but fails to appear, the Department of Energy's proposed order assessing a civil penalty,

described under OAR 345-029-0060(2), becomes final upon a prima facie case made on the record of the Department.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 183.415, ORS 469.085, ORS 469.992

345-029-0080

Payment of Penalty

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.992

345-029-0090

Council Consideration of Mitigating Factors

Notwithstanding OAR 345-029-0080, the Council in its order after a contested case proceeding initiated under OAR 345-029-0070 may rescind or reduce a civil penalty imposed under this division upon a showing by the responsible party incurring the penalty that imposition of the penalty would be an unreasonable economic and financial hardship, that the responsible party has taken prompt and effective action to correct the violation and ensure that it will not be repeated, or that the responsible party reported the conditions or circumstances of the violation as a result of a routine audit conducted as part of an ongoing comprehensive compliance audit program.

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.085, ORS 469.992

345-029-0100

Revocation or Suspension of Site Certificate

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

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

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

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

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

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

Stat. Authority: ORS 469.470

Stat. Implemented: ORS 469.440