



Oregon

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To: Oregon Energy Facility Siting Council

From: Duane Kilsdonk, Compliance Officer

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Subject: Agenda Item E - 2022-2023 Compliance Update for the September 27, 2022 Council Meeting

Attachments: Attachment A: Compliance Program Work Plan for 2022/2023 for details associated with these compliance categories.

The Oregon Department of Energy (Department) Siting Division includes Senior Siting Analysts, Compliance Officers, Siting Policy Analyst/Rule Coordinator, Operation and Policy Analyst, Fiscal Analyst and Division Administrator. Each of these positions support the Compliance Officers and Compliance Program, as described in this staff report.

After a facility receives a site certificate, Department staff, on behalf of the Energy Facility Siting Council (EFSC or Council), monitor the facility throughout the life cycle of the facility to verify that it is constructed, operated and retired consistent with the approved site certificate conditions. In order to establish the Department's Compliance program expectations and goals and ensure all compliance activities are completed throughout the year, an annual compliance work plan is created.

The Compliance Update is provided to the Council once a year and outlines the specific compliance activities including process improvement work tasks.

Compliance Categories include:

- Facility Inspections
- Annual Report Review
- Incident Notification Response
- Annual Fee Assessment
- Financial Assurance Updates
- Site Certificate Transitions
- Exempt Facilities
- Site Inspection Request Resolution
- Notice of Violation Procedures
- Compliance Program Evaluation

ATTACHMENT A

OREGON DEPARTMENT OF ENERGY 2022/2023 SITING DIVISION – COMPLIANCE PROGRAM – WORK PLAN

After a facility receives a site certificate, Department staff, on behalf of EFSC, monitor the facility throughout its life cycle to verify that it is constructed, operated and retired consistent with the approved site certificate conditions. In order to establish program expectations and goals and ensure all compliance activities are completed throughout the year, an annual compliance work plan is created. The first part of the work plan briefly describes the categories of activities. The second part consists of three tables outlining the specific compliance activities. The first table consists of the Compliance Work Plan Tasks for 2022-2023. The second table consists of Process Improvement Work Tasks for 2022-2023. The final table is the Anticipated Inspections for 2022-2023. These tables include status update columns to track the progress of each item throughout the year.

Compliance Categories

1. Facility Inspections

Operating Facilities – It is staff's intent to inspect operating facilities annually. However, for some of the older facilities, desk audit and/or biennial onsite inspection may be more appropriate. A desk audit inspection is used to conduct an inspection remotely – using TEAMS or other similar format where Department staff and certificate holders can still meet face to face and have the ability to review records and conduct interview, saving travel expense and avoiding inclement weather. Frequency of onsite inspections is determined based on site certificate condition requirements such as noxious weed control, revegetation and habitat mitigation plans and recent known incidences (e.g. fire, spills or accidents). Large facilities may require several days or multiple persons to complete the inspection. Site inspections for facilities located in the same geographic area are scheduled together when possible to maximize efficiency and minimize cost.

Facilities in Pre-Construction/Construction – Documents required by site certificate conditions are reviewed and approved by Siting Division staff, including the Compliance Officer(s), Senior Siting Analyst, Senior Policy Advisor, Operations and Policy Analyst and Siting Policy Analyst/Rule Coordinator, as necessary and applicable. Department of Energy staff rely on state agencies, local governments, tribal governments and consultants where necessary. Inspections are done as needed to ensure site certificate conditions are met. For a typical site, one or more pre-construction site visits occur prior to groundbreaking activities to photograph and document conditions prior to any disturbance. During construction, inspections occur after the Department has received and reviewed the first semiannual construction progress

report. Inspections occur to verify that site certificate conditions are being met. Photos, document review, interviews and direct observation are the methods to verify compliance of the conditions. Each inspection concludes in a report of findings and is issued to the certificate holder.

2. Annual Report Review

Consistent with OAR 345-026-0080, most certificate holders are required to submit annual reports no later than April 30 of each year, except for OAR 345-026-0080(1)(a) the certificate holder shall submit a semiannual construction progress report to the department within 6 months after the start of construction and every 6 months thereafter. The annual report is an overview of the calendar year preceding the date of the report and includes the status of the facility, reliability and efficiency of power productions, fuel use, financial surety status, monitoring/mitigation report and a compliance report /Compliance Matrix.

Prior to reviewing an annual report, staff familiarizes themselves with the operational conditions in the site certificate. The report is reviewed and any issues are noted. A semi-annual or annual site visit is conducted to verify information in the annual report and resolve any identified issues. A response letter is generated and sent to the certificate holder. If corrective action is required, a corrective action plan and schedule is requested and monitored.

Per OAR 345-030-0010, the research reactors at Oregon State University and Reed College must submit annual reports associated with their research reactors by August 1 of each year that details any environmental effects, as specified in rule, which occurred during the prior calendar year.

3. Incident Notification Response

Consistent with OAR 345-026-0170, a certificate holder is required to notify Siting staff within 72 hours of any occurrence involving an attempt by anyone to interfere with its safe operation, a significant natural event such as a fire, earthquake, flood, tsunami or tornado, or a human caused event such as a fire or explosion, or a fatal injury at a facility. Incidents are being recorded and tracked, according to reporting requirements under OAR 345-026-0170 and/or OAR 345-029-0010.

Oregon State University and Reed College have incident response requirements for their research reactors that are largely taken from the Nuclear Regulatory Commission's code of federal regulations.

4. Annual Fee Assessment

Consistent with ORS 469.421(5), most certificate holders are required to pay an annual fee based on the estimation of compliance activities' costs incurred by Department Siting staff for that facility. Each May, individual assessments for the next fiscal year are created. The assessments

take into account the time to review the annual reports, evaluate short- and long-term restoration and mitigation requirements, conduct the number of inspections to be done and administrative tasks such as records management and financial assurance updates. The annual fee is assessed in August for the July 1-June 30 period. Unanticipated work such as preparation for a proposed amendment, incident responses, or questions with annual reports will increase certificate holder's fee. Any unexpended fees are returned to the certificate holder or applied to the next year's assessment.

5. Financial Assurance Updates

Consistent with OAR 345-025-0006(8), certificate holders must maintain a bond or letter of credit in the amount estimated to restore the site back to a non-hazardous condition if the facility is retired and the certificate holder does not decommission the facility and restore the site. Bonds and letters of credit are typically updated annually to keep pace with inflation and the associated financial institutions are evaluated annually for financial viability. The Department securely holds these bonds or letters of credit on behalf of the Council. The total amount as of this report is \$210,676,118.

6. Site Certificate Conditions and Transitions

Development of clear and enforceable site certificate conditions are instrumental to the implementation of the Department's Compliance Program. Coordination between Senior Siting Analysts, Compliance Officers, Senior Policy Advisor, Siting Policy Analyst/Rule Coordinator, Operations and Policy Analyst and the Department's Department of Justice Legal Counsel, as appropriate and necessary, in drafting conditions allows the Compliance Program to ensure site certificates contain clear, enforceable and consistent conditions which, when applicable, can be applied across projects.

7. Exempt Facilities

Consistent with OAR 345-015-0350, certain facilities are exempt from the requirement of obtaining a site certificate. To date, sixteen facilities have been granted exemption status by EFSC. The most recent was the Port Westward Renewable Fuels Project which Council issued an order granted an exemption in May of this year.

8. Site Inspection Request Resolution

Anyone may request an inspection by Department staff of an EFSC-jurisdiction facility. Oregon Administrative Rules 345-026-0050(2) provide guidance on submitting a request, which is limited to two areas:

- a. The requestor believes a violation of an EFSC order, site certificate condition, or warranty has occurred or may imminently occur; or

- b. A situation exists that may lead to unnecessary exposure of an individual to hazardous materials or unsafe or dangerous conditions.

The Compliance Officer is responsible for reviewing requests, communicating appropriately with the requestor and EFSC, and completing investigations, as warranted. Requests can be made in writing, through email or through an online form on the agency’s website.

9. Violations

OAR 345 Division 29 outlines the process for issuing a notice of violation, assessing civil penalties and either revoking or suspending a site certificate. If a certificate holder or the operator of an exempt facility construct or operate a facility contrary to their site certificate or exemption, the enforcement procedures included in Division 29 are utilized. Enforcement proceedings would be managed by the Senior Policy Advisor, Assistant Division Administrator, Department’s Department of Justice Legal Counsel and in consultation with the Compliance Officer(s).

10. Process Improvement/Compliance Program Evaluation

The Department constantly looks for process efficiencies to increase timeliness, consistency, inclusiveness, transparency, predictability and to enhance relationships with the various groups who participate in the EFSC process. Process improvement tasks are typically one-time efforts that allow us to better perform the compliance responsibilities listed above. Proposed process improvement tasks currently planned to be undertaken in 2022-2023 are included in the “Improvement Tasks” table below.

Annual Tasks

Task Description	Status Update
<p><u>2022-2023 Facility Inspections</u> –16 operational onsite inspections –10 operational Desk Audits - virtual meeting with certificate holder –16 construction onsite inspections</p>	
<p><u>Annual Report Review –</u></p> <ul style="list-style-type: none"> • Receive all by April 30 (OSU and Reed research reactors submit by Aug 1) • Review annual report then conduct a semi-annual or annual site inspection to verify conditions. During the annual report review, if the Department has questions or issues, the Department first works with the certificate holder to find answers or resolution. Additionally, the Compliance Officer may be able to resolve the issue during the site visit. 	<p>The Department has received all required Annual reports.</p> <p>Review of the Annual Reports will coincide with facility inspections.</p>

<u>Financial Assurance Updates</u> – Ensure all bonds and letters of credit are updated to reflect present value. Verify all financial institutions are financially viable.	All Financial Assurances are up to date with the total amount of Assurances currently at \$210,676,118
<u>Annual Assessment</u> – Create Individual assessments based on forecasted work/costs associated with each facility.	Annual Assessment period is July through June
<u>Incident Response</u> – Provide the appropriate Department response to any safety, fatal injury or natural event incident at a facility.	13 Incidents reported in 2022
<u>Violations</u> – Pursue all violations of site certificates and exemptions.	None completed to Date

Improvement Tasks

Task Description	Status Update
<u>Habitat Mitigation Area Assessment</u> – Establish procedures to evaluate Site Certificate Habitat Mitigation site; the protection of the habitat quality; the results of the enhancement actions conducted and the usage of the area by avian and mammal species.	As the Department and or the Department’s consultants review the Annual Reports, they are to identify tasks to follow up on and may need to conduct a Site inspection to verify compliance.
<u>Compliance Program Roles and Responsibilities</u> – Define the roles for various members of the Siting team in the Compliance program.	The first step was to conduct a Responsible, Accountable, Consulted, and Informed (RACI) exercise; this step has been completed. The goal is to transition to a model where responsibilities for execution of the Compliance program are shared among the members of the Siting team.
<u>Incident Response Process</u> – Define the process to be conducted after an incident is reported, including the agency response, tracking, and requests for corrective action.	A formal process improvement exercise to define the incident reporting process was completed during the prior fiscal year, and a database for tracking incidents was established. The next step is to establish the reporting requirements for various types of incidents, citing the basis for the Council’s authority.

Task Description	Status Update
<p><u>Desk Audit inspections</u> - Introduce process for conducting Desk Audit inspections in lieu of annual on-site inspections.</p>	<p>Establish a process for conducting “virtual” site inspections for facilities with an established compliance record. The first facility to undergo a desk audit inspection is scheduled for September 2022. Note: On-site inspections are still to be conducted at least every second year.</p>

Forecasted Operating, Construction and Desk Audits Inspections

Facility Name	Phase	Anticipated # of Inspections
Bakeoven Solar	Construction	2 Const.
Biglow Canyon Wind Farm	Operating	1 in-person
Boardman Solar Facility	Approved -Not built <i>Must construct by 2/23/2024</i>	Not Anticipated
Carty Generating Station	Operating & Construction	1 in-person 2 for Const.
Columbia Ethanol Project	Operating	1 Desk Audit Inspection
Coyote Springs Cogeneration - PGE	Operating	1 Desk Audit Inspection
Coyote Springs Cogeneration - Avista	Operating	1 Desk Audit Inspection
Daybreak Solar Project	Under Construction	2 Const.
Eugene to Medford Power Line	Operating	1 Desk Audit Inspection
Golden Hills Wind Project	Operating	1 in-person
Hermiston Generating Project	Operating	1 in-person
Hermiston Power Project	Operating	1 in-person
Klamath Cogeneration Project	Operating	1 in-person
Klamath Generation Peakers	Operating	1 in-person
Klondike III Wind Project	Operating	1 Desk Audit Inspection
Leaning Juniper IIA Wind Power Facility	Operating	1 Desk Audit Inspection

Leaning Juniper IIB Wind Power Facility	Operating	1 Desk Audit Inspection
Montague Wind Power Facility	Operating	1 in-person
Montague Solar Facility	Construction	2 Const.
MST - MIST NWNG Storage	Operating	1 Desk Audit Inspection
OSU Research Reactor	Operating	Not Anticipated
Port Westward Generating Project 1&2	Operating	1 in-person
Reed Research Reactor	Operating	Not Anticipated
Shepherds Flat Central	Operating & Construction	1 in-person 2 for Const.
Shepherds Flat North	Operating & Construction	1 in-person 2 for Const.
Shepherds Flat South	Operating & Construction	1 in-person 2 for Const.
South Mist Feeder Pipeline	Operating	1 Desk Audit Inspection
South Mist Pipeline Extension	Operating	1 Desk Audit Inspection
Springfield Utility-Industrial Energy Center	Operating	Not Anticipated
Stateline Wind Project	Operating & Construction	1 in-person 2 for Const.
Summit Ridge Wind Farm	Construction	Not Anticipated
Wheatridge Renewable Energy Facility I (PGE)	Operating	1 in-person
Wheatridge Renewable Energy Facility II	Operating	1 in-person
Wheatridge Renewable Energy Facility III	Operating (Solar)	1 in-person
Site of Decommissioned Trojan Nuclear Plant	On site, long term fuel storage (ISFSI) Independent Spent Fuel Storage Installation	Not Anticipated
	On Site Operational Inspections	16
	Desk Audits Audit Inspections	10
	Construction Inspections	16