

BEFORE THE ENERGY FACILITY SITING COUNCIL

In the Matter of a Request for)
Exemption from Energy Facility Site)
Certificate requirements for the)
Pacific Ethanol facility proposed by)
Pacific Ethanol, Inc.)

ORDER GRANTING EXEMPTION

On April 19, 2006, Pacific Ethanol Inc. submitted an application for exemption from requirements to obtain an Energy Facility Site Certificate for a proposed ethanol production facility located at the Port of Morrow in Boardman, Oregon. The refinery will receive corn for conversion into ethanol and distiller wet grains (an animal feed). The ethanol will be intended for use as fuel. The applicant, Pacific Ethanol, Inc., is based in Portland, Oregon..

Applicable Regulations

The definition of "Energy facility" at ORS 469.300(11)(a) includes:

(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.

The Pacific Ethanol facility will be designed to produce up to 42 million gallons of fuel-grade ethanol per year. This is equivalent to approximately 9.7 billion BTU/day (HHV)¹. Therefore, the facility is an "energy facility" under ORS 469.300(11)(a).

Oregon statute exempts certain fuel producing energy facilities from EFSC jurisdiction. Pacific Ethanol requests an exemption under ORS 469.320(2)(f), which states that no site certificate shall be required for:

- "(f) An energy facility as defined in ORS 469.300(11)(a)(G), if the facility
- (A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;
 - (B) Has received local land use approval under the applicable acknowledged comprehensive plant and land use regulations of the affected local government and the facility complies with any statewide planning goal or rules of the Land Conservation and Development Commission that are directly applicable to the facility
 - (C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section, and
 - (D) Produces a synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge."

¹ Based on Higher Heating Value of ethanol at 84,000 BTU/gal.

Review of Exemption Request

The Council has reviewed Pacific Ethanol's request under its rules at OAR 345-015-0370.

The Pacific Ethanol request for exemption is unusual in that Pacific Ethanol previously filed a Notice of Intent (NOI) to file an application for site certificate pursuant to ORS 469.330.² The NOI and this exemption request are for the same facility. The NOI states that Pacific Ethanol will ship its ethanol product by barge, rail and truck, without restriction on the percentage of product shipped by truck. The exemption request is based on Pacific Ethanol shipping at least 90% of its product by barge and rail. In all other respects, the exemption request relies on the facility description in the NOI.

On May 3, 2006, the Oregon Department of Energy (ODOE) determined that the exemption request met the content requirements at OAR 345-015-0370(7). ODOE deemed the exemption request complete and issued notice of filing to Pacific Ethanol and to the Council's general mailing list.

The Council considered ODOE's recommended findings regarding this exemption request at a meeting in Corvallis, Oregon on May 19, 2006.

Based on the information in the request for exemption and on staff recommendations in ODOE's notice of filing, the Council makes the following findings regarding compliance with the exemption criteria of ORS 469.320(2)(f).

Compliance with Exemption Criteria

To grant the exemption, the Council must find that the facility:

(A) Uses biomass exclusively from grain, whey or potatoes as the source of material for conversion to a liquid fuel;

Pacific Ethanol states that the facility will initially receive corn as feedstock for conversion into fuel grade ethanol and distiller's wet grains. Pacific Ethanol may switch to locally produced potatoes or whey as feedstock. Therefore, the Council finds that criterion (A) is met.

(B) Has received local land use approval under the applicable acknowledged comprehensive plant and land use regulations of the affected local government and the facility complies with any statewide planning goal or rules of the Land Conservation and Development Commission that are directly applicable to the facility

The exemption request includes a letter of April 11, 2006 from Carla McLane, Morrow County Planning Director. The letter states that the ethanol facility is an outright permitted use in the Port Industrial zone, where the facility is proposed.

² Pacific Ethanol Notice of Intent, filed March 3, 2006.

The Council has previously found³ that Morrow County's comprehensive land use plan is acknowledged by LCDC and that for a facility in the Port Industrial zone, no statewide planning goals or rules apply directly to the facility under ORS 197.464.

The letter from Carla McLane points out that Pacific Ethanol must still obtain the required zoning permit and building permits and must still go through county site plan review prior to construction. However, the zoning permit, building permits and site plan review are not considered to be the land use approvals required in criterion (B) of ORS 469.320(2)(f). The county planning director's determination that the facility is an outright permitted use is sufficient to meet the exemption criterion. The Council therefore finds that criterion (B) is met.

(C) Requires no new electric transmission lines or gas or petroleum product pipelines that would require a site certificate under subsection (1) of this section.

The facility's expected load is approximately 3.5 MW, which would be supplied by Umatilla Electric Coop. The only transmission line needed would be 2000 feet or less. Natural gas would be supplied by Cascade Natural Gas. The NOI describes the gas supply line as 6 inches in diameter and 3500 feet long. Neither the gas line nor the transmission line would be an energy facility on a stand alone basis. Therefore the Council finds that criterion (C) is met.

(D) Produces a synthetic fuel, at least 90 percent of which is used in an industrial or refueling facility located within one mile of the facility or is transported from the facility by rail or barge."

The exemption request shows that the Union Pacific railroad serves the Port of Morrow Industrial Park, with ample capacity to ship 90% of the facility's output by rail. The Port of Morrow and Pacific Ethanol also propose to build a barge loading facility. Seven to eight barges per week would be necessary to ship 90% of the facility's design output to the market. Therefore, the Council finds that criterion (D) is met.

Conclusion

Although not required for the exemption, Morrow County's requirements for zoning permits, building permits and site plan review still apply and must be met prior to construction.

The Council determines that the proposed Pacific Ethanol facility, as described in the exemption request submitted by Pacific Ethanol Inc. on April 19, 2006, is exempt from its jurisdiction pursuant to ORS 469.320(2)(f).

The exemption is predicated on the facility's continued compliance with all criteria at ORS 469.320(2)(f)(A) through (D). If Pacific Ethanol should wish to ship more than 10% of its

³ EFSC Order Approving Exemption for the Oregon Ethanol LLC facility, January 20, 2006

ethanol product by truck, then the facility would no longer meet the exemption criteria and must first obtain an Energy Facility Site Certificate.

Hans Neukomm
Hans Neukomm, Chair
Energy Facility Siting Council

5/19/06
date

Notice of Right to Appeal

Pursuant to ORS 469.320(4), you have the right to appeal this Order to the Oregon Supreme Court as provided 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. To appeal you must file a petition for judicial review with the Supreme Court within 60 days from the day this order was served on you. If this order was personally delivered to you, the date of service is the date you received this order. If this order was mailed to you, the date of service is the date it was mailed, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you lose your right to appeal. The record on review by the Supreme Court will be the record established in the council proceeding on this exemption.