

## 980 CMR 8.00: NOTICES OF INTENTION TO CONSTRUCT AN OIL FACILITY

### Section

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8.03: Notice of Intention to Construct an Oil Facility

### 8.01: General Provisions

(1) Scope and Purpose. 980 CMR 8.00 establishes the procedures for the filing of Notices of Intention to Construct an Oil Facility for certain facilities expected to be valued at more than \$5,000,000 and the requirements for the contents of such notices. The petitioner shall file an initial petition with the Council not later than two years prior to commencement of construction of a complex refinery, and not later than one year prior to construction of any other type of oil facility.

(2) Statutory Authority. 980 CMR 8.00 is promulgated pursuant to M.G.L. c. 164, §§ 69H - 69J.

(3) Definitions. In 980 CMR 8.00, the definitions set forth in 980 CMR 2.03(3) and 8.01(3) apply, unless the context or subject matter requires a different interpretation.

Complex Refinery means a facility for the refining of oil designed so that more than 35% of its output at normal crude oil throughput rates could be gasoline or refined oil products lighter than gasoline.

Petition means a Notice of Intention to Construct an Oil Facility filed with the Council under the provisions of M.G.L. c. 164, §§ 69I and 69J.

Petitioner means a person or group of persons proposing to construct a new oil facility.

Refining means the process of manufacturing from crude oil or refined oil products, such products as gasoline, kerosene, naptha (including jet fuel), middle distillate (including No. 2 fuel oil and jet fuel), liquid petroleum gas, refined lubricating oils, diesel fuel or residual fuel oils.

Transshipment means the transfer of oil or refined oil products:

- (a) From one mode of transport (ship, truck, tank car, pipeline, etc.) to another mode of transport;
- (b) From any mode of transport to storage from which the oil or refined oil products will be eventually transferred to a mode of transport; and
- (c) From storage to any mode of transport. Transshipment shall not include transfer to storage facilities of ultimate consumers of oil or refined oil products.

(4) Application of 980 CMR 1.00 and 2.00. The Rules set forth in 980 CMR 1.00 and 2.00 shall apply to 980 CMR 8.00 except to the extent that 980 CMR 1.00, 980 CMR 2.00 and 980 CMR 8.00 are in conflict. In the event of a conflict, 980 CMR 1.00 shall prevail over 980 CMR 2.00 and 980 CMR 8.00 shall prevail over 980 CMR 1.00 and 2.00.

(5) General Principles and Practices.

(a) The Energy Facilities Siting Council is responsible for implementing the energy policies contained in M.G.L. c. 164, §§ 69H-S, to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

(b) In the event that a proposed oil facility is intended to serve directly or indirectly customers in any other state or country, the petitioner shall prepare two separate market forecasts: one for Massachusetts only and the second for the total marketing region likely to be served by the proposed oil facility.

(c) In the case of an oil facility proposed to be constructed by two or more oil companies, the companies may file a joint initial petition. If a joint petition is filed, there shall be a single filing fee and a combined hearing.

(d) Unless a petitioner is a public utility or governmental body, the Council shall not, in reviewing an initial petition, refuse to approve an initial petition because it believes that there are sufficient existing oil facilities or because it believes that construction of a new oil facility may have adverse effects upon competitors of the petitioner proposing the new facility.

(e) The following practices shall be followed when accurate historical data cannot be provided:

1. Historical data which cannot be provided shall be estimated.
2. Notation shall be made indicating which data were estimated.
3. A brief description of the estimation process used shall be included in the Notice of Intention.

(f) If a petitioner believes that 980 CMR 8.00 requires the submission of information which is a trade secret and which would be damaging if made public, the petitioner may seek a Council determination pursuant to the provisions of 980 CMR 4.00 that the item is exempt from public access and entitled to Council protection. If the Council determines pursuant to 980 CMR 4.00 that certain information is not exempt from public access and if the petitioner withdraws the information, the petitioner may withhold the information and state that the information is confidential. In such event the petitioner shall provide as much material as possible without jeopardizing the confidential information, and shall state as fully as possible the reasons for withholding the information. If information is withheld, the Council may take such action as it deems appropriate, including approving the Notice of Intention, denying the Notice of Intention by reason of petitioner's failure to submit complete information, and approving the Notice of Intention subject to the condition that the information be provided to the Council at a subsequent date.

(g) Petitioners are encouraged to make informal contacts with the Council

staff concerning proposed facilities prior to the filing of an initial petition pursuant to 980 CMR 8.02(1).

(h) A petitioner which intends to use a site for business purposes, which use does not require approval by the Council, and intends at some later date to construct an oil facility on the said site is encouraged but not required to file an initial petition with the Council concerning the proposed oil facility at the earliest possible time.

(i) In cases where an oil facility requires approval by the council as well as by other federal, state, or local agencies, the Council shall encourage and otherwise promote the holding of joint hearings in order to facilitate governmental decision-making and to avoid duplication of effort. In addition, the Council may avail itself of the particular expertise of other state agencies in technical or specialized areas during the course of such joint hearings to further expedite the approval process.

(6) Exemption of Facilities under Construction.

(a) No oil facility which is under construction prior to May 1, 1976, shall be subject to any requirement that a Notice of Intention to Construct an Oil Facility be approved by the Council, nor shall failure to file a Notice of Intention impair in any way the rights of the company constructing the facility to file an application for a Certificate with the Council in regard to the facility or to seek a license to construct, operate or maintain the facility from any local or other state agency.

(b) An oil facility shall be considered to be under construction if the erection or installation of major buildings or equipment has begun or if the sum of expenses already incurred for preparation work at the site and irreversible contractual commitments of funds for the purchase of equipment or construction supplies is valued in excess of \$5,000,000.

(7) Filing Fees. Each petition shall be accompanied by payment of a fee as herein provided.

(a) For an oil refinery, the fee shall be \$2.50 per rated barrel per day of throughput capacity, but in no event more than \$400,000.

(b) For an oil storage or transshipment facility, the fee shall be \$.025 per rated barrel of storage capacity, but in no event more than \$400,000.

(c) For an oil terminal intended to handle water-borne shipments, the fee shall be \$.25 per rated barrel per day of throughput capacity, but in no event more than \$400,000.

(d) For an oil pipeline, the fee shall be \$.50 per cubic foot of volume contained for that part of the line proposed for a new right of way, plus \$.25 per cubic foot of volume contained for that part of the line proposed for an established right of way, but in no event more than \$400,000.

8.02: Procedures

(1) Initial Petition. An initial petition or application, as referred to in 980 CMR 8.02, shall consist of any Notice of Intention to Construct an Oil Facility filed with the Council pursuant to 980 CMR 8.00. The filing of such initial pleading shall be deemed to have commenced an adjudicatory proceeding.

(2) Title; Other Required Information. In addition to the information required by 980 CMR 8.02, every initial petition, so far as possible, shall contain the following:

- (a) A title which indicates the nature of the proceeding and the complete name and address of the petitioner;
- (b) The name and address of the officer of the petitioner to whom communications with respect to the initial petition should be addressed and, if the petitioner is represented by counsel, the name and address of such counsel;
- (c) A reference to the statute pursuant to which the initial petition is filed (M.G. L. c. 164, § 69I or 69J); and
- (d) A request that the Notice of Intention which is the subject of the initial petition be approved.

(3) Filing Dates.

- (a) Any petitioner intending to construct an oil facility other than a complex refinery shall file an initial petition with the Council at least one year prior to the commencement of construction of the facility.
- (b) A petitioner intending to construct a complex refinery shall file an initial petition with the Council at least two years prior to the commencement of construction of the facility.
- (c) In the event that a petition is disapproved or approved subject to conditions, the petitioner or a successor in interest may file a new Notice of Intention at any time.

(4) Notice. Notice of filing a petition shall be given by the Council or the petitioner in the manner set forth in 980 CMR 1.03(2). Such notice shall, in addition, state that copies of the initial petition are available at the offices of the Council and at a repository of documents chosen pursuant to 980 CMR 8.02(5) and that persons desiring more information should contact the Council.

(5) Repository of Documents. Each petitioner filing a petition shall place a copy of the petition in a repository of documents chosen pursuant to 980 CMR 2.03(4). For each proposed facility, the petitioner shall choose at least one repository to be located in a city or town in which the facility is proposed to be constructed or in a city or town adjacent thereto. The repository shall be chosen in order to provide convenient access to the initial petition to as many interested and affected persons as possible. The Council may in its discretion require that additional documents, date or transcripts be provided for such repository by the petitioner or any other party. Materials may be removed from a repository after the conclusion of all judicial appeals or the expiration of all time limits for judicial appeals.

(6) Adjudicatory Hearing. The Council shall commence an adjudicatory hearing on each petition within six months after the filing thereof.

(7) Informational Hearing. The Council shall conduct a public hearing for informational purposes in each locality in which there is a site for a facility proposed in a petition. The informational hearing shall be held at least 14 days prior to the commencement of the adjudicatory hearing required by 980 CMR 8.02(6). The Council shall give such notice or require the company to give such notice as is necessary, to inform the public in the affected area of the time, place, and nature of the hearing. The Council may require the company proposing the site to present oral testimony at such an informational hearing as a necessary precondition of Council approval of the petition.

(8) Conduct of Adjudicatory Proceedings.

(a) The Council may in its discretion require at any time during an adjudicatory hearing subject to 980 CMR 8.00 that a company or other party produce such additional information, data, or evidence as the Council needs to render a decision.

(b) In reviewing any question presented concerning a proposed facility described pursuant to 980 CMR 8.00, the Council may in its discretion examine the question in great detail or examine the question in limited detail. The Council may base its determination of the level of detail upon such factors as the completeness of plans for and design of the facility, the adequacy or probable adequacy of subsequent review by local or other state agencies, the importance of the question, and the wishes of the company, local and other state agencies, or other parties.

(9) Council Decisions.

(a) Within 24 months from the date of filing of an initial petition stating the intention to construct a complex refinery, or within 12 months from the date of filing an initial petition stating the intention to construct an oil facility other than a complex refinery, the Council shall render a decision approving the initial petition, approving it subject to stated conditions, or disapproving it. A majority vote shall be required to approve an initial petition. The Council may, among other actions, approve an initial petition but retain jurisdiction to review further the plans for a particular facility at a later time or approve an initial petition subject to approval of a particular facility by a local or other state agency at a later time. Conditional approval of an initial petition may, according to its terms, be deemed to satisfy the requirement of M.G. L. c. 164, § 69I, that a site and facility conform to the most recently approved Notice of Intention to Construct an Oil Facility for purposes of permit proceedings before other agencies.

(b) The Council shall approve a petition if the Council determines that each of the following requirements has been met by the petitioner:

1. All information regarding sources of supply for the proposed facility and financial information regarding the petitioner and its proposed facility are substantially accurate and complete.

2. The petitioner's capital investment plans to complete its facility, the long-term economic viability of the facility, the overall financial soundness of the petitioner, and the petitioner's capability and experience involving the transshipment, transportation, storage, refining and marketing of oil and refined oil products are adequate.

3. All information relating to current activities, facilities agreements, environmental and economic impact, and land use and development, is substantially accurate and complete.

4. The plans for expansion and construction of the proposed facility, including any buffer zones or alternatives thereto, are consistent with current health, environmental protection, and land and resource use and development policies as adopted by the Commonwealth.

5. The plans for expansion and construction of the proposed facility are consistent with the state policy of the Commonwealth to provide a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.

(c) A decision shall be set forth in writing with the reasons therefor included.

(10) Determination of Council Jurisdiction.

(a) Any company or other person may at any time petition the Council pursuant to this section for a determination whether an oil refinery, tank farm, terminal, or pipeline is within the definition of facility, is exempt from Council jurisdiction pursuant to 980 CMR 8.01(6), should be the subject of a Notice of Intention to Construct an Oil Facility, or may qualify for a Certificate pursuant to 980 CMR 6.00. The facility for which a determination of Council jurisdiction is sought may be proposed, existing or under construction.

(b) Should the Council decide to consider such a petition, its action shall be taken through an adjudicatory proceeding subject to all procedures set forth in 980 CMR 1.00.

(c) The petition shall state the name of the petitioner, the nature of the petition, and the determination of the Council sought by the petitioner.

(d) The petition shall be accompanied by such briefs, information, data, and written testimony as the petitioner may deem appropriate to support its request. The Council may during a hearing require such additional information, data and evidence as it in its discretion deems necessary.

(e) If a hearing is held, the Council shall within four months issue a decision on a petition stating fully the extent to which a proposed facility is subject to Council jurisdiction, stating that the proposed facility is within or without Council jurisdiction for a specific purpose, or deferring a determination of Council jurisdiction.

(f) The Council may consider a petition pursuant to 980 CMR 8.02(10) to determine whether a facility is within Council jurisdiction for purposes of a Notice of Intention to Construct an Oil Facility or Application for a Certificate at the same time that it reviews the Notice or Application. A company by submitting information to the Council pursuant to 980 CMR 6.00 or 7.00 does not waive the

right to challenge Council jurisdiction.

(g) A determination by the Council pursuant to 980 CMR 8.02(10) that a proposed facility is not within the jurisdiction of the Council and need not be the subject of a Notice of Intention to Construct an Oil Facility shall be equivalent to a determination by the Council that the said facility and its site conform to the most recently approved Notice of Intention. Such a determination by the Council shall be sufficient but not necessary to satisfy the requirement of M.G. L. c. 164, § 69I, that the Council approve a Notice of Intention to which the site and facility conform before any state agency may issue a construction permit.

(h) The existence of the procedures of 980 CMR 8.02 shall not be deemed to preclude any party from raising the question of Council jurisdiction during a proceeding concerning a Notice of Intention.

### 8.03: Notice of Intention to Construct an Oil Facility

(1) Form of Initial Petition. A Notice of Intention to Construct an Oil Facility shall be a petition or amended petition and shall provide all information required by 980 CMR 8.02(1), 8.02(2) and 8.03. In cases where additional information is needed for a determination, the Council reserves the right to require such additional information and material.

(2) Description of Proposed Facility and Site.

(a) For each facility covered by a petition, the following information shall be provided:

1. Facility name and location;
2. Predicted dates of commencement and completion of construction, and first commercial operation;
3. The names of any local or other state agencies asserting or which may assert jurisdiction over the proposed facility, and a description of the asserted jurisdiction, including a reference to the statutory authority of the agencies;
4. The names of any federal agencies asserting or which may assert jurisdiction over the proposed facility, and a description of the asserted jurisdiction, including a reference to the statutory authority of the agencies;
5. The names of any state or federal agencies required to prepare an environmental assessment of the proposed facility under M.G. L. c. 30, § 62, or under 42 U.S.C., § 4332; and
6. A description of any zoning by-laws in effect on the date of the initial petition and affecting the proposed site and any alternative sites considered.

(b) The petitioner shall provide the information required pursuant to this paragraph for two or more sites. For those sites which have been rejected, the petitioner shall state the reasons for their rejection.

(c) For a proposed facility for storage of oil or refined oil products (and for

any alternative sites and facilities proposed to the extent that the information is available and relevant) the petitioner shall provide:

1. A general description of major structures and equipment comprising the facility and to be located on the site (the general description shall be accompanied by such detailed descriptions and plans as are then available);
2. Aerial photographs of appropriate scale showing the facility site and its surroundings within a one-mile radius of the site, designating current major land use patterns within the one mile radius, and showing the location of proposed facilities within the site (include written descriptions, keyed to said aerial photographs of developed areas, agricultural or other open areas, parks and recreation areas, areas designed by a governmental agency for protection as nature preserves or historic or scenic districts, zoning patterns, major transportation facilities, existing and proposed, serving the facility site, and provisions, if any, for buffer zones adjoining the site);
3. A statement enumerating the products to be stored at the facility and the facility's designed annual capacity for each such product;
4. U.S.G.S. topographical maps of scale 1:24,000 depicting the site and all lands and waters within 8,000 feet of the site;
5. A general description of environmental protection equipment to be installed at the facility, and other measures to minimize damage to the environment;
6. A statement of the region in which crude oil or refined petroleum products stored at the facility are expected to be sold to retail customers;
7. A statement of the measures, if any, to be taken to reduce the impact on transportation systems and to otherwise provide for an adequate transportation network both in the vicinity of the facility and throughout the area where its product will be marketed.

(d) For a proposed facility for transshipment of oil or refined oil products (and for any alternative sites and facilities proposed to the extent that the information is available and relevant) the petitioner shall provide:

1. A general description of major structures and equipment comprising the facility and to be located on the site (the general description shall be accompanied by such detailed descriptions and plans as are then available);
2. Aerial photographs of appropriate scale showing the facility site and its surroundings within a one mile radius of the site, designating current major land use patterns within the one mile radius, and showing the location of proposed facilities within the site (include written descriptions, keyed to said aerial photographs of developed areas, agricultural or other open areas, parks and recreation areas, areas designated by a governmental agency for protection as nature preserves or historic or scenic districts, zoning patterns, major transportation facilities, existing and proposed serving the facility site, and provisions, if any, for



