

Chapter 469

1975 REPLACEMENT PART

Energy Conservation

POLICY	
469.010	Legislative findings
DEPARTMENT OF ENERGY	
469.020	Definitions for ORS 176.810, 469.010 to 469.140, 469.990, 757.710 and 757.720
469.030	Department of Energy; creation; duties
469.040	Director; duties; appointment
469.050	Limitations on employment of past director; sanctions
469.060	Report to Governor and Legislative Assembly; energy pricing structures research
469.070	Energy forecast; contents; energy forecast by industry
469.080	Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse
469.090	Confidentiality of information submitted under ORS 469.080
469.100	Agency consideration of legislative policy; report to Energy Policy Review Committee
469.110	Dealings with Federal Government; intervention by department in agency action
469.120	Energy Department Account; appropriation; record of moneys
469.130	Energy Policy Review Committee; appointment; term; vacancy; duties; compensation; recommendations to Legislative Assembly
469.140	Study of means of funding Department of Energy
REGULATION OF ENERGY FACILITIES (General Provisions)	
469.300	Definitions for ORS 469.300 to 469.570 and 469.992
469.310	Policy
(Siting)	
469.320	Site certificate required; exceptions
469.330	Notice of intent to file application for site certificate; public notice
469.340	Geothermal resources for geothermal electric power plant; site application
469.350	Application for site certificate; comment and recommendation
469.360	Study of site applications; costs; payment by applicant
469.370	Hearings on site application; recommendations; judicial review; certificate submitted to Governor; recommendation or rejection by council
469.380	Conduct of hearings
469.390	Waiting period for issuance of certificate; waiver
469.400	Execution of site certificates; contents
469.410	Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate
469.420	Fees; exemptions
469.430	Site inspections
469.440	Grounds for revocation or suspension of certificates
(Administration)	
469.450	Energy Facility Siting Council; appointment; confirmation; term; restrictions
469.460	Officers; meetings; compensation and expenses
469.470	Powers and duties
469.480	County advisory groups; special advisory groups; compensation and expenses
(Rules; Standards)	
469.490	Adoption of rules
469.500	Adoption of safety standards
469.510	Considerations in adoption of safety, construction and operation rules
469.520	Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development
(Plant Operations; Radioactive Wastes)	
469.530	Regulation of transport of radioactive material; duties of certificate holders and transporters; review and approval of security programs
469.540	Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs
469.550	Order for halt of plant operations or activities with radioactive material; notice
(Records)	
469.560	Records; public inspection; confidential information
(Enforcement)	
469.570	Court orders for enforcement
PENALTIES	
469.990	Penalties for ORS 469.090
469.992	Civil penalties

CROSS REFERENCES

Administrative procedures governing state agencies, Ch. 183
Energy Conservation Board, 456.730 to 456.745
Environmentally hazardous wastes, 459.410
Joint operating agencies for electrical power, 262.005 to 262.115

People's Utility Districts, function of director of department, Ch. 261
Public meetings law exemption, 192.690

POLICY

469.010 Legislative findings. The Legislative Assembly finds and declares that:

(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include, but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality.

(d) That state government assist every citizen and industry in adjusting to a diminished availability of energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That all state agencies, when making monetary decisions take into consideration cost factors including but not limited to energy resource depletion and environmental costs.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced.

[1975 c.606 s 1]

DEPARTMENT OF ENERGY

469.020 Definitions for ORS 176.810, 469.010 to 469.140, 469.990, 757.710 and 757.720. As used in ORS 176.810, 469.010 to 469.140, 469.990, 757.710 and 757.720, unless the context requires otherwise:

(1) "Agency" includes a department or other agency of state government, city, county, municipal corporation, political subdivision, port, people's utility district, joint operating agency and electric cooperative.

(2) "Coal supplier" means any person engaged in the wholesale distribution in this state of coal intended for use in this state for an energy facility.

(3) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(4) "Department" means the Department of Energy created under ORS 469.030.

(5) "Director" means the Director of the Department of Energy.

(6) "Energy facility" means any of the following:

(a) An electric power generating plant with a nominal electric generating capacity of more than 25,000 kilowatts, including but not limited to a thermal power plant or hydropower plant.

(b) A nuclear installation as defined in ORS 469.300.

(c) A high voltage transmission line of more than 10 miles in length with a capacity in excess of 230,000 volts, to be constructed in more than one political subdivision in this state; but excluding lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity in excess of 230,000 volts.

(d) A solar collecting facility using more than 100 acres of land, or providing more than 25,000 kilowatts of power.

(e) A pipeline that is:

(A) Six inches or greater in diameter, and five miles or longer in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form or other fossil energy resource.

(B) Sixteen inches or greater in diameter, and five miles or longer in length, used for the transportation of natural or synthetic gas.

(7) "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.

(8) "Petroleum supplier" means a petroleum refiner in this state, or any person engaged in the wholesale distribution of more than 5 million gallons of crude petroleum or derivative thereof or 2 million gallons of propane annually in this state.

(9) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structure, road and rail access, pipeline basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility.

(10) "Site" means a proposed location of an energy facility, and its related or supporting facilities.

(11) "Thermal power plant" has the meaning given that term by ORS 469.300.

(12) "Utility" includes:

(a) An individual, 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.

[1975 c 606 s 2]

469.030 Department of Energy; creation; duties. (1) There is created the Department of Energy.

(2) The department shall:

(a) Be the central repository within the state government for the collection of data on energy resources;

(b) Endeavor to utilize all public and private sources to inform and educate the public about energy problems and ways in which the public can conserve energy resources;

(c) Engage in research, but whenever possible, contract with appropriate public or private agencies and dispense funds for research projects and other services related to energy resources, except that the department shall endeavor to avoid duplication of research whether completed or in progress;

(d) Qualify for, accept and disburse or utilize any private or federal moneys or

services available for the administration of ORS 176.810, 192.500, 192.690, 453.765, 469.010 to 469.990, 757.710 and 757.720;

(e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;

(f) Be a clearinghouse for energy research to which all agencies shall send information on all energy related research;

(g) Prepare contingent energy programs to include all forms of energy not otherwise provided pursuant to ORS 757.710 and 757.720;

(h) Maintain an inventory of energy research projects in Oregon and the results thereof; and

(i) Collect, compile and analyze energy statistics, data and information.

[1975 c 606 s.4]

469.040 Director; duties; appointment. (1) The department shall be under the supervision of the director who shall:

(a) Supervise the day-to-day functions of the department;

(b) Supervise and facilitate the work and research on energy facility siting applications at the direction of the Energy Facility Siting Council;

(c) Hire, assign, reassign and coordinate personnel of the department and prescribe their duties and fix their compensation, subject to the State Merit System Law; and

(d) Adopt rules and issue orders to carry out his duties and those of the department in accordance with ORS chapter 183 and the policy stated in ORS 469.010.

(2) The director shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The director shall serve at the pleasure of the Governor.

[1975 c.606 s.5]

469.050 Limitations on employment of past director; sanctions. (1) A person who has been director shall not, within two years after he ceases to be the director, be an employe of:

(a) An owner or operator of an energy facility;

(b) An applicant for a site certificate; or

(c) Any person who engages in the sale or manufacture of any energy resource or of any major component of an energy facility in Oregon.

(2) Employment of any individual in violation of paragraph (a) or (b) of subsection

(1) of this section shall be grounds for the revocation of any license issued by this state or any agency thereof and held by the person that employs such individual.

[1975 c 606 ss.6, 7]

469.060 Report to Governor and Legislative Assembly; energy pricing structures research. (1) Beginning January 1, 1977, and every year thereafter, the department shall transmit to the Governor and the Legislative Assembly a comprehensive report including comments on the energy forecasts of the utilities and on the department's independent analysis and evaluation. The report shall be designed to identify emerging trends related to energy supply, need and conservation and public health and safety factors, to estimate the level of state-wide energy need for each year in the forthcoming 5-year period and for the 10th and 20th year following issuance of the report.

(2) Notwithstanding paragraph (c) of subsection (2) of ORS 469.030, the department shall conduct research into all energy pricing structures, relating price to consumption and considering the interchangeability of the various energy forms. In conducting the research, the department shall consider matters including, but not limited to, price elasticity, cross elasticity of demand and energy rate structures, as well as the rate structure studies of the Public Utility Commissioner. This research shall be submitted annually to the Legislative Assembly and the Governor as a part of the report described in subsection (1) of this section.

[1975 c 606 s 8]

469.070 Energy forecast; contents; energy forecast by industry. (1) The department shall annually issue a preliminary and final forecast on the energy situation as it affects Oregon. The forecast shall include, but not be limited to the estimate of:

(a) Energy demand and the resources available to meet that demand; and

(b) Impacts of conservation and new technology, increased efficiency of present energy facilities, additions to present facilities, and construction of new facilities, on the availability of energy to Oregon.

(2) The forecast shall include summary forecasts for:

(a) Each of the first five years immediately following issuance of the forecast; and

(b) The 10th and 20th year following the issuance of the forecast.

(3) The preliminary and final forecasts shall identify all major components of

demand and any anticipated increase in demand, including but not limited to population, commercial, agricultural and industrial growth.

(4) (a) Except as provided in paragraph (b) of this subsection, by February 1, 1976, and annually thereafter, utilities, petroleum suppliers and coal suppliers shall submit to the department an energy forecast in a manner to be prescribed by the director. Any person required to submit an energy forecast under this subsection may file a single forecast on behalf of more than one operation owned or otherwise controlled by him.

(b) Any petroleum supplier who is a wholesale distributor and who is solely supplied by one or more persons who are also required to submit a forecast under this subsection shall be exempt from the requirements of this subsection upon written proof of such source of supply to the director.

(5) The department by July 1, 1976, and annually thereafter, shall issue the preliminary forecast, and not later than the 45th day thereafter, commence public hearings thereon.

(6) All state agencies, energy suppliers, owners of energy facilities, and other persons whom the director believes have an interest in the subject or who have applied to the director therefor, shall be supplied a copy of the preliminary forecast. The director may charge a reasonable fee for a copy of this forecast not to exceed the cost thereof.

(7) After the public hearings on the preliminary forecast, but not later than January 1 following the issuance of the preliminary forecast, the department shall issue a final forecast.

(8) The final forecast shall be included within the report provided for in subsection (1) of ORS 469.060.

[1975 c 606 s 9]

469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse. (1) The director may obtain all necessary information from producers, suppliers and consumers of energy resources within Oregon, and from political subdivisions in this state, as necessary to carry out ORS 176.810, 192.500, 192.690, 453.765, 469.010 to 469.990, 757.710 and 757.720. Such information may include, but not be limited to:

(a) Sales volume;

(b) Forecasts of energy resource requirements;

(c) Inventory of energy resources; and

(d) Local distribution patterns of information under paragraphs (a) to (c) of this subsection.

(2) In obtaining information under subsection (1) of this section, the director with the written consent of the Governor may subpoena witnesses, material and relevant books, papers, accounts, records and memoranda, administer oaths, and may cause the depositions of persons residing within or without Oregon to be taken in the manner prescribed for depositions in civil actions in circuit courts, to obtain information relevant to energy resources.

(3) In obtaining information under this section the director:

(a) Shall avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state or local regulatory authority that is available to the director for such study; and

(b) Shall cause reporting procedures, including forms, to conform to existing requirements of federal, state and local regulatory authorities.

(4) Any person who is served with a subpoena to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or the documents or records as provided in ORS 176.810, 192.500, 192.690, 453.765, 469.010 to 469.990, 757.710 and 757.720, may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORS 45.181 in the case of depositions.

[1975 c.606 s 18]

469.090 Confidentiality of information submitted under ORS 469.080. (1) Information furnished under ORS 469.080 shall be confidential and maintained as such, if so requested by the person providing the information, if the information meets one of the following requirements:

(a) The information is proprietary in nature; or

(b) The information consists of geological and geophysical information and data, including maps, concerning oil, gas or geothermal resource wells.

(2) Nothing in this section prohibits the use of confidential information to prepare statistics or other general data for publication, so presented as to prevent identification of particular persons.

[1975 c.606 s.19]

469.100 Agency consideration of legislative policy; report to Energy Policy

Review Committee. (1) All agencies shall consider the policy stated in ORS 469.010 in adopting or modifying their rules and policies.

(2) All agencies shall review their rules and policies to determine their consistency with the policy stated in ORS 469.010.

(3) (a) On July 1, 1976, and annually thereafter, each state agency shall submit to the Energy Policy Review Committee created under ORS 469.130 a report that identifies the rules and policies of the agency that are consistent and inconsistent with the policy stated in ORS 469.010 and that indicates the reasons for the inconsistencies. The report shall be submitted in such form as the committee may require.

(b) As used in this subsection, "state agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

[1975 c.606 s.3]

469.110 Dealings with Federal Government; intervention by department in agency action. (1) As to any matter involving the Federal Government, its departments or agencies, which is within the scope of the power and duties of the department, the department may represent its interest or, upon request, may represent the interest of any county, city, state agency, special district or owner or operator of any energy facility.

(2) The department may intervene in any proceeding undertaken by an agency for the purpose of expressing its views as to the effect of an agency action, upon state energy resources and state energy policy.

[1975 c 606 s 12]

469.120 Energy Department Account; appropriation; record of moneys. (1) The Energy Department Account is established.

(2) All funds received by the department pursuant to law shall be paid into the State Treasury and credited to the Energy Department Account. All moneys in the account are continuously appropriated to the department for payment of expenses of the department.

(3) The department shall keep a record of all moneys deposited in the Energy Department Account. The record shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged.

[1975 c 606 s 13]

469.130 Energy Policy Review Committee; appointment; term; vacancy; duties; compensation; recommendations to Legislative Assembly. (1) There is created the Energy Policy Review Committee. The committee shall be composed of nine members appointed in the following manner:

(a) The Governor shall appoint three public members, except that the Governor shall not appoint employes of the Executive Department or members of the Legislative Assembly;

(b) The President of the Senate shall appoint three members of the Senate, including at least one member recommended by the Minority Leader.

(c) The Speaker of the House of Representatives shall appoint three members of the House, including at least one member recommended by the Minority Leader.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection, the term of office of each member is two years. Before the expiration of the term of any public member, the Governor shall appoint a successor whose term begins on July 1 next following.

(b) The term of office of a legislative member expires upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. Before the expiration of the term of any legislative member, the appointing authority shall appoint a successor.

(c) No member shall serve more than two terms.

(d) A vacancy shall be filled by the appointing authority in the manner provided for the original appointment.

(3) The committee shall.

(a) Represent to the director public concerns on contingency or curtailment planning;

(b) Review for the director conservation programs and recommend public information policy thereon;

(c) Advise the director on areas of needed research and development;

(d) Comment upon the preliminary and final forecast prepared pursuant to ORS 469.070;

(e) Review statutes and rules of agencies for consistency with the policy set forth in ORS 469.010, review reports submitted to it pursuant to paragraph (a) of subsection (3) of ORS 469.100; and

(f) Before January 1 of each odd-numbered year, submit a report containing the results of its review, including any

proposed legislation, and recommended policy changes to the Legislative Assembly.

(4) Committee members shall be entitled to compensation and expenses as provided in ORS 292.495.

(5) (a) The committee shall select one of its members as chairman and another member as vice chairman for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of the committee shall act as the chairman of the committee in the absence of the chairman.

(b) The committee shall meet at least quarterly at the time and place determined by the chairman.

(6) The committee shall recommend to the Legislative Assembly changes in the state's energy policy and other energy-related legislation.

[1975 c 606 s 47]

469.140 Study of means of funding Department of Energy. The Energy Policy Review Committee shall study, and shall endeavor to identify the most equitable of, possible alternate means of assessing energy resource suppliers for purposes of funding the activities of the Department of Energy under ORS 176.810, 192.500, 192.690, 453.765, 469.010 to 469.990, 757.710 and 757.720. On or before February 1, 1977, the committee shall report its findings, including any appropriate proposed legislation, to the Fifty-ninth Legislative Assembly.

[1975 c 606 s 48]

REGULATION OF ENERGY FACILITIES

(General Provisions)

469.300 Definitions for ORS 469.300 to 469.570 and 469.992. As used in ORS 469.300 to 469.570 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 469.570 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 469.570 and 469.992.

(3) "Associated transmission lines" means new transmission lines constructed to connect a thermal power plant 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) "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.

(5) "Construction" means on-site work and construction, the cost of which exceeds \$250,000, excluding exploratory work.

(6) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(7) "Department" means the Department of Energy created under ORS 469.030.

(8) "Director" means the Director of the Department of Energy.

(9) "Electric utility" means individuals, 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, transmitting or distributing electric energy. "Electric utility" includes any person or public agency generating electric energy from an energy facility for its own consumption.

(10) "Energy facility" means any of the following:

(a) An electric power generating plant with a nominal electric generating capacity of more than 25,000 kilowatts, including but not limited to thermal power, hydropower, geothermal power, or 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 in excess of 230,000 volts, to be constructed in more than one political subdivision in this state; but excluding lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity in excess of 230,000 volts.

(d) A solar collecting facility using more than 100 acres of land, or providing more than 25,000 kilowatts of power.

(e) A pipeline that is:

(A) Six inches or greater in diameter, and five miles or longer in length, used for the transportation of crude petroleum or a

derivative thereof, liquified natural gas, a geothermal energy form or other fossil energy resource.

(B) Sixteen inches or greater in diameter, and five miles or longer in length, used for the transportation of natural or synthetic gas.

(11) "Nuclear installation" means any power reactor; nuclear fuel fabrication plant; nuclear fuel reprocessing plant; storage or waste disposal facility for radioactive waste produced from the operation of thermal power plants or nuclear installations, as described by rule of the council; and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities which are part of a thermal power plant.

(12) "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.

(13) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility.

(14) "Site" means any proposed location of an energy facility and related or supporting facilities.

(15) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate an energy facility on an approved site, incorporating all conditions imposed by the state on the applicant and all warranties given by the applicant to the state.

(16) "Thermal power plant" means an electrical or any other facility using any source of thermal energy with a nominal electric generating capacity of more than 25,000 kilowatts, 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.

(17) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for

or derived from any thermal power plant or nuclear installation, or the delivery of such material to a carrier for transportation.

(18) "Utility" includes:

(a) An individual, 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.

[Formerly 453 305]

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 469.570 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.

[Formerly 453 315]

(Siting)

469.320 Site certificate required; exceptions. After July 2, 1975, no energy 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 469.570 and 469.992, but no site certificate shall be required for an existing industrial or energy facility if the facility is merely modified to increase the electric capacity and not expanded. No energy facility shall operate except in conformity with the requirements of ORS 469.300 to 469.570 and 469.992.

[Formerly 453 325]

469.330 Notice of intent to file application for site certificate; public notice.

(1) Each applicant for a site certificate for a

nuclear installation, or for a thermal power plant with a nominal electric generating capacity of more than 200,000 kilowatts except combustion turbine power plants and geothermal-fueled power plants, must file with the council a notice of intent to file an application for a site certificate. The notice of intent must describe the proposed site with sufficient detail to enable the council to identify the proposed site.

(2) The council shall cause public notice to be given whenever a notice of intent is filed and provide a description of the proposed site in sufficient detail to inform the public of its location.

[Formerly 453 335]

469.340 Geothermal resources for geothermal electric power plant; site application. Any person desiring to utilize geothermal resources from a completed geothermal well as described in ORS 522.185 in a geothermal power plant for the purpose of producing electric power shall file with the council a site application.

[1975 c 552 s 37, 1975 c.606 s 26a]

469.350 Application for site certificate; comment and recommendation. (1) Applications for site certificates shall be made to the council on a form prescribed by the council and accompanied by the fee required by ORS 469.420. When a notice of intent is required by ORS 469.330 the application may be filed not sooner than 12 months after filing of the notice of intent.

(2) Proposed use of a site within an area designated by the council pursuant to ORS 469.470 as suitable for location of a particular type of energy facility does not preclude the necessity of the applicant obtaining a site certificate for the specific site.

(3) 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 Policy Review Board, the State Fish and Wildlife Commission, the Health Division, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commissioner of Oregon, the State Department of Agriculture, the Department of Transportation, the Department of Land Conservation and Development, the Economic Development Department and any city or county affected by the application.

[Formerly 453.345]

469.360 Study of site applications; costs; payment by applicant. The council shall study each site application and may commission an independent study of any aspect of the proposed energy facility. The full cost of the study shall be paid from the applicant's fee paid under subsection (2) of ORS 469.420. However, if costs of the study exceed the fee paid under ORS 469.420, the applicant must agree to pay any excess costs before they are incurred and must pay such costs after they are incurred. If the costs are less than the fee paid, the excess shall be refunded to the applicant. Expenses incurred for site studies, other than those incurred for studies authorized by this section, are the sole responsibility of the applicant.
[Formerly 453 355]

469.370 Hearings on site application; recommendations; judicial review; certificate submitted to Governor; recommendation or rejection by council. (1) The council shall hold public hearings in the affected area and elsewhere, as it deems necessary, on the application for a site certificate. At the conclusion of its hearings and upon receipt of the study authorized under ORS 469.360 the council shall either recommend or reject the application. The council must make its recommendation by the affirmative vote of at least four members, approving or rejecting any application for a certificate.

(2) Rejection or recommendation to grant an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review pursuant to ORS chapter 183.

(3) The certificate, if any, with any conditions prescribed by the council, shall be prepared and submitted to the Governor.

(4) The council shall either recommend 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 name plate 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 or a geothermal-fueled power plant;

(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 25,000 and 50,000 kilowatts;

(C) To add generating capacity to an existing dam; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.
[Formerly 453 365]

469.380 Conduct of hearings. (1) Any person may appear personally or by counsel to present testimony in any hearing before the council on any application for a site certificate.

(2) The council may, by proper order, permit any person to become a party complainant or defendant by intervention who appears to have an interest in the results of the hearing or who represents a public interest in such results. However, the request for intervention must be made before the final taking of evidence in the hearing.

(3) Any person authorized to intervene in the hearing on a site certificate may appeal the council's recommendation in the manner prescribed in ORS chapter 183. Such recommendation shall be deemed a final order for purposes of such appeal.
[Formerly 453 375]

469.390 Waiting period for issuance of certificate; waiver. Except as provided in section 4, chapter 609, Oregon Laws 1971, and ORS 469.410, no site certificate shall be issued under ORS 469.300 to 469.570 and 469.992 until the entire review time prescribed by ORS 469.370 has been utilized, except that the council may waive the time requirement if, pursuant to ORS 469.470, area studies of the entire state for that type of energy facility have been completed or have been determined to be unnecessary.
[Formerly 453.385]

469.400 Execution of site certificates; contents. (1) Except as provided in subsection (7) of this section, after expiration of the appeal period authorized by ORS 183.480 or after an appeal is completed, the site certificate shall be executed by the Governor for the State of Oregon and by the applicant.

(2) The certificate shall authorize the applicant to construct and operate the proposed energy facility subject to the conditions set forth in such certificate.

(3) The site certificate shall contain conditions for the protection of the public health and safety and shall require both

parties to abide by state law and rules of the council in effect on the date the site certificate is executed, except that upon a clear showing that there is danger to the public health and safety that requires stricter laws or rules, the state may, subject to ORS 469.500, require compliance with such stricter laws or rules.

(4) The site certificate shall contain the applicant's warranties as to its abilities required under subsection (3) of ORS 469.470, its provisions as to protection of the public health and safety and as to time of completion of construction.

(5) Subject to the conditions set forth therein, any certificate signed by the Governor 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 proposed energy facility. Affected state agencies shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the facility, subject only to condition of the site certificate. Each state agency that issues a permit, license or certificate shall continue to exercise enforcement authority over such permit, license or certificate.

(6) Where a site certificate authorizes the construction and operation of an energy facility within the boundaries of an incorporated city, the certificate shall be conditioned upon compliance with lawful ordinances in effect and enacted by the city on the date of filing of the notice of intent or the application, whichever is earlier. If a city subsequently adopts lawful ordinances that are stricter than any ordinance in effect on the date of filing of the notice of intent or the application, upon a clear showing that there is danger to the public health and safety the state may require compliance with such stricter ordinances.

(7) Except as site certificates are authorized under section 4, chapter 609, Oregon Laws 1971 and ORS 469.410, the Governor may refuse to execute a site certificate submitted by the council but he cannot execute a site certificate application rejected by the council. If the Governor does not sign the certificate on or before the 30th day after it is submitted to him, the certificate is void.

[Formerly 453.395]

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate. (1) Any applicant for a site

certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.810, 192.500, 192.690, 453.765, 469.010 to 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Governor for:

(a) Any transmission lines for which application has been filed with the Federal Government and the Public Utility Commissioner 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 subsections (3) and (4) of ORS 469.420 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 adopted pursuant to paragraph (d) of subsection (1) of ORS 469.040 and rules of the council adopted pursuant to ORS 469.300 to 469.570.

(3) Site certificates executed by the Governor under ORS 469.400 prior to July 2, 1975, or pursuant to the provisions of section 58, chapter 606, Oregon Laws 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates.

[1975 c 606 s.24]

469.420 Fees; exemptions for certain reactors and electric utilities. (1) Every person filing notice of intent to file for a site certificate shall submit a fee of \$5,000 for each site so indicated. If the person subsequently becomes an applicant for a site certificate, the amount paid at the time notice of intent is filed shall be credited against the amount otherwise due under subsection (2) of this section.

(2) Every applicant for a site certificate shall submit to the department at the same time as the application for a site certificate is filed with the council, an amount equal to \$0.05 per kilowatt of the maximum planned net electric capacity for the proposed addition to an industrial facility or an energy facility or for the proposed thermal power plant, or an amount equal to \$1,000 for each \$1 million of estimated capital investment in any other proposed energy facility or addition thereto, less any amount credited under subsection (1) of this section.

(3) Each holder of a certificate under ORS 469.300 to 469.570 and 469.992 shall pay a fee, due on the July 1 next following issuance of a site certificate and annually thereafter. The annual fee shall be determined as follows:

(a) For a thermal power plant, \$0.025 per kilowatt of the maximum net electric capacity authorized by the site certificate. Once construction on the plant has begun the name plate rating of the plant shall be used in calculating the annual fee.

(b) For any other energy facility, \$300 for each \$1 million (or portion thereof) of estimated capital investment. Once the energy facility is in service, the booked original cost of such energy facility shall be used thereafter in calculating the annual fee.

(4) In addition to the annual fee required under subsection (3) of this section, each natural gas and electric utility in this state shall pay annually to the department by July 1 of each year, its share of \$300,000 as follows:

(a) Each electric utility shall pay a share of \$200,000 which share shall be determined on the ratio that the annual kilowatt hour sales of each electric utility bears to the annual total kilowatt hour sales of all such electric utilities, as determined by the department.

(b) Each natural gas utility shall pay a share of \$100,000 which share shall be determined on the ratio that the annual sales of therms of natural gas each natural gas utility bears to the annual total sales of therms of natural gas of all such natural gas utilities, as determined by the department.

(5) Except as a portion of the application fee may be refunded under ORS 469.360, funds received under this section are continuously appropriated to the department for payment of expenses incurred under ORS 176.810, 192.500, 192.690, 453.765, 469.010 to 469.990, 757.710 and 757.720.

(6) 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 (3) and (4) of this section.

[Formerly 453 405]

469.430 Site inspections. The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the department to inspect, the site at any time.

[Formerly 453 415]

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

(1) For any breach of a warranty; or

(2) For failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) For violation of the provisions of ORS 469.300 to 469.570 and 469.992 or rules adopted pursuant to ORS 469.300 to 469.570 and 469.992.

[Formerly 453 425]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established an Energy Facility Siting Council consisting of seven public members, who shall be appointed by the Governor, subject to confirmation by the Senate in the manner prescribed in ORS 171.560 and 171.570.

(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 employe, director or retired employe 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 his term accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.570 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]

469.460 Officers; meetings; compensation and expenses. (1) The council shall annually elect from among its members a chairman and vice chairman with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.570 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 chairman 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. The 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) After public hearings, designate areas within this state that are suitable or unsuitable for use as sites for the following types of energy facilities:

(a) Nuclear-fueled and fossil-fueled thermal power plants with nominal electric generating capacity of more than 200,000 kilowatts.

(b) Geothermal power plants.

(c) Each additional type of energy facility for which the council determines such designations are necessary.

(3) Establish standards and promulgate rules that applicants for site certificates must meet including, but not limited to, standards of financial ability and qualifications as to ability to construct and operate the energy facility to which the site certificate applies and prescribe the form.

(4) Conduct public hearings on the proposed location of any site after application is filed therefor.

(5) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in establishing standards for site selection.

(6) 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 469.570 and 469.992.

(7) 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 469.570 and 469.992.
[Formerly 453 455]

469.480 County advisory groups; special advisory groups; compensation and expenses. (1) The council shall designate the governing body of the city or county or counties as a special advisory group in any city or county or counties wherein a proposed site is located upon filing of a site application therefor.

(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 employes, 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.

[Formerly 453 475]

(Rules; Standards)

469.490 Adoption of rules. All rules adopted by the council pursuant to ORS 469.300 to 469.570 and 469.992 shall be adopted in the manner required by ORS chapter 183.
[Formerly 453 495]

469.500 Adoption of safety standards. (1) The council shall adopt safety standards promulgated as rules for the operation of all thermal power plants and nuclear installations. Such standards shall include but need not be limited to:

(a) Emission standards at the lowest practicable limits, taking into account the state of technology and the economics of improvements in relation to the benefits to public health and safety;

(b) All necessary safety devices and procedures, and

(c) The accumulation, storage, disposal and transportation of wastes including nuclear wastes.

(2) The council shall establish programs for monitoring the environmental and ecological effects of the construction and operation of thermal power plants and nuclear installations to assure continued compliance with the terms and conditions of the certificate and the safety standards adopted under subsection (1) of this section.

(3) The director 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 standards established by the council. The council and director shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(4) The monitoring program may be conducted in cooperation with any federally operated program if the information available therefrom is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the director.

(5) 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.
[Formerly 453 505]

469.510 Considerations in adoption of safety, construction and operation rules. In performing its duties and exercising its powers under ORS 469.300 to 469.570 and 469.992, the council shall, subject to ORS 469.500, set standards and promulgate rules for safety, construction and operation of thermal plants and nuclear installation which shall take into account the following:

(1) The health, safety and welfare of the public.

(2) The effects of chemical, waste heat, moisture and radioactive discharge or other impact on the environment and associated natural resources and physical processes, including humans, air, water, fish and wildlife.

(3) Rules and regulations of the federal Nuclear Regulatory Commission, the Environmental Protection Agency, the Federal Department of Transportation and the Federal Energy Administration or their successors.

(4) Land and water use characteristics of any site, including but not limited to the aesthetics of the site and the environment and the impact on present and future use of adjacent areas.

(5) Present and future industrial, commercial and residential power needs by classes and amount for each class.

(6) Beneficial use of waste water developed by a thermal power plant.

(7) The regulations, if any, of cities or counties relating to the installations of thermal power plants or nuclear installations within their respective borders.

(8) Ability of the affected area to absorb the industrial and population growth resulting from operation of the facility.

[Formerly 453 515]

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 department 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]

Note: Section 40b, chapter 606, Oregon Laws 1975, provides

Sec. 40b. On or before January 1, 1976, each state agency shall submit to the department, for the department's information, a copy of each rule of the state agency that relates to energy facility development and that is in effect on the date of the submittal

(Plant Operations; Radioactive Wastes)

469.530 Regulation of transport of radioactive material; duties of certificate holders and transporters; review and approval of security programs. (1) In cooperation with appropriate federal agencies, the council shall regulate the transportation process for all radioactive material derived from or destined for any thermal power plant or nuclear installation.

(2) The holder of a site certificate for any thermal power plant or nuclear installation and any transporter of radioactive materials derived from such plant or installation must keep the council and director

informed on the procedures, routes and schedules for the transportation of such materials.

(3) The council and the director shall review and approve all security programs attendant to a nuclear-fueled thermal power plant, a nuclear installation and the transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation. The council shall provide reasonable public notice of a meeting of the council held for purposes of such review and approval.

[Formerly 453 535]

469.540 Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs. (1) In instances where the director determines either from his monitoring or surveillance that there is danger of violation of a safety standard adopted under ORS 469.500 from the continued operation of a plant or installation, he may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

(2) An order of reduction or curtailment shall be entered only after notice to the thermal power plant or installation and only after a reasonable time, considering the extent of the danger, has been allowed for repairs or other alterations that would bring the plant or installation into conformity with applicable safety standards.

[Formerly 453.545]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the director from the results of monitoring or surveillance of operation of any nuclear-fueled thermal power plant or nuclear installation or based upon information from the council there is cause to believe that there is clear and immediate danger to the public health and safety from continued operation of the plant or installation, the director shall, in cooperation with appropriate state and federal agencies, without hearing or prior notice, order the operation of the plant halted by service of the order on the plant superintendent or other person charged with the operation thereof. Within 24 hours after such order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the director or based upon information from the

council, there is cause to believe that there is clear and immediate danger to the public health and safety from the accumulation, storage, disposal or transportation of radioactive material located at, derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation, the director shall in cooperation with appropriate state and federal agencies, without hearing or prior notice, order such accumulation, storage, disposal or transportation halted or immediately impose safety precautions by service of the order on the officer responsible for the accumulation, storage, disposal or transportation. Within 24 hours after such an order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570.

[Formerly 453 555]

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.500, any information filed or submitted pursuant to ORS 469.300 to 469.570 and 469.992 shall be made available for public inspection and copying during regular office hours of the department at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 469.300 to 469.570 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing.

[Formerly 453 565]

(Enforcement)

469.570 Court orders for enforcement. Without prior administrative proceedings, a circuit court may issue such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with ORS 469.300 to 469.570 and 469.992 or with a site certificate issued pursuant to ORS 469.300 to 469.570 and 469.992.

[Formerly 453.575]

PENALTIES

469.990 Penalties for ORS 469.090. (1)

In addition to any penalties under subsection (2) of this section, a person who discloses confidential information in violation of ORS 469.090, wilfully or with criminal negligence, as defined by ORS 161.085, may be subject to removal from office or immediate dismissal from public employment.

(2) (a) Wilful disclosure of confidential information in violation of ORS 469.090 is punishable upon conviction, by a fine or not more than \$10,000 or imprisonment for up to one year, or both, for each offense.

(b) Disclosure of confidential information in violation of ORS 469.090 with criminal negligence, as defined by ORS 161.085, is

punishable, upon conviction, by a fine of not more than \$1,000 for each offense.
[1975 c 606 s.20]

469.992 Civil penalties. (1) A civil penalty in an amount not less than \$1,000 per day nor more than \$25,000 per day for each day of construction or operation in material violation of ORS 469.300 to 469.570 and this section or in material violation of any site certificate issued pursuant to ORS 469.300 to 469.570 and this section may be assessed by the circuit court.

(2) Violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.
[Formerly 453 994]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Thomas G Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law
Done at Salem, Oregon,
October 1, 1975

Thomas G. Clifford
Legislative Counsel

CHAPTER 470

[Reserved for expansion]