

OREGON REVISED STATUTE REGULATION OF ENERGY FACILITIES

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(General Provisions)

469.300 Definitions. As used in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992, unless the context requires otherwise:

- (1) “Applicant” means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.
- (2) “Application” means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.
- (3) “Associated transmission lines” means new transmission lines constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.
- (4) “Average electric generating capacity” means the peak generating capacity of the facility divided by one of the following factors:
 - (a) For wind or solar energy facilities, 3.00;
 - (b) For geothermal energy facilities, 1.11; or
 - (c) For all other energy facilities, 1.00.
- (5) “Combustion turbine power plant” means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.
- (6) “Construction” means work performed on a site, excluding surveying, exploration or other activities to define or characterize the site, the cost of which exceeds \$250,000.
- (7) “Council” means the Energy Facility Siting Council established under ORS 469.450
- (8) “Department” means the State Department of Energy created under ORS 469.030.
- (9) “Director” means the Director of the State Department of Energy appointed under ORS 469.040.
- (10) “Electric utility” means persons, regulated electrical companies, people’s utility districts, joint operating agencies, electric cooperatives, municipalities or any

combination thereof, engaged in or authorized to engage in the business of generating, supplying, transmitting or distributing electric energy.

(11)

(a) “Energy facility” means any of the following:

(A) An electric power generating plant with a nominal electric generating capacity of 25 megawatts or more, including but not limited to:

- (i) Thermal power; or
- (ii) Combustion turbine power plant.

(B) A nuclear installation as defined in this section.

(C) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one city or county in this state, but excluding:

- (i) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more; and
- (ii) Lines of 57,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same right of way.

(D) A solar collecting facility using more than 100 acres of land.

(E) A pipeline that is:

- (i) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquefied natural gas, a geothermal energy form in a liquid state or other fossil energy resource, excluding a pipeline conveying natural or synthetic gas;
- (ii) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas, but excluding:
- (iii) A pipeline proposed for construction of which less than five miles of the pipeline is more than 50 feet from a public road, as defined in ORS 368.001; or
- (iv) A parallel or upgraded pipeline up to 24 inches in diameter that is constructed within the same right of way as an existing 16-inch or larger pipeline that has a site certificate, if all studies and necessary mitigation conducted for the existing site certificate meet or are updated to meet current site certificate standards; or

- (v) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form in a gaseous state but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.
 - (F) A synthetic fuel plant which converts a natural resource including, but not limited to, coal or oil to a gas, liquid or solid product intended to be used as a fuel and capable of being burned to produce the equivalent of two billion Btu of heat a day.
 - (G) A plant which converts biomass to a gas, liquid or solid product, or combination of such products, intended to be used as a fuel and if any one of such products is capable of being burned to produce the equivalent of six billion Btu of heat a day.
 - (H) A storage facility for liquefied natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.
 - (I) A surface facility related to an underground gas storage reservoir that, at design injection or withdrawal rates, will receive or deliver more than 50 million cubic feet of natural or synthetic gas per day, or require more than 4,000 horsepower of natural gas compression to operate, but excluding:
 - (i) The underground storage reservoir;
 - (ii) The injection, withdrawal or monitoring wells and individual wellhead equipment; and
 - (iii) An underground gas storage reservoir into which gas is injected solely for testing or reservoir maintenance purposes or to facilitate the secondary recovery of oil or other hydrocarbons.
 - (J) An electric power generating plant with an average electric generating capacity of 35 megawatts or more if the power is produced from geothermal, solar or wind energy at a single energy facility or within a single energy generation area.
- (b) “Energy facility” does not include a hydroelectric facility.
- (12) “Energy generation area” means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 35 megawatts average electric generating capacity or more. An “energy generation area” for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles,

measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

- (13) “Extraordinary nuclear occurrence” means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement off-site, or causing radiation levels off-site, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property off-site.
- (14) “Facility” means an energy facility together with any related or supporting facilities.
- (15) “Geothermal reservoir” means an aquifer or aquifers containing a common geothermal fluid.
- (16) “Local government” means a city or county.
- (17) “Nominal electric generating capacity” means the maximum net electric power output of an energy facility based on the average temperature, barometric pressure and relative humidity at the site during the times of the year when the facility is intended to operate.
- (18) “Nuclear incident” means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.
- (19) “Nuclear installation” means any power reactor, nuclear fuel fabrication plant, nuclear fuel reprocessing plant, waste disposal facility for radioactive waste, and any facility handling that quantity of fissionable materials sufficient to form a critical mass. “Nuclear installation” does not include any such facilities that are part of a thermal power plant.
- (20) “Nuclear power plant” means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines.
- (21) “Person” means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people’s utility district, or any other entity, public or private, however organized.

- (22) “Project order” means the order, including any amendments, issued by the State Department of Energy under ORS 469.330.
- (23)
- (a) “Radioactive waste” means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.
- (b) Notwithstanding paragraph (a) of this subsection, “radioactive waste” does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.
- (24) “Related or supporting facilities” means any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures. “Related or supporting facilities” does not include geothermal or underground gas storage reservoirs, production, injection or monitoring wells or wellhead equipment or pumps.
- (25) “Site” means any proposed location of an energy facility and related or supporting facilities.
- (26) “Site certificate” means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate a facility on an approved site, incorporating all conditions imposed by the council on the applicant.
- (27) “Thermal power plant” means an electrical facility using any source of thermal energy with a nominal electric generating capacity of 25 megawatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies. “Thermal power plant” includes a nuclear-fueled thermal power plant that has ceased to operate.
- (28) “Transportation” means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.
- (29) “Underground gas storage reservoir” means any subsurface sand, strata, formation, aquifer, cavern or void, whether natural or artificially created, suitable for

the injection, storage and withdrawal of natural gas or other gaseous substances. "Underground gas storage reservoir" includes a pool as defined in ORS 520.005.

(30) "Utility" includes:

(a) A person, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(31) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. As used in this subsection, "temporary storage" includes storage of radioactive waste on the site of a nuclear-fueled thermal power plant for which a site certificate has been issued until a permanent storage site is available by the federal government. [Formerly 453.305; 1977 c.796 §1; 1979 c.283 §1; 1981 c.587 §1; 1981 c.629 §2; 1981 c.707 §1; 1981 c.866 §1; 1991 c.480 §4; 1993 c.544 §3; 1993 c.569 §3; 1995 c.505 §6; 1995 c.551 §10; 1997 c.606 §1; 1999 c.365 §5; 2001 c.134 §2; 2001 c.683 §6; 2003 c.186 §28]

469.310 Policy. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the federal government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. It is furthermore the policy of this state, notwithstanding ORS 469.010 (2)(f) and the definition of cost-effective in ORS 469.020, that the need for new generating facilities, as defined in ORS 469.503, is sufficiently addressed by reliance on competition in the market rather than by consideration of cost-effectiveness and shall not be a matter requiring determination by the Energy Facility Siting Council in the siting of a generating facility, as defined in ORS 469.503. [Formerly 453.315; 1997 c.428 §1; 2003 c.186 §29]

(Siting)

469.320 Site certificate required; exceptions.

- (1)** Except as provided in subsections (2) and (5) of this section, no facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. No facility shall be constructed or operated except in conformity with the requirements of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.
- (2)** A site certificate is not required for:
- (a)** An energy facility for which no site certificate has been issued that, on August 2, 1993, had operable electric generating equipment for a modification that uses the same fuel type and increases electric generating capacity, if:
 - (A)** The site is not enlarged; and
 - (B)** The ability of the energy facility to use fuel for electricity production under peak steady state operating conditions is not more than 200 million Btu per hour greater than it was on August 2, 1993, or the energy facility expansion is called for in the short-term plan of action of an energy resource plan that has been acknowledged by the Public Utility Commission of Oregon.
 - (b)** Construction or expansion of any interstate natural gas pipeline or associated underground natural gas storage facility authorized by and subject to the continuing regulation of the Federal Energy Regulatory Commission or successor agency.
 - (c)** An energy facility, except coal and nuclear power plants, if the energy facility:
 - (A)** Sequentially produces electrical energy and useful thermal energy from the same fuel source; and
 - (B)** Under average annual operating conditions, has a nominal electric generating capacity:
 - (i)** Of less than 50 megawatts and the fuel chargeable to power heat rate value is not greater than 6,000 Btu per kilowatt hour;
 - (ii)** Of 50 megawatts or more and the fuel chargeable to power heat rate value is not greater than 5,500 Btu per kilowatt hour; or

subparagraph may be met by agreeing to require such a term in the lease contract for the facility; and

- (C)** The standby generators are electrically incapable of being interconnected to the transmission grid. For an applicant that proposes to provide the physical facilities for the installation of standby generators, the requirement of this subparagraph may be met by agreeing to require such a term in the lease contract for the facility.
- (3)** The Energy Facility Siting Council may review and, if necessary, revise the fuel chargeable to power heat rate value set forth in subsection (2)(c)(B) of this section. In making its determination, the council shall ensure that the fuel chargeable to power heat rate value for facilities set forth in subsection (2)(c)(B) of this section remains significantly lower than the fuel chargeable to power heat rate value for the best available, commercially viable thermal power plant technology at the time of the revision.
- (4)** Any person who proposes to construct or enlarge an energy facility and who claims an exemption under subsection (2)(a), (c), (f) or (g) of this section from the requirement to obtain a site certificate shall request the Energy Facility Siting Council to determine whether the proposed facility qualifies for the claimed exemption. The council shall make its determination within 60 days after the request for exemption is filed. An appeal from the council's determination on a request for exemption shall be made under ORS 469.403, except that the scope of review by the Supreme Court shall be the same as a review by a circuit court under ORS 183.484. The record on review by the Supreme Court shall be the record established in the council proceeding on the exemption.
- (5)** Notwithstanding subsection (1) of this section, a separate site certificate shall not be required for:

 - (a)** Transmission lines, storage facilities, pipelines or similar related or supporting facilities, if such related or supporting facilities are addressed in and are subject to a site certificate for another energy facility;
 - (b)** Expansion within the site or within the energy generation area of a facility for which a site certificate has been issued, if the existing site certificate has been amended to authorize expansion; or
 - (c)** Expansion, either within the site or outside the site, of an existing council certified surface facility related to an underground gas storage reservoir, if the existing site certificate is amended to authorize expansion.
- (6)** If the substantial loss of the steam host causes a facility exempt under subsection (2)(c) of this section to substantially fail to meet the exemption requirements under subsection (2)(c) of this section, the electric generating facility shall cease to operate one year after the substantial loss of the steam host unless an application for a site

certificate has been filed in accordance with the provisions of ORS 469.300 to 469.563.

(7) As used in this section:

(a) “Standby generation facility” means an electric power generating facility, including standby generators and the physical structures necessary to install and connect standby generators, that provides temporary electric power in the event of a power outage and that is electrically incapable of being interconnected with the transmission grid.

(b) “Total energy output” means the sum of useful thermal energy output and useful electrical energy output.

(c) “Useful thermal energy” means the verifiable thermal energy used in any viable industrial or commercial process, heating or cooling application.

(8) Notwithstanding the definition of “energy facility” in ORS 469.300 (11)(a)(J), an electric power generating plant with an average electric generating capacity of less than 35 megawatts produced from wind energy at a single energy facility or within a single energy generation area may elect to obtain a site certificate in the manner provided in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. An election to obtain a site certificate under this subsection shall be final upon submission of an application for a site certificate. [Formerly 453.325; 1977 c.86 §1; 1979 c.730 §8; 1982 s.s.1 c.6 §1; 1987 c.200 §5; 1991 c.480 §5; 1993 c.569 §4; 1995 c.505 §7; 1999 c.365 §6; 1999 c.385 §1; 2001 c.134 §§3,4; 2001 c.683 §§7,8; 2003 c.186 §§76,77; 2005 c.768 §§1,2; 2007 c.739 §33; 2009 c.751 §7]

469.330 Notice of intent to file application for site certificate; public notice; standards, application requirements and study requirements; project order; rules.

(1) Each applicant for a site certificate shall submit to the Energy Facility Siting Council a notice of intent to file an application for a site certificate. The notice of intent must provide information about the proposed site and the characteristics of the facility sufficient for the preparation of the State Department of Energy’s project order.

(2) The council shall cause public notice to be given upon receipt of a notice of intent by the council. The public notice shall provide a description of the proposed site and facility in sufficient detail to inform the public of the location and proposed use of the site.

(3) Following review of the notice of intent and any public comments received in response to the notice of intent, the department may hold a preapplication conference with state agencies and local governments that have regulatory or advisory responsibility with respect to the facility. After the preapplication conference, the department shall issue a project order establishing the statutes, administrative rules, council standards, local ordinances, application requirements

and study requirements for the site certificate application. A project order is not a final order.

- (4) A project order issued under subsection (3) of this section may be amended at any time by either the department or the council. [Formerly 453.335; 1977 c.794 §9; 1989 c.88 §1; 1993 c.569 §5; 1995 c.505 §8]

469.340 [1975 c.552 §37; 1975 c.606 §26a; repealed by 1981 c.629 §3]

469.350 Application for site certificate; comment and recommendation.

- (1) Applications for site certificates shall be made to the Energy Facility Siting Council in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

- (2) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Land Conservation and Development, the Oregon Department of Aviation, any other state agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application.

- (3) Any state agency, city or county that is requested by the council to comment and make recommendations under this section shall respond to the council by the specified deadline. If a state agency, city or county determines that it cannot respond to the council by the specified deadline because the state agency, city or county lacks sufficient resources to review and comment on the application, the state agency, city or county shall contract with another entity to assist in preparing a response. A state agency, city or county that enters into a contract to assist in preparing a response may request funding to pay for that contract from the council pursuant to ORS 469.360.

- (4) The State Department of Energy shall notify the applicant whether the application is complete. When the department determines an application is complete, the department shall notify the applicant and provide notice to the public. [Formerly 453.345; 1977 c.794 §10; 1989 c.88 §2; 1993 c.569 §6; 1995 c.505 §9; 2001 c.683 §10; 2009 c.399 §4]

469.360 Evaluation of site applications; costs; payment.

- (1) The Energy Facility Siting Council shall evaluate each site certificate application. As part of its evaluation, the council may commission an independent study by an independent contractor, state agency, local government or any other person, of any

aspect of the proposed facility within its statutory authority to review. The council may compensate a state agency or local government for expenses related to:

- (a) Review of the notice of intent, the application or a request for an expedited review;
 - (b) The state agency's or local government's participation in a council proceeding; and
 - (c) The performance of specific studies necessary to complete the council's statutory evaluation of the application.
- (2) The council may enter into a contract under subsection (1) of this section only after the council makes a determination that the council is unable to fully evaluate the application without assistance and identifies specific issues to be addressed and only pursuant to a written contract or agreement with the independent contractor, state agency, local government or other person. The council shall compensate the independent contractor, state agency, local government or other person only to the extent the costs are directly related to issues identified by the council.
- (3) The council shall provide funding to state agencies, cities or counties required to contract with another entity to complete comments and recommendations pursuant to ORS 469.350.
- (4) In addition to compensating state agencies and local governments pursuant to subsection (1) of this section, the council may provide funding to the Department of Environmental Quality for the department to conduct modeling and provide technical assistance to expedite preparation, submission and review of applications for permits under ORS 468A.040 required for energy facilities. [Formerly 453.355; 1987 c.450 §1; 1989 c.88 §3; 1993 c.569 §7; 1995 c.505 §10; 2001 c.683 §11]

469.370 Draft proposed order for hearing; issues raised; final order; expedited processing.

- (1) Based on its review of the application and the comments and recommendations on the application from state agencies and local governments, the State Department of Energy shall prepare and issue a draft proposed order on the application.
- (2) Following issuance of the draft proposed order, the Energy Facility Siting Council shall hold one or more public hearings on the application for a site certificate in the affected area and elsewhere, as the council considers necessary. Notice of the hearing shall be mailed at least 20 days before the hearing. The notice shall, at a minimum:
- (a) Comply with the requirements of ORS 197.763 (2), with respect to the persons notified;

- (b) Include a description of the facility and the facility's general location;
 - (c) Include the name of an agency representative to contact and the telephone number where additional information may be obtained;
 - (d) State that copies of the application and draft proposed order are available for inspection at no cost and will be provided at a reasonable cost; and
 - (e) State that failure to raise an issue in person or in writing prior to the close of the record of the public hearing with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes consideration of the issue in a contested case.
- (3) Any issue that may be the basis for a contested case shall be raised not later than the close of the record at or following the final public hearing prior to issuance of the department's proposed order. Such issues shall be raised with sufficient specificity to afford the council, the department and the applicant an adequate opportunity to respond to each issue. A statement of this requirement shall be made at the commencement of any public hearing on the application.
- (4) After reviewing the application, the draft proposed order and any testimony given at the public hearing and after consulting with other agencies, the department shall issue a proposed order recommending approval or rejection of the application. The department shall issue public notice of the proposed order that shall include notice of a contested case hearing specifying a deadline for requests to participate as a party or limited party and a date for the prehearing conference.
- (5) Following receipt of the proposed order from the department, the council shall conduct a contested case hearing on the application for a site certificate in accordance with the applicable provisions of ORS chapter 183 and any procedures adopted by the council. The applicant shall be a party to the contested case. The council may permit any other person to become a party to the contested case in support of or in opposition to the application only if the person appeared in person or in writing at the public hearing on the site certificate application. Issues that may be the basis for a contested case shall be limited to those raised on the record of the public hearing under subsection (3) of this section, unless:
- (a) The department failed to follow the requirements of subsection (2) or (3) of this section; or
 - (b) The action recommended in the proposed order, including any recommended conditions of the approval, differs materially from that described in the draft proposed order, in which case only new issues related to such differences may be raised.

- (6)** If no person requests party status to challenge the department's proposed order, the proposed order shall be forwarded to the council and the contested case hearing shall be concluded.
- (7)** At the conclusion of the contested case, the council shall issue a final order, either approving or rejecting the application based upon the standards adopted under ORS 469.501 and any additional statutes, rules or local ordinances determined to be applicable to the facility by the project order, as amended. The council shall make its decision by the affirmative vote of at least four members approving or rejecting any application for a site certificate. The council may amend or reject the proposed order, so long as the council provides public notice of its hearing to adopt a final order, and provides an opportunity for the applicant and any party to the contested case to comment on material changes to the proposed order, including material changes to conditions of approval resulting from the council's review. The council's order shall be considered a final order for purposes of appeal.
- (8)** Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.403.
- (9)** The council shall either approve or reject an application for a site certificate:
- (a)** Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a nameplate rating of more than 200,000 kilowatts;
 - (b)** Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;
 - (c)** Within six months after filing an application for a site certificate for an energy facility, if the application is:
 - (A)** To expand an existing industrial facility to include an energy facility;
 - (B)** To expand an existing energy facility to achieve a nominal electric generating capacity of between 25 and 50 megawatts; or
 - (C)** To add injection or withdrawal capacity to an existing underground gas storage facility; or
 - (d)** Within 12 months after filing an application for a site certificate for any other energy facility.
- (10)** At the request of the applicant, the council shall allow expedited processing of an application for a site certificate for an energy facility with an average electric generating capacity of less than 100 megawatts. No notice of intent shall be

required. Following approval of a request for expedited review, the department shall issue a project order, which may be amended at any time. The council shall either approve or reject an application for a site certificate within six months after filing the site certificate application if there are no intervenors in the contested case conducted under subsection (5) of this section. If there are intervenors in the contested case, the council shall either approve or reject an application within nine months after filing the site certificate application. For purposes of this subsection, the generating capacity of a thermal power plant is the nameplate rating of the electrical generator proposed to be installed in the plant.

- (11) Failure of the council to comply with the deadlines set forth in subsection (9) or (10) of this section shall not result in the automatic issuance or denial of a site certificate.
- (12) The council shall specify in the site certificate a date by which construction of the facility must begin.
- (13) For a facility that is subject to and has been or will be reviewed by a federal agency under the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., the council shall conduct its site certificate review, to the maximum extent feasible, in a manner that is consistent with and does not duplicate the federal agency review. Such coordination shall include, but need not be limited to:
 - (a) Elimination of duplicative application, study and reporting requirements;
 - (b) Council use of information generated and documents prepared for the federal agency review;
 - (c) Development with the federal agency and reliance on a joint record to address applicable council standards;
 - (d) Whenever feasible, joint hearings and issuance of a site certificate decision in a time frame consistent with the federal agency review; and
 - (e) To the extent consistent with applicable state standards, establishment of conditions in any site certificate that are consistent with the conditions established by the federal agency. [Formerly 453.365; 1977 c.296 §14; 1977 c.794 §11; 1977 c.895 §1; 1985 c.569 §17; 1993 c.544 §4; 1993 c.569 §8; 1995 c.79 §288; 1995 c.505 §11; 1997 c.428 §2; 2001 c.134 §6]

469.371 [1985 c.569 §5; 1991 c.480 §6; repealed by 1993 c.544 §9]

469.372 [1985 c.569 §14; 1985 c.673 §196; repealed by 1993 c.544 §9]

469.373 Expedited processing for certain natural gas energy facilities.

- (1)** Notwithstanding the expedited review process established pursuant to ORS 469.370, an applicant may apply under the provisions of this section for expedited review of an application for a site certificate for an energy facility if the energy facility:
- (a)** Is a combustion turbine energy facility fueled by natural gas or is a reciprocating engine fueled by natural gas, including an energy facility that uses petroleum distillate fuels for backup power generation;
 - (b)** Is a permitted or conditional use allowed under an applicable local acknowledged comprehensive plan, land use regulation or federal land use plan, and is located:
 - (A)** At or adjacent to an existing energy facility; or
 - (B)**
 - (i)** At, adjacent to or in close proximity to an existing industrial use; and
 - (ii)** In an area currently zoned or designated for industrial use;
 - (c)**
 - (A)** Requires no more than three miles of associated transmission lines or three miles of new natural gas pipelines outside of existing rights of way for transmission lines or natural gas pipelines; or
 - (B)** Imposes, in the determination of the Energy Facility Siting Council, no significant impact in the locating of associated transmission lines or new natural gas pipelines outside of existing rights of way;
 - (d)** Requires no new water right or water right transfer;
 - (e)** Provides funds to a qualified organization in an amount determined by the council to be sufficient to produce any required reduction in carbon dioxide emissions as specified in ORS 469.503 (2)(c)(C) and in rules adopted under ORS 469.503 for the total carbon dioxide emissions produced by the energy facility for the life of the energy facility; and
 - (f)**
 - (A)** Discharges process wastewater to a wastewater treatment facility that has an existing National Pollutant Discharge Elimination System permit, can obtain an industrial pretreatment permit, if needed, within the expedited review process time frame and has written confirmation from the wastewater facility permit holder that the additional wastewater load will be accommodated by the facility without resulting in a significant thermal increase in the facility effluent or without requiring any changes to the wastewater facility National Pollutant Discharge Elimination System permit;

- (B)** Plans to discharge process wastewater to a wastewater treatment facility owned by a municipal corporation that will accommodate the wastewater from the energy facility and supplies evidence from the municipal corporation that:

 - (i)** The municipal corporation has included, or intends to include, the process wastewater load from the energy facility in an application for a National Pollutant Discharge Elimination System permit; and
 - (ii)** All conditions required of the energy facility to allow the discharge of process wastewater from the energy facility will be satisfied; or
 - (C)** Obtains a National Pollutant Discharge Elimination System or water pollution control facility permit for process wastewater disposal, supplies evidence to support a finding that the discharge can likely be permitted within the expedited review process time frame and that the discharge will not require:

 - (i)** A new National Pollutant Discharge Elimination System permit, except for a storm water general permit for construction activities; or
 - (ii)** A change in any effluent limit or discharge location under an existing National Pollutant Discharge Elimination System or water pollution control facility permit.
- (2)** An applicant seeking expedited review under this section shall submit documentation to the State Department of Energy, prior to the submission of an application for a site certificate, that demonstrates that the energy facility meets the qualifications set forth in subsection (1) of this section. The department shall determine, within 14 days of receipt of the documentation, on a preliminary, nonbinding basis, whether the energy facility qualifies for expedited review.
- (3)** If the department determines that the energy facility preliminarily qualifies for expedited review, the applicant may submit an application for expedited review. Within 30 days after the date that the application for expedited review is submitted, the department shall determine whether the application is complete. If the department determines that the application is complete, the application shall be deemed filed on the date that the department sends the applicant notice of its determination. If the department determines that the application is not complete, the department shall notify the applicant of the deficiencies in the application and shall deem the application filed on the date that the department determines that the application is complete. The department or the council may request additional information from the applicant at any time.
- (4)** The State Department of Energy shall send a copy of a filed application to the Department of Environmental Quality, the Water Resources Department, the State Department of Fish and Wildlife, the State Department of Geology and Mineral Industries, the State Department of Agriculture, the Department of Land Conservation and Development, the Public Utility Commission and any other state

agency, city, county or political subdivision of the state that has regulatory or advisory responsibility with respect to the proposed energy facility. The State Department of Energy shall send with the copy of the filed application a notice specifying that:

- (a)** In the event the council issues a site certificate for the energy facility, the site certificate will bind the state and all counties, cities and political subdivisions in the state as to the approval of the site, the construction of the energy facility and the operation of the energy facility, and that after the issuance of a site certificate, all permits, licenses and certificates addressed in the site certificate must be issued as required by ORS 469.401 (3); and
 - (b)** The comments and recommendations of state agencies, counties, cities and political subdivisions concerning whether the proposed energy facility complies with any statute, rule or local ordinance that the state agency, county, city or political subdivision would normally administer in determining whether a permit, license or certificate required for the construction or operation of the energy facility should be approved will be considered only if the comments and recommendations are received by the department within a reasonable time after the date the application and notice of the application are sent by the department.
- (5)** Within 90 days after the date that the application was filed, the department shall issue a draft proposed order setting forth:
- (a)** A description of the proposed energy facility;
 - (b)** A list of the permits, licenses and certificates that are addressed in the application and that are required for the construction or operation of the proposed energy facility;
 - (c)** A list of the statutes, rules and local ordinances that are the standards and criteria for approval of any permit, license or certificate addressed in the application and that are required for the construction or operation of the proposed energy facility; and
 - (d)** Proposed findings specifying how the proposed energy facility complies with the applicable standards and criteria for approval of a site certificate.
- (6)** The council shall review the application for site certification in the manner set forth in subsections (7) to (10) of this section and shall issue a site certificate for the facility if the council determines that the facility, with any required conditions to the site certificate, will comply with:
- (a)** The requirements for expedited review as specified in this section;
 - (b)** The standards adopted by the council pursuant to ORS 469.501 (1)(a), (c) to (e), (g), (h) and (L) to (o);

- (c) The requirements of ORS 469.503 (3); and
 - (d) The requirements of ORS 469.504 (1)(b).
- (7) Following submission of an application for a site certificate, the council shall hold a public informational meeting on the application. Following the issuance of the proposed order, the council shall hold at least one public hearing on the application. The public hearing shall be held in the area affected by the energy facility. The council shall mail notice of the hearing at least 20 days prior to the hearing. The notice shall comply with the notice requirements of ORS 197.763 (2) and shall include, but need not be limited to, the following:
- (a) A description of the energy facility and the general location of the energy facility;
 - (b) The name of a department representative to contact and the telephone number at which people may obtain additional information;
 - (c) A statement that copies of the application and proposed order are available for inspection at no cost and will be provided at reasonable cost; and
 - (d) A statement that the record for public comment on the application will close at the conclusion of the hearing and that failure to raise an issue in person or in writing prior to the close of the record, with sufficient specificity to afford the decision maker an opportunity to respond to the issue, will preclude consideration of the issue, by the council or by a court on judicial review of the council's decision.
- (8) Prior to the conclusion of the hearing, the applicant may request an opportunity to present additional written evidence, arguments or testimony regarding the application. In the alternative, prior to the conclusion of the hearing, the applicant may request a contested case hearing on the application. If the applicant requests an opportunity to present written evidence, arguments or testimony, the council shall leave the record open for that purpose only for a period not to exceed 14 days after the date of the hearing. Following the close of the record, the department shall prepare a draft final order for the council. If the applicant requests a contested case hearing, the council may grant the request if the applicant has shown good cause for a contested case hearing. If a request for a contested case hearing is granted, subsections (9) to (11) of this section do not apply, and the application shall be considered under the same contested case procedures used for a nonexpedited application for a site certificate.
- (9) The council shall make its decision based on the record and the draft final order prepared by the department. The council shall, within six months of the date that the application is deemed filed:
- (a) Grant the application;

(b) Grant the application with conditions;

(c) Deny the application; or

(d) Return the application to the site certification process required by ORS 469.320.

(10) If the application is granted, the council shall issue a site certificate pursuant to ORS 469.401 and 469.402. Notwithstanding subsection (6) of this section, the council may impose conditions based on standards adopted under ORS 469.501 (1)(b), (f) and (i) to (k), but may not deny an application based on those standards.

(11) Judicial review of the approval or rejection of a site certificate by the council under this section shall be as provided in ORS 469.403. [2001 c.683 §15]

Note: 469.373 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.374 [1985 c.569 §15; repealed by 1993 c.544 §9]

469.375 Required findings for radioactive waste disposal facility certificate. The Energy Facility Siting Council shall not issue a site certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or mill by-product or for radioactive waste or radioactively contaminated containers or receptacles used in the transportation, storage, use or application of radioactive material, unless, accompanying its decision it finds:

(1) The site is:

(a) Suitable for disposal of such wastes, and the amount of the wastes, intended for disposal at the site;

(b) Not located in or adjacent to:

(A) An area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(B) Within the 500-year floodplain of a river, taking into consideration the area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(C) An active fault or an active fault zone;

(D) An area of ancient, recent or active mass movement including land sliding, flow or creep;

(E) An area subject to ocean erosion; or

- (F) An area having experienced volcanic activity within the last two million years.
- (2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment;
 - (3) The disposal of such wastes and the amount of the wastes, at the site will be compatible with the regulatory programs of federal government for disposal of such wastes;
 - (4) The disposal of such wastes, and the amount of the wastes, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes;
 - (5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste;
 - (6) That suitable deed restrictions have been placed on the site recognizing the hazard of the material; and
 - (7) That, where federal funding for remedial actions is not available, a surety bond in the name of the state has been provided in an amount determined by the State Department of Energy to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate conditions. The bond may be withdrawn when the council finds that:
 - (a) The radioactive waste has been disposed of at a waste disposal facility for which a site certificate has been issued; and
 - (b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure.
 - (8) If any section, portion, clause or phrase of this section is for any reason held to be invalid or unconstitutional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this section are severable. [Formerly 459.625; 1979 c.283 §3; 1981 c.587 §3; 1985 c.4]

469.378 Land use compatibility statement for energy facility. Notwithstanding ORS 197.180, when a state agency action or recommendation concerning an energy facility requires a land use compatibility statement prior to the action being completed, the state agency shall satisfy any applicable requirement of ORS 197.180 by conditioning the agency action or recommendation on a determination by either the Energy Facility Siting Council or the applicable city or county that the energy facility as affected by the state agency action satisfies, or will continue to satisfy, the applicable requirements of ORS 197.180. [2001 c.683 §17]

Note: 469.378 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.380 [Formerly 453.375; 1977 c.794 §12; 1977 c.895 §2; 1993 c.569 §9; repealed by 1995 c.505 §32]

469.390 [Formerly 453.385; repealed by 1993 c.569 §31]

469.400 [Formerly 453.395; 1977 c.794 §13; 1977 c.895 §3; repealed by 1993 c.569 §10 (469.401 and 469.403 enacted in lieu of 469.400)]

469.401 Energy facility site certificate; conditions; effect of issuance on state and local government agencies.

- (1) Upon approval, the site certificate or any amended site certificate with any conditions prescribed by the Energy Facility Siting Council shall be executed by the chairperson of the council and by the applicant. The certificate or amended certificate shall authorize the applicant to construct, operate and retire the facility subject to the conditions set forth in the site certificate or amended site certificate. The duration of the site certificate or amended site certificate shall be the life of the facility.
- (2) The site certificate or amended site certificate shall contain conditions for the protection of the public health and safety, for the time for completion of construction, and to ensure compliance with the standards, statutes and rules described in ORS 469.501 and 469.503. The site certificate or amended site certificate shall require both parties to abide by local ordinances and state law and the rules of the council in effect on the date the site certificate or amended site certificate is executed, except that upon a clear showing of a significant threat to the public health, safety or the environment that requires application of later-adopted laws or rules, the council may require compliance with such later-adopted laws or rules. For a permit addressed in the site certificate or amended site certificate, the site certificate or amended site certificate shall provide for facility compliance with applicable state and federal laws adopted in the future to the extent that such compliance is required under the respective state agency statutes and rules.
- (3) Subject to the conditions set forth in the site certificate or amended site certificate, any certificate or amended certificate signed by the chairperson of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the facility. After issuance of the site certificate or amended site certificate, any affected state agency, county, city and political subdivision shall, upon submission by the applicant of the proper applications and payment of the proper fees, but without hearings or other proceedings, promptly issue the permits, licenses and certificates addressed in the site certificate or amended site certificate, subject only to conditions set forth in the site certificate or amended site certificate. After the site certificate or amended site

certificate is issued, the only issue to be decided in an administrative or judicial review of a state agency or local government permit for which compliance with governing law was considered and determined in the site certificate or amended site certificate proceeding shall be whether the permit is consistent with the terms of the site certificate or amended site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over the permit, license or certificate.

- (4) Nothing in ORS chapter 469 shall be construed to preempt the jurisdiction of any state agency or local government over matters that are not included in and governed by the site certificate or amended site certificate. Such matters include but are not limited to employee health and safety, building code compliance, wage and hour or other labor regulations, local government fees and charges or other design or operational issues that do not relate to siting the facility. [1993 c.569 §11 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §12; 1999 c.385 §2]

469.402 Delegation of review of future action required by site certificate. If the Energy Facility Siting Council elects to impose conditions on a site certificate or an amended site certificate, that require subsequent review and approval of a future action, the council may delegate the future review and approval to the State Department of Energy if, in the council's discretion, the delegation is warranted under the circumstances of the case. [1995 c.505 §27; 1999 c.385 §3]

Note: 469.402 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.403 Rehearing on approval or rejection of application for site certificate or amendment; appeal; judicial review vested in Supreme Court; stay of order.

- (1) Any party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served. The date of service shall be the date on which the Energy Facility Siting Council delivered or mailed its approval or rejection in accordance with ORS 183.470. The application for rehearing shall set forth specifically the ground upon which the application is based. No objection to the council's approval or rejection of an application for a site certificate or a site certificate amendment shall be considered on rehearing without good cause shown unless the basis for the objection is urged with reasonable specificity before the council in the site certificate or amended site certificate process. Upon such application, the council shall have the power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the council acts upon the application for rehearing within 30 days after the application is filed, the application shall be considered denied. The filing of an application for rehearing shall not, unless specifically ordered by the council, operate as a stay of the site certificate or amended site certificate for the facility.

- (2)** Any party to a contested case proceeding on a site certificate or amended site certificate application may appeal the council's approval or rejection of the site certificate or amended site certificate application. Issues on appeal shall be limited to those raised by the parties to the contested case proceeding before the council.
- (3)** Jurisdiction for judicial review of the council's approval or rejection of an application for a site certificate or amended site certificate is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days after the date of service of the council's final order or within 30 days after the date the petition for rehearing is denied or deemed denied. Date of service shall be the date on which the council delivered or mailed its order in accordance with ORS 183.470.
- (4)** The filing of a petition for judicial review may not stay the order, except that a party to the contested case may apply to the Supreme Court for a stay upon a showing that there is a colorable claim of error and that:
- (a)** The petitioner will suffer irreparable injury; or
 - (b)** Construction of the energy facility will result in irreparable harm to resources protected by applicable council standards or applicable agency or local government standards.
- (5)** If the Supreme Court grants a stay pursuant to subsection (4) of this section, the court:
- (a)** Shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000.
 - (b)** May grant a stay in whole or in part.
 - (c)** May impose other reasonable conditions on the stay.
- (6)** Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review and shall render a decision within six months of the filing of the petition for review.
- (7)** The following periods of delay shall be excluded from the six-month period within which the court must render a decision under subsection (6) of this section:
- (a)** Any period of delay resulting from a motion properly before the court; or
 - (b)** Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served

by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months.

- (8)** No period of delay resulting from a continuance granted by the Supreme Court under subsection (7)(b) of this section shall be excluded from the six-month period unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in having a decision within six months. The factors the court shall consider in determining whether to grant a continuance under subsection (7)(b) of this section are:
- (a)** Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or
 - (b)** Whether the case is so unusual or so complex, due to the number of parties involved or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the six-month period.
- (9)** No continuance under subsection (7)(b) of this section shall be granted because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party. [1993 c.569 §12 (469.401 and 469.403 enacted in lieu of 469.400); 1995 c.505 §13; 1999 c.385 §4; 2001 c.683 §12]

469.405 Amendment of site certificate; judicial review; exemption; rules.

- (1)** A site certificate may be amended with the approval of the Energy Facility Siting Council. The council may establish by rule the type of amendment that must be considered in a contested case proceeding. Judicial review of an amendment to a site certificate shall be as provided in ORS 469.403.
- (2)** Notwithstanding ORS 34.020 or 197.825, or any other provision of law, the land use approval by an affected local government of a proposed amendment to a facility and the recommendation of the special advisory group of applicable substantive criteria shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to show compliance with the statewide planning goals by demonstrating that the facility has received local land use approval, the provisions of this section shall apply only to proposed projects for which the land use approval by the local government occurs after the date an application for amendment is submitted to the State Department of Energy.
- (3)** An amendment to a site certificate is not required for 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 will connect to a council certified surface facility related to an underground gas storage reservoir or to a council certified gas pipeline, whether the proposed pipeline is to

be located inside or outside the site of a council certified facility, the certificate holder must obtain, prior to construction, the approval of the department for the construction, operation and retirement of the proposed pipeline. The department shall approve such a proposed pipeline if the pipeline meets applicable council substantive standards. Notwithstanding ORS 469.503 (3), the department may not review the proposed pipeline for compliance with other state standards. Notwithstanding ORS 469.503 (4), or any council rule addressing compliance with land use standards, the department shall not review such a proposed pipeline for compliance with land use requirements. Notwithstanding ORS 469.401 (3), the approval by the department of such pipeline shall not bind any state or local agency. The council may adopt appropriate procedural rules for the department review. The department shall issue an order approving or rejecting the proposed pipeline. Judicial review of a department order under this section shall be as provided in ORS 469.403. [1995 c.505 §2; 1999 c.385 §5]

Note: 469.405 was added to and made a part of 469.300 to 469.563 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.407 Amendment of application to increase capacity of facility.

- (1) A recipient may by amendment of its application for a site certificate or by amendment of its site certificate increase the capacity of the facility if the Energy Facility Siting Council finds that:
 - (a) The facility will satisfy the conditions of the 500-megawatt exemption, unless modified by the council;
 - (b) The enlarged facility does not exceed 500 megawatts and meets the applicable carbon dioxide standard provided for in ORS 469.503 (2) for any increase in capacity beyond the capacity of the 500-megawatt exemption; and
 - (c) The enlarged facility meets all other applicable council standards.
- (2) A recipient is deemed to meet any applicable need standard and carbon dioxide emissions standard for the nominal generating capacity of the 500-megawatt exemption provided that the recipient satisfies the conditions of the 500-megawatt exemption, unless the council modifies the conditions.
- (3) As used in this section:
 - (a) "Recipient" means any base load gas plant, as defined in ORS 469.503, determined by the council to have the lowest net monetized air emissions among the applicants participating in a contested case proceeding.
 - (b) "500-megawatt exemption" means the council order in which a recipient was determined to have the lowest net monetized air emissions. [1997 c.428 §8]

Note: 469.407 and 469.409 were added to and made a part of 469.300 to 469.563 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

469.409 Amendment of site certificate to demonstrate compliance with carbon dioxide emissions standard; binding arbitration to resolve disputes. Any site certificate holder that is required by its site certificate or by law to demonstrate need for the facility shall instead demonstrate compliance with the carbon dioxide emissions standard applicable to the type of facility subject to the site certificate before beginning construction. Such a demonstration shall be made as an amendment to the site certificate. Notwithstanding ORS 469.405 or any council rule, if the site certificate holder proceeds pursuant to ORS 469.503 (2)(c)(A) or (C), or both, the Energy Facility Siting Council shall not conduct a contested case hearing on such amendment and the council's order shall not be subject to judicial review. Any dispute about the site certificate holder's demonstration of compliance with the applicable carbon dioxide emissions standard shall be settled through binding arbitration. [1997 c.428 §7]

Note: See note under 469.407.

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate; monitoring programs.

- (1) Any applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.563, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Energy Facility Siting Council for:
 - (a) Any transmission lines for which application has been filed with the federal government and the Public Utility Commission of Oregon prior to July 2, 1975; and
 - (b) Any energy facility under construction on July 2, 1975.
- (2) Each applicant for a site certificate under this section shall pay the fees required by ORS 469.421 (2) to (9), if applicable, and shall execute a site certificate in which the applicant agrees:
 - (a) To abide by the conditions of all licenses, permits and certificates required by the State of Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975; and
 - (b) On and after July 2, 1975, to abide by the rules of the Director of the State Department of Energy adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930.

- (3) The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the State Department of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to ensure that the facility is being operated consistently with the terms and conditions of the site certificate and any applicable health or safety standards.
- (4) The council shall establish programs for monitoring the environmental and ecological effects of the operation and the 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.
- (5) Site certificates executed by the Governor under ORS 469.400 (1991 Edition) prior to July 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates. Any holder of a site certificate issued prior to July 2, 1975, shall abide by the rules of the director adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [1975 c.606 §24; 1983 c.740 §184; 1989 c.88 §5; 1993 c.569 §13; 1995 c.505 §15]

469.420 [Formerly 453.405; 1977 c.813 §1; 1979 c.234 §1; 1981 c.792 §3; repealed by 1981 c.792 §4 (469.421 enacted in lieu of 469.420)]

469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty.

- (1) Subject to the provisions of ORS 469.441, any person submitting a notice of intent, a request for exemption under ORS 469.320, a request for an expedited review under ORS 469.370, a request for an expedited review under ORS 469.373, a request for the State Department of Energy to approve a pipeline under ORS 469.405 (3), an application for a site certificate or a request to amend a site certificate shall pay all expenses incurred by the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services related to the review and decision of the council. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing a final order or site certificate, commissioning an independent study by a contractor, state agency or local government under ORS 469.360, and changes to the rules of the council that are specifically required and related to the particular site certificate.
- (2) Every person submitting a notice of intent to file for a site certificate, a request for exemption or a request for expedited review shall submit the fee required under the fee schedule established under ORS 469.441 to the State Department of Energy when the notice or request is submitted to the council. To the extent possible, the full cost of the evaluation shall be paid from the fee paid under this subsection. However, if costs of the evaluation exceed the fee, the person submitting the notice or request shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to

complete the project. If costs are less than the fee paid, the excess shall be refunded to the person submitting the notice or request.

- (3)** Before submitting a site certificate application, the applicant shall request from the State Department of Energy an estimate of the costs expected to be incurred in processing the application. The department shall inform the applicant of that amount and require the applicant to make periodic payments of the costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits the application. If costs of the evaluation exceed the estimate, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the council provided prior notification to the applicant and a detailed projected budget the council believes is necessary to complete the project. If costs are less than the fee paid, the council shall refund the excess to the applicant.
- (4)** Any person who is delinquent in the payment of fees under subsections (1) to (3) of this section shall be subject to the provisions of subsection (11) of this section.
- (5)** Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the State Department of Energy's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the Director of the State Department of Energy promptly shall enter an order establishing an annual fee based on the amount of revenues that the director estimates is needed to fund the cost of ensuring that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the department under ORS 469.405 (3) and any applicable health or safety standards. In determining this cost, the director shall include both the actual direct cost to be incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services to ensure that the facility is being operated consistently with the terms and conditions of the site certificate, any order issued by the State Department of Energy under ORS 469.405 (3) and any applicable health or safety standards, and the general costs to be incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services to ensure that all certificated facilities are being operated consistently with the terms and conditions of the site certificates, any orders issued by the State Department of Energy under ORS 469.405 (3) and any applicable health or safety standards that cannot be allocated to an individual, licensed facility. Not more than 35 percent of the annual fee charged each facility shall be for the recovery of these general costs. The fees for direct costs shall reflect the size and complexity of the facility and its certificate conditions.
- (6)** Each holder of a site certificate executed after July 1 of any fiscal year shall pay a fee for the remaining portion of the year. The amount of the fee shall be set at the

cost of regulating the facility during the remaining portion of the year determined in the same manner as the annual fee.

- (7)** When the actual costs of regulation incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are less than the annual fees for that facility, the unexpended balance shall be refunded to the site certificate holder. When the actual regulation costs incurred by the council, the State Department of Energy and the Oregon Department of Administrative Services for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are projected to exceed the annual fee for that facility, the Director of the State Department of Energy may issue an order revising the annual fee.
- (8)** In addition to any other fees required by law, each energy resource supplier shall pay to the State Department of Energy annually its share of an assessment to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, determined by the Director of the State Department of Energy in the following manner:

 - (a)** Upon approval of the budget authorization of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy by a regular session of the Legislative Assembly, the Director of the State Department of Energy shall promptly enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming biennium. On or before June 1 of each even-numbered year, the Director of the State Department of Energy shall enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year of the biennium. The order shall take into account any revisions to the biennial budget of the Energy Facility Siting Council, the State Department of Energy and the Oregon Department of Administrative Services made by the Emergency Board or by a special session of the Legislative Assembly subsequent to the most recently concluded regular session of the Legislative Assembly. However, an assessment under this section may not be used to derive revenue for funding State Department of Energy activities related to the energy efficiency and sustainable technology loan program described in ORS chapter 470.
 - (b)** Each order issued by the director pursuant to paragraph (a) of this subsection shall allocate the aggregate assessment set forth therein to energy resource suppliers in accordance with paragraph (c) of this subsection.

- (c)** The amount assessed to an energy resource supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state during that year by all energy resource suppliers. The assessment against an energy resource supplier shall not exceed five-tenths of one percent of the supplier's gross operating revenue derived within this state in the preceding calendar year. The director shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than \$250.
- (d)** The director shall send each energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.
- (e)** The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of this subsection shall be paid to the State Department of Energy as follows:
- (A)** Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days following the close of the regular session of the Legislative Assembly; and
 - (B)** Amounts assessed for the second fiscal year of a biennium shall be paid not later than July 1 of each even-numbered year.
- (f)** An energy resource supplier shall provide the director, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the preceding calendar year. The statement shall be in the form prescribed by the director and is subject to audit by the director. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of section 3a, Article IX of the Oregon Constitution, and ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not more than 15 days for the requirements of this subsection if:
- (A)** The energy supplier makes a showing of hardship caused by the deadline;
 - (B)** The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(C) The extension of time does not prevent the Energy Facility Siting Council, the Oregon Department of Administrative Services or the State Department of Energy from fulfilling their statutory responsibilities.

(g) As used in this section:

(A) “Energy resource supplier” means an electric utility, natural gas utility or petroleum supplier supplying, generating, transmitting or distributing electricity, natural gas or petroleum products in Oregon.

(B) “Gross operating revenue” means gross receipts from sales or service made or provided within this state during the regular course of the energy supplier’s business, but does not include either revenue derived from interutility sales within the state or revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of section 3a, Article IX of the Oregon Constitution, or ORS 319.020 or 319.530.

(C) “Petroleum supplier” has the meaning given that term in ORS 469.020.

(h) In determining the amount of revenues that must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the director shall take into account all other known or readily ascertainable sources of revenue to the Energy Facility Siting Council, the Oregon Department of Administrative Services and the State Department of Energy, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

(i) Orders issued by the director pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(9)

(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal power plant or nuclear installation within this state shall pay to the State Department of Energy annually on July 1, an assessment in an amount determined by the director to be necessary to fund the activities of the state and the counties associated with emergency preparedness for a nuclear fueled thermal power plant or nuclear installation. The assessment shall not exceed \$461,250 per year. Moneys collected as assessments under this subsection are continuously appropriated to the State Department of Energy for this purpose.

(b) The State Department of Energy shall maintain and shall cause other state agencies and counties to maintain time and billing records for the expenditure of any fees collected from an operator of a nuclear fueled thermal power plant under paragraph (a) of this subsection.

(10) Reactors operated by a college, university or graduate center for research purposes and electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements of subsections (5), (8) and (9) of this section.

(11)

(a) All fees assessed by the director against holders of site certificates for facilities that have an installed capacity of 500 megawatts or greater may be paid in several installments, the schedule for which shall be negotiated between the director and the site certificate holder.

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (9) of this section or the fees required under ORS 469.360 after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The court may award reasonable attorney fees to the director if the director prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [1981 c.792 §5 (enacted in lieu of 469.420); 1983 c.273 §5; 1987 c.450 §2; 1989 c.88 §4; 1993 c.569 §14; 1995 c.505 §14; 1995 c.542 §1; 1995 c.551 §11; 1995 c.618 §74a; 1995 c.696 §22; 1997 c.249 §166; 1999 c.385 §6; 2001 c.683 §13; 2003 c.186 §30; 2009 c.11 §67; 2009 c.753 §76]

Note: Sections 47a and 49, chapter 753, Oregon Laws 2009, provide:

Sec. 47a. Notwithstanding ORS 469.441, in addition to any assessment imposed under ORS 469.421 (8), the State Department of Energy may impose a special assessment on energy resource suppliers that are subject to the assessment described in ORS 469.421 (8). The special assessment authorized under this section may not exceed \$300,000. The department shall calculate the share of the special assessment to be paid by an energy resource supplier based on the most recent gross operating revenue ratio determined for that supplier under ORS 469.421 (8)(c) as of the special assessment date. The department may not impose the special assessment authorized under this section more than once and may not impose the special assessment after July 1, 2010. Moneys received by the department from the special assessment must be deposited to the Energy Project Supplemental Fund and used to pay costs incurred by the department or the Director of the State Department of Energy in implementing or administering loan programs for small scale local energy projects. [2009 c.753 §47a]

Sec. 49. Sections 42, 43, 44, 45, 46, 46a and 47a of this 2009 Act are repealed January 2, 2016. [2009 c.753 §49]

469.430 Site inspections. The Energy Facility Siting Council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the State Department of Energy to inspect, or request another state agency or local government to inspect, the site at any time in order to assure that the facility is being operated consistently with the terms and conditions of the site certificate or any order issued by the department under ORS 469.405 (3). The council shall avoid duplication of effort with site inspections by other state and federal agencies and local governments that have issued permits or licenses for the facility. [Formerly 453.415; 1993 c.569 §15; 1995 c.505 §16; 1999 c.385 §7]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS chapter 183, a site certificate or an amended site certificate may be revoked or suspended:

- (1) For failure to comply with the terms or conditions of the site certificate or amended site certificate;
- (2) For violation of the provisions of ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992 or rules adopted pursuant to ORS 469.525 to 469.563, 469.590 to 469.619, 469.930 and 469.992; or
- (3) If the site certificate was executed prior to July 2, 1975, for violation of the provisions of ORS 469.300 to 469.520 or rules adopted pursuant to ORS 469.300 to 469.520 or for failure to comply with applicable health or safety standards. [Formerly 453.425; 1993 c.569 §16; 1995 c.505 §17; 1999 c.385 §8]

469.441 Justification of fees charged; judicial review.

- (1) All expenses incurred by the Energy Facility Siting Council and the State Department of Energy under ORS 469.360 (1) and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the department or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons submitting a notice of intent, a request for an exemption, a request for a pipeline described in ORS 469.405 (3) or a request for an expedited review must submit under ORS 469.421 at the time of submitting the notice of intent, request for exemption, request for pipeline or request for expedited review. The fee schedule shall be designed to recover the council's actual costs of evaluating the notice of intent, request for exemption, request for pipeline or request for expedited review subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and department to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent, request for exemption, request for pipeline or request for expedited review is submitted, whether the notice of intent, request for

exemption, request for pipeline or request for expedited review is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.

- (2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant or site certificate holder, the applicant or holder may seek judicial review for the amount of expenses charged or allocated in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant or holder establishes that any of the charges or allocations are unnecessary or unreasonable, the council or the department shall refund the amount found to be unnecessary or unreasonable. The applicant or holder shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1989 c.88 §8; 1993 c.569 §17; 1999 c.385 §9]

(High Voltage Transmission Lines)

469.442 Procedure prior to construction of transmission line in excess of 230,000 volts; review committee.

- (1) Any person who proposes to construct a transmission line in excess of 230,000 volts capacity that is not otherwise under the jurisdiction of the Energy Facility Siting Council shall:
- (a) Give public notice of the proposed action at least six months before beginning any process to obtain local permits required for the proposed transmission line. Notification shall be given:
 - (A) By publication once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the transmission line is to be constructed; and
 - (B) To the governing bodies and planning directors of cities and counties which are within or partially within the project study area.
 - (b) Provide an opportunity for public comment on the proposed transmission line and conduct public meetings to review the proposal.
 - (c) Respond specifically and in writing to local concerns and recommendations regarding the proposed transmission line.
- (2) The Director of the State Department of Energy shall establish a committee to include technical experts and members of the public to coordinate public review of a proposed transmission line under subsection (1) of this section when requested to do so by ordinance or resolution of the affected governing body.

- (3) At the conclusion of the public review, the committee shall make a summary report to the affected governing body including public concerns and recommendations concerning the proposed transmission line.
- (4) The scope of work and cost of conducting the review shall be negotiated between the State Department of Energy and the project sponsor. The negotiated cost shall be paid by the project sponsor.
- (5) Subsections (1) to (4) of this section shall not apply to a person who proposes to construct transmission lines entirely within 500 feet of an existing corridor occupied by transmission lines with a capacity in excess of 230,000 volts. [1987 c.200 §2; 1993 c.569 §18]

469.445 [1987 c.200 §3; repealed by 1993 c.569 §31]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions.

- (1) There is established an Energy Facility Siting Council to be located within the Oregon Department of Administrative Services and consisting of seven public members, who shall be appointed by the Governor, subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.
- (2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment but no member shall serve more than two full terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.
- (3) No member of the council shall be an employee, director or retired employee or director of or a consultant to or have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of the appointment to the council, in any corporation or utility operating or interested in establishing an energy facility in this state or in any manufacturer of related equipment.
- (4) No member shall for two years after the expiration of the term of the member accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.
- (5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or any agency thereof and held by the owner or operator of the energy facility that employs such person. [Formerly 453.435; 1995 c.551 §12]

469.460 Officers; meetings; compensation and expenses.

- (1) The Energy Facility Siting Council shall annually elect from among its members a chairperson and vice chairperson with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. The council may meet as often as it requires at a time and place determined by the council. Five members constitute a quorum. The Governor or the chairperson of the council may call a special meeting, to be held at any place in this state designated by the person calling the meeting, upon 24 hours' notice to each member and to the public.
- (2) Council members shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 453.445]

469.470 Powers and duties; rules. The Energy Facility Siting Council shall:

- (1) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to all aspects of site selection.
- (2) In accordance with the applicable provisions of ORS chapter 183, and subject to the provisions of ORS 469.501 (3), adopt standards and rules to perform the functions vested by law in the council including the adoption of standards and rules for the siting of energy facilities pursuant to ORS 469.501, and implementation of the energy policy of the State of Oregon set forth in ORS 469.010 and 469.310.
- (3) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in performing the functions vested by law in the council.
- (4) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government and affected groups, in furtherance of the purposes of ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992.
- (5) Consult with the Water Resources Commission on the need for power and other areas within the expertise of the council when the Water Resources Commission is determining whether to allocate water for hydroelectric development.
- (6) Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992. [Formerly 453.455; 1991 c.480 §7; 1993 c.544 §5; 1993 c.569 §19; 1995 c.505 §18]

469.480 Local government advisory group; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee; rules.

- (1) The Energy Facility Siting Council shall designate as a special advisory group the governing body of any local government within whose jurisdiction the facility is proposed to be located.
- (2) In addition to advisory groups required by subsection (1) of this section the council may establish such special advisory groups as are considered necessary. Such advisory groups shall include membership as determined by the council to represent interests and disciplines as needed to carry out the responsibility assigned to such advisory groups, which shall report findings, recommendations and decisions to the council.
- (3) Subject to applicable laws regulating travel and other expenses of state officers and employees, members of any advisory committee appointed under subsection (1) of this section shall receive no compensation but may receive their actual and necessary travel and other expenses incurred in the performance of their official duties.
- (4) The council by rule shall form an Electric and Magnetic Field Committee which shall meet at the call of the council chair. The committee shall include representatives of the public, utilities, manufacturers and state agencies. The committee shall monitor information being developed on electric and magnetic fields and report the committee's findings to the council. The council shall report the findings of the Electric and Magnetic Field Committee to the Legislative Assembly. [Formerly 453.475; 1991 c.491 §1; 1993 c.569 §20; 1995 c.551 §17]

(Rules; Standards; Compliance)

469.490 Adoption of rules; determination of validity. All rules adopted by the Energy Facility Siting Council pursuant to ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992 shall be adopted in the manner required by ORS chapter 183. The validity of any rule adopted by the council may be determined only upon a petition by any person to the Supreme Court. The petition must be filed within 60 days after the date the rule becomes effective under ORS 183.355. The review by the Supreme Court of the validity of any rule adopted by the council shall otherwise be according to ORS 183.400. The Supreme Court shall give priority on its docket to such a petition for review. [Formerly 453.495; 1995 c.505 §19]

469.500 [Formerly 453.505; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.501 Energy facility siting, construction, operation and retirement standards; exemptions.

- (1) The Energy Facility Siting Council shall adopt standards for the siting, construction, operation and retirement of facilities. The standards may address but need not be limited to the following subjects:

- (a)** The organizational, managerial and technical expertise of the applicant to construct and operate the proposed facility.
- (b)** Seismic hazards.
- (c)** Areas designated for protection by the state or federal government, including but not limited to monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas.
- (d)** The financial ability and qualifications of the applicant.
- (e)** Effects of the facility, taking into account mitigation, on fish and wildlife, including threatened and endangered fish, wildlife or plant species.
- (f)** Impacts of the facility on historic, cultural or archaeological resources listed on, or determined by the State Historic Preservation Officer to be eligible for listing on, the National Register of Historic Places or the Oregon State Register of Historic Properties.
- (g)** Protection of public health and safety, including necessary safety devices and procedures.
- (h)** The accumulation, storage, disposal and transportation of nuclear waste.
- (i)** Impacts of the facility on recreation, scenic and aesthetic values.
- (j)** Reduction of solid waste and wastewater generation to the extent reasonably practicable.
- (k)** Ability of the communities in the affected area to provide sewers and sewage treatment, water, storm water drainage, solid waste management, housing, traffic safety, police and fire protection, health care and schools.
- (l)** The need for proposed nongenerating facilities as defined in ORS 469.503, consistent with the state energy policy set forth in ORS 469.010 and 469.310. The council may consider least-cost plans when adopting a need standard or in determining whether an applicable need standard has been met. The council shall not adopt a standard requiring a showing of need or cost-effectiveness for generating facilities as defined in ORS 469.503.
- (m)** Compliance with the statewide planning goals adopted by the Land Conservation and Development Commission as specified by ORS 469.503.
- (n)** Soil protection.

- (o) For energy facilities that emit carbon dioxide, the impacts of those emissions on climate change. For fossil-fueled power plants, as defined in ORS 469.503, the council shall apply a standard as provided for by ORS 469.503 (2).
- (2) The council may adopt exemptions from any need standard adopted under subsection (1)(L) of this section if the exemption is consistent with the state's energy policy set forth in ORS 469.010 and 469.310.
- (3) The council may issue a site certificate for a facility that does not meet one or more of the standards adopted under subsection (1) of this section if the council determines that the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.
- (4) Notwithstanding subsection (1) of this section, the council may not impose any standard developed under subsection (1)(b), (f), (j) or (k) of this section to approve or deny an application for an energy facility producing power from wind, solar or geothermal energy. However, the council may, to the extent it determines appropriate, apply any standards adopted under subsection (1)(b), (f), (j) or (k) of this section to impose conditions on any site certificate issued for any energy facility. [1993 c.569 §22 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §20; 1997 c.428 §3; 2001 c.134 §7]

469.503 Requirements for approval of energy facility site certificate; carbon dioxide emissions standard; offset funds; use of offset funds by qualifying organization; rules. In order to issue a site certificate, the Energy Facility Siting Council shall determine that the preponderance of the evidence on the record supports the following conclusions:

- (1) The facility complies with the standards adopted by the council pursuant to ORS 469.501 or the overall public benefits of the facility outweigh the damage to the resources protected by the standards the facility does not meet.
- (2) If the energy facility is a fossil-fueled power plant, the energy facility complies with any applicable carbon dioxide emissions standard adopted by the council or enacted by statute. Base load gas plants shall comply with the standard set forth in subsection (2)(a) of this section. Other fossil-fueled power plants shall comply with any applicable standard adopted by the council by rule pursuant to subsection (2)(b) of this section. Subsections (2)(c) and (d) of this section prescribe the means by which an applicant may comply with the applicable standard.
 - (a) The net carbon dioxide emissions rate of the proposed base load gas plant shall not exceed 0.70 pounds of carbon dioxide emissions per kilowatt hour of net electric power output, with carbon dioxide emissions and net electric power output measured on a new and clean basis. Notwithstanding the foregoing, the council may by rule modify the carbon dioxide emissions standard for base load gas plants if the council finds that the most efficient stand-alone combined cycle, combustion turbine, natural gas-fired energy facility that is commercially demonstrated and operating in the United States has a net heat rate of less than

7,200 Btu per kilowatt hour higher heating value adjusted to ISO conditions. In modifying the carbon dioxide emission standard, the council shall determine the rate of carbon dioxide emissions per kilowatt hour of net electric output of such energy facility, adjusted to ISO conditions, and reset the carbon dioxide emissions standard at 17 percent below this rate.

(b) The council shall adopt carbon dioxide emissions standards for other types of fossil-fueled power plants. Such carbon dioxide emissions standards shall be promulgated by rule. In adopting or amending such carbon dioxide emissions standards, the council shall consider and balance at least the following principles, the findings on which shall be contained in the rulemaking record:

(A) Promote facility fuel efficiency;

(B) Promote efficiency in the resource mix;

(C) Reduce net carbon dioxide emissions;

(D) Promote cogeneration that reduces net carbon dioxide emissions;

(E) Promote innovative technologies and creative approaches to mitigating, reducing or avoiding carbon dioxide emissions;

(F) Minimize transaction costs;

(G) Include an alternative process that separates decisions on the form and implementation of offsets from the final decision on granting a site certificate;

(H) Allow either the applicant or third parties to implement offsets;

(I) Be attainable and economically achievable for various types of power plants;

(J) Promote public participation in the selection and review of offsets;

(K) Promote prompt implementation of offset projects;

(L) Provide for monitoring and evaluation of the performance of offsets; and

(M) Promote reliability of the regional electric system.

(c) The council shall determine whether the applicable carbon dioxide emissions standard is met by first determining the gross carbon dioxide emissions that are reasonably likely to result from the operation of the proposed energy facility. Such determination shall be based on the proposed design of the energy facility. The council shall adopt site certificate conditions to ensure that the predicted carbon dioxide emissions are not exceeded on a new and clean basis. For any remaining emissions reduction necessary to meet the applicable standard, the applicant may elect to use any of subparagraphs (A) to (D) of this paragraph, or

any combination thereof. The council shall determine the amount of carbon dioxide emissions reduction that is reasonably likely to result from the applicant's offsets and whether the resulting net carbon dioxide emissions meet the applicable carbon dioxide emissions standard. If the council or a court on judicial review concludes that the applicant has not demonstrated compliance with the applicable carbon dioxide emissions standard under subparagraphs (A), (B) or (D) of this paragraph, or any combination thereof, and the applicant has agreed to meet the requirements of subparagraph (C) of this paragraph for any deficiency, the council or a court shall find compliance based on such agreement.

(A) The facility will sequentially produce electrical and thermal energy from the same fuel source, and the thermal energy will be used to displace another source of carbon dioxide emissions that would have otherwise continued to occur, in which case the council shall adopt site certificate conditions ensuring that the carbon dioxide emissions reduction will be achieved.

(B) The applicant or a third party will implement particular offsets, in which case the council may adopt site certificate conditions ensuring that the proposed offsets are implemented but shall not require that predicted levels of avoidance, displacement or sequestration of carbon dioxide emissions be achieved. The council shall determine the quantity of carbon dioxide emissions reduction that is reasonably likely to result from each of the proposed offsets based on the criteria in sub-subparagraphs (i) to (iii) of this subparagraph. In making this determination, the council shall not allow credit for offsets that have already been allocated or awarded credit for carbon dioxide emissions reduction in another regulatory setting. In addition, the fact that an applicant or other parties involved with an offset may derive benefits from the offset other than the reduction of carbon dioxide emissions is not, by itself, a basis for withholding credit for an offset.

- (i)** The degree of certainty that the predicted quantity of carbon dioxide emissions reduction will be achieved by the offset;
- (iii)** The ability of the council to determine the actual quantity of carbon dioxide emissions reduction resulting from the offset, taking into consideration any proposed measurement, monitoring and evaluation of mitigation measure performance; and
- (iv)** The extent to which the reduction of carbon dioxide emissions would occur in the absence of the offsets.

(C) The applicant or a third party agrees to provide funds in an amount deemed sufficient to produce the reduction in carbon dioxide emissions necessary to meet the applicable carbon dioxide emissions standard, in which case the funds shall be used as specified in paragraph (d) of this subsection. Unless modified by the council as provided below, the payment of 57 cents shall be deemed to result in a reduction of one ton of carbon dioxide emissions. The council shall determine the offset funds using the monetary offset rate and the level of emissions reduction required to meet the applicable standard. If a site

certificate is approved based on this subparagraph, the council may not adjust the amount of such offset funds based on the actual performance of offsets. After three years from June 26, 1997, the council may by rule increase or decrease the monetary offset rate of 57 cents per ton of carbon dioxide emissions. Any change to the monetary offset rate shall be based on empirical evidence of the cost of carbon dioxide offsets and the council's finding that the standard will be economically achievable with the modified rate for natural gas-fired power plants. Following the initial three-year period, the council may increase or decrease the monetary offset rate no more than 50 percent in any two-year period.

(D) Any other means that the council adopts by rule for demonstrating compliance with any applicable carbon dioxide emissions standard.

(d) If the applicant elects to meet the applicable carbon dioxide emissions standard in whole or in part under paragraph (c)(C) of this subsection the applicant shall identify the qualified organization. The applicant may identify an organization that has applied for, but has not received, an exemption from federal income taxation, but the council may not find that the organization is a qualified organization unless the organization is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996. The site certificate holder shall provide a bond or comparable security in a form reasonably acceptable to the council to ensure the payment of the offset funds and the amount required under subparagraph (A)(ii) of this paragraph. Such security shall be provided by the date specified in the site certificate, which shall be no later than the commencement of construction of the facility. The site certificate shall require that the offset funds be disbursed as specified in subparagraph (A) of this paragraph, unless the council finds that no qualified organization exists, in which case the site certificate shall require that the offset funds be disbursed as specified in subparagraph (B) of this paragraph.

(A) The site certificate holder shall disburse the offset funds and any other funds required by sub-subparagraph (ii) of this subparagraph to the qualified organization as follows:

(i) When the site certificate holder receives written notice from the qualified organization certifying that the qualified organization is contractually obligated to pay any funds to implement offsets using the offset funds, the site certificate holder shall make the requested amount available to the qualified organization unless the total of the amount requested and any amounts previously requested exceeds the offset funds, in which case only the remaining amount of the offset funds shall be made available. The qualified organization shall use at least 80 percent of the offset funds for contracts to implement offsets. The qualified organization may use up to 20 percent of the offset funds for monitoring, evaluation, administration and enforcement of contracts to implement offsets.

- (ii) At the request of the qualified organization and in addition to the offset funds, the site certificate holder shall pay the qualified organization an amount equal to 10 percent of the first \$500,000 of the offset funds and 4.286 percent of any offset funds in excess of \$500,000. This amount shall not be less than \$50,000 unless a lesser amount is specified in the site certificate. This amount compensates the qualified organization for its costs of selecting offsets and contracting for the implementation of offsets.
- (iii) Notwithstanding any provision to the contrary, a site certificate holder subject to this subparagraph shall have no obligation with regard to offsets, the offset funds or the funds required by sub-subparagraph (ii) of this subparagraph other than to make available to the qualified organization the total amount required under paragraph (c) of this subsection and sub-subparagraph (ii) of this subparagraph, nor shall any nonperformance, negligence or misconduct on the part of the qualified organization be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.
- (B) If the council finds there is no qualified organization, the site certificate holder shall select one or more offsets to be implemented pursuant to criteria established by the council. The site certificate holder shall give written notice of its selections to the council and to any person requesting notice. On petition by the State Department of Energy, or by any person adversely affected or aggrieved by the site certificate holder's selection of offsets, or on the council's own motion, the council may review such selection. The petition must be received by the council within 30 days of the date the notice of selection is placed in the United States mail, with first-class postage prepaid. The council shall approve the site certificate holder's selection unless it finds that the selection is not consistent with criteria established by the council. The site certificate holder shall contract to implement the selected offsets within 18 months after commencing construction of the facility unless good cause is shown requiring additional time. The contracts shall obligate the expenditure of at least 85 percent of the offset funds for the implementation of offsets. No more than 15 percent of the offset funds may be spent on monitoring, evaluation and enforcement of the contract to implement the selected offsets. The council's criteria for selection of offsets shall be based on the criteria set forth in paragraphs (b)(C) and (c)(B) of this subsection and may also consider the costs of particular types of offsets in relation to the expected benefits of such offsets. The council's criteria shall not require the site certificate holder to select particular offsets, and shall allow the site certificate holder a reasonable range of choices in selecting offsets. In addition, notwithstanding any other provision of this section, the site certificate holder's financial liability for implementation, monitoring, evaluation and enforcement of offsets pursuant to this subsection shall be limited to the amount of any offset funds not already contractually obligated. Nonperformance, negligence or misconduct by the entity or entities implementing, monitoring or evaluating the

selected offset shall not be a basis for revocation of the site certificate or any other enforcement action by the council with respect to the site certificate holder.

(C) Every qualified organization that has received funds under this paragraph shall, at five-year intervals beginning on the date of receipt of such funds, provide the council with the information the council requests about the qualified organization's performance. The council shall evaluate the information requested and, based on such information, shall make any recommendations to the Legislative Assembly that the council deems appropriate.

(e) As used in this subsection:

(A) "Adjusted to ISO conditions" means carbon dioxide emissions and net electric power output as determined at 59 degrees Fahrenheit, 14.7 pounds per square inch atmospheric pressure and 60 percent humidity.

(B) "Base load gas plant" means a generating facility that is fueled by natural gas, except for periods during which an alternative fuel may be used and when such alternative fuel use shall not exceed 10 percent of expected fuel use in Btu, higher heating value, on an average annual basis, and where the applicant requests and the council adopts no condition in the site certificate for the generating facility that would limit hours of operation other than restrictions on the use of alternative fuel. The council shall assume a 100 percent capacity factor for such plants and a 30-year life for the plants for purposes of determining gross carbon dioxide emissions.

(C) "Fossil-fueled power plant" means a generating facility that produces electric power from natural gas, petroleum, coal or any form of solid, liquid or gaseous fuel derived from such material.

(D) "Generating facility" means those energy facilities that are defined in ORS 469.300 (11)(a)(A), (B) and (D).

(E) "Gross carbon dioxide emissions" means the predicted carbon dioxide emissions of the proposed energy facility measured on a new and clean basis.

(F) "Net carbon dioxide emissions" means gross carbon dioxide emissions of the proposed energy facility, less carbon dioxide emissions avoided, displaced or sequestered by any combination of cogeneration or offsets.

(G) "New and clean basis" means the average carbon dioxide emissions rate per hour and net electric power output of the energy facility, without degradation, as determined by a 100-hour test at full power completed during the first 12 months of commercial operation of the energy facility, with the results

adjusted for the average annual site condition for temperature, barometric pressure and relative humidity and use of alternative fuels, and using a rate of 117 pounds of carbon dioxide per million Btu of natural gas fuel and a rate of 161 pounds of carbon dioxide per million Btu of distillate fuel, if such fuel use is proposed by the applicant. The council may by rule adjust the rate of pounds of carbon dioxide per million Btu for natural gas or distillate fuel. The council may by rule set carbon dioxide emissions rates for other fuels.

- (H) “Nongenerating facility” means those energy facilities that are defined in ORS 469.300 (11)(a)(C) and (E) to (I).
- (I) “Offset” means an action that will be implemented by the applicant, a third party or through the qualified organization to avoid, sequester or displace emissions of carbon dioxide.
- (J) “Offset funds” means the amount of funds determined by the council to satisfy the applicable carbon dioxide emissions standard pursuant to paragraph (c)(C) of this subsection.
- (K) “Qualified organization” means an entity that:
- (j) Is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on December 31, 1996;
 - (iii) Either is incorporated in the State of Oregon or is a foreign corporation authorized to do business in the State of Oregon;
 - (iv) Has in effect articles of incorporation that require that offset funds received pursuant to this section are used for offsets that will result in the direct reduction, elimination, sequestration or avoidance of carbon dioxide emissions, that require that decisions on the use of such funds are made by a body composed of seven voting members of which three are appointed by the council, three are Oregon residents appointed by the Bullitt Foundation or an alternative environmental nonprofit organization named by the body, and one is appointed by the applicants for site certificates that are subject to paragraph (d) of this subsection and the holders of such site certificates, and that require nonvoting membership on the decision-making body for holders of site certificates that have provided funds not yet disbursed under paragraph (d)(A) of this subsection;
 - (v) Has made available on an annual basis, beginning after the first year of operation, a signed opinion of an independent certified public accountant stating that the qualified organization’s use of funds pursuant to this statute conforms with generally accepted accounting procedures except that the qualified organization shall have one year to conform with generally accepted accounting principles in the event of a nonconforming audit;

(vi) Has to the extent applicable, except for good cause, entered into contracts obligating at least 60 percent of the offset funds to implement offsets within two years after the commencement of construction of the facility; and

(vii) Has to the extent applicable, except for good cause, complied with paragraph (d)(A)(i) of this subsection.

(3) Except as provided in ORS 469.504 for land use compliance and except for those statutes and rules for which the decision on compliance has been delegated by the federal government to a state agency other than the council, the facility complies with all other Oregon statutes and administrative rules identified in the project order, as amended, as applicable to the issuance of a site certificate for the proposed facility. If compliance with applicable Oregon statutes and administrative rules, other than those involving federally delegated programs, would result in conflicting conditions in the site certificate, the council may resolve the conflict consistent with the public interest. A resolution may not result in the waiver of any applicable state statute.

(4) The facility complies with the statewide planning goals adopted by the Land Conservation and Development Commission. [1993 c.569 §23 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §21; 1997 c.428 §4; 1999 c.365 §11; 2001 c.134 §10; 2003 c.186 §78]

469.504 Facility compliance with statewide planning goals; exception; amendment of local plan and land use regulations; conflicts; technical assistance; rules.

(1) A proposed facility shall be found in compliance with the statewide planning goals under ORS 469.503 (4) if:

(a) The facility has received local land use approval under the acknowledged comprehensive plan and land use regulations of the affected local government; or

(b) The Energy Facility Siting Council determines that:

(A) The facility complies with applicable substantive criteria from the affected local government's acknowledged comprehensive plan and land use regulations that are required by the statewide planning goals and in effect on the date the application is submitted, and with any Land Conservation and Development Commission administrative rules and goals and any land use statutes that apply directly to the facility under ORS 197.646;

(B) For an energy facility or a related or supporting facility that must be evaluated against the applicable substantive criteria pursuant to subsection (5) of this section, that the proposed facility does not comply with one or more of the

applicable substantive criteria but does otherwise comply with the applicable statewide planning goals, or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section; or

- (C)** For a facility that the council elects to evaluate against the statewide planning goals pursuant to subsection (5) of this section, that the proposed facility complies with the applicable statewide planning goals or that an exception to any applicable statewide planning goal is justified under subsection (2) of this section.
- (2)** The council may find goal compliance for a facility that does not otherwise comply with one or more statewide planning goals by taking an exception to the applicable goal. Notwithstanding the requirements of ORS 197.732, the statewide planning goal pertaining to the exception process or any rules of the Land Conservation and Development Commission pertaining to an exception process goal, the council may take an exception to a goal if the council finds:

 - (a)** The land subject to the exception is physically developed to the extent that the land is no longer available for uses allowed by the applicable goal;
 - (b)** The land subject to the exception is irrevocably committed as described by the rules of the Land Conservation and Development Commission to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or
 - (c)** The following standards are met:

 - (A)** Reasons justify why the state policy embodied in the applicable goal should not apply;
 - (B)** The significant environmental, economic, social and energy consequences anticipated as a result of the proposed facility have been identified and adverse impacts will be mitigated in accordance with rules of the council applicable to the siting of the proposed facility; and
 - (C)** The proposed facility is compatible with other adjacent uses or will be made compatible through measures designed to reduce adverse impacts.
- (3)** If compliance with applicable substantive local criteria and applicable statutes and state administrative rules would result in conflicting conditions in the site certificate or amended site certificate, the council shall resolve the conflict consistent with the public interest. A resolution may not result in a waiver of any applicable state statute.
- (4)** An applicant for a site certificate shall elect whether to demonstrate compliance with the statewide planning goals under subsection (1)(a) or (b) of this section. The applicant shall make the election on or before the date specified by the council by rule.

- (5)** Upon request by the State Department of Energy, the special advisory group established under ORS 469.480 shall recommend to the council, within the time stated in the request, the applicable substantive criteria under subsection (1)(b)(A) of this section. If the special advisory group does not recommend applicable substantive criteria within the time established in the department's request, the council may either determine and apply the applicable substantive criteria under subsection (1)(b) of this section or determine compliance with the statewide planning goals under subsection (1)(b)(B) or (C) of this section. If the special advisory group recommends applicable substantive criteria for an energy facility described in ORS 469.300 or a related or supporting facility that does not pass through more than one local government jurisdiction or more than three zones in any one jurisdiction, the council shall apply the criteria recommended by the special advisory group. If the special advisory group recommends applicable substantive criteria for an energy facility as defined in ORS 469.300 (11)(a)(C) to (E) or a related or supporting facility that passes through more than one jurisdiction or more than three zones in any one jurisdiction, the council shall review the recommended criteria and determine whether to evaluate the proposed facility against the applicable substantive criteria recommended by the special advisory group, against the statewide planning goals or against a combination of the applicable substantive criteria and statewide planning goals. In making its determination, the council shall consult with the special advisory group and shall consider:
- (a)** The number of jurisdictions and zones in question;
 - (b)** The degree to which the applicable substantive criteria reflect local government consideration of energy facilities in the planning process; and
 - (c)** The level of consistency of the applicable substantive criteria from the various zones and jurisdictions.
- (6)** The council is not subject to ORS 197.180 and a state agency may not require an applicant for a site certificate to comply with any rules or programs adopted under ORS 197.180.
- (7)** On or before its next periodic review, each affected local government shall amend its comprehensive plan and land use regulations as necessary to reflect the decision of the council pertaining to a site certificate or amended site certificate.
- (8)** Notwithstanding ORS 34.020 or 197.825 or any other provision of law, the affected local government's land use approval of a proposed facility under subsection (1)(a) of this section and the special advisory group's recommendation of applicable substantive criteria under subsection (5) of this section shall be subject to judicial review only as provided in ORS 469.403. If the applicant elects to comply with subsection (1)(a) of this section, the provisions of this subsection shall apply only to proposed projects for which the land use approval of the local government occurs

after the date a notice of intent or an application for expedited processing is submitted to the State Department of Energy.

- (9) The State Department of Energy, in cooperation with other state agencies, shall provide, to the extent possible, technical assistance and information about the siting process to local governments that request such assistance or that anticipate having a facility proposed in their jurisdiction. [1997 c.428 §5; 1999 c.385 §10; 2001 c.134 §11; 2003 c.186 §79; 2005 c.829 §12]

Note: 469.504 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.505 Consultation with other agencies.

- (1) In making a determination regarding compliance with statutes, rules and ordinances administered by another agency or compliance with requirements of ORS 469.300 to 469.563 and 469.590 to 469.619 where another agency has special expertise, consultation with the other agency shall occur during the notice of intent and site certificate application process. Any permit application for which the permitting decision has been delegated by the federal government to a state agency other than the Energy Facility Siting Council shall be reviewed, whenever feasible, simultaneously with the council's review of the site certificate application. Any hearings required on such permit applications shall be consolidated, whenever feasible, with hearings under ORS 469.300 to 469.563 and 469.590 to 469.619.
- (2) Before resolving any conflicting conditions in site certificates or amended site certificates under ORS 469.503 (3) and 469.504, the council shall notify and consult with the agencies and local governments responsible for administering the statutes, administrative rules or substantive local criteria that result in the conflicting conditions regarding potential conflict resolution. [1993 c.569 §24 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1997 c.428 §9; 1999 c.385 §11]

469.507 Monitoring environmental and ecological effects of construction and operation of energy facilities.

- (1) The site certificate holder shall establish programs for monitoring the environmental and ecological effects of the construction and operation of facilities subject to site certificates to assure continued compliance with the terms and conditions of the certificate. The programs shall be subject to review and approval by the Energy Facility Siting Council.
- (2) The site certificate holder shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to guidelines established by the Energy Facility Siting Council or its designee. The council and the Director of the State Department of

Energy shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

- (3) The monitoring program may be conducted in cooperation with any federally operated program if the information available from the federal program is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the council or its designee.
- (4) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear fueled thermal power plant or nuclear installation. [1993 c.569 §25 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510); 1995 c.505 §22]

469.510 [Formerly 453.515; 1977 c.794 §15; repealed by 1993 c.569 §21 (469.501, 469.503, 469.505 and 469.507 enacted in lieu of 469.500 and 469.510)]

469.520 Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development.

- (1) Each state agency and political subdivision in this state that is concerned with energy facilities shall inform the State Department of Energy, promptly of its activities and programs relating to energy and radiation.
- (2) Each state agency proposing to adopt, amend or rescind a rule relating to energy facility development first shall file a copy of its proposal with the council, which may order such changes as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.
- (3) The effective date of a rule relating to energy facility development, or an amendment or rescission thereof, shall not be sooner than 10 days subsequent to the filing of a copy of such proposal with the council. [Formerly 453.525]