

## 990 CMR: HAZARDOUS WASTE FACILITY SITE SAFETY COUNCIL

### 990 CMR 11.00: NEGOTIATIONS BETWEEN A DEVELOPER AND A HOST COMMUNITY

#### Section

11.01: Initiation of Negotiations

11.02: Mediation

11.03: Negotiation Status Report

11.04: Determination Whether an Impasse Exists

#### 11.01: Initiation of Negotiations

- (1) Negotiations between a developer and a host community shall commence as follows:
  - (a) Where a developer has submitted a Notice of Intent which names a specific site and has indicated an unwillingness to utilize the site suggestion process, negotiations shall commence at any time following a determination by the Council pursuant to 990 CMR 5.00 that the proposed project is feasible and deserving of state assistance;
  - (b) Where a developer has utilized the site suggestion process pursuant to 990 CMR 7.00, negotiations shall commence at any time following distribution by the Department of a Final Suggested Site List pursuant to 990 CMR 7.05, if said list contains only one site or if it contains sites in a single host community;
  - (c) Where a developer has utilized the site suggestion process pursuant to 990 CMR 7.00 and the Department has distributed a Final Suggested Site List, containing sites in more than one community, negotiations shall commence at any time after the developer has filed a project notification form pursuant to 990 CMR 10.00 for a specific site on said list.
- (2) In any event, negotiations between a developer and a host community shall commence upon the Council's determination that the Draft SEA is adequate.

#### 11.02: Mediation

- (1) Voluntary Mediation. Prior to the initiation of negotiations, if the developer and the host community agree to utilize the services of a mediator the Council shall provide each party with a list of available mediators.
- (2) Requirement of mediation. Forty-five days after a determination by the Council that the Draft SEA is adequate, the Council may require the parties to utilize a mediator selected by the Council if:
  - (a) the parties have either refused to utilize a mediator or have failed to agree upon one;
  - (b) the Council determines that negotiations are not progressing in a satisfactory manner; and
  - (c) the Council determines that the services of a mediator would be beneficial.
- (3) Compensation for the Mediator. If the Council requires the parties to utilize a mediator, the Council shall compensate the mediator for each day or part thereof of his services, as the Council shall determine.
- (4) Powers. The mediator shall aid the parties in executing a siting agreement and shall be required to:
  - (a) keep the Council and the Department informed of the time and place of negotiation sessions and any progress toward the execution of a siting agreement;
  - (b) hold meetings at times and places convenient to both parties.

#### 11.03: Negotiation Status Report

If no siting agreement has been executed within 60 days of a determination by the Council that the Draft SEA is adequate, or within any extension thereof granted by the Council pursuant to 990 CMR 11.04, the developer, the local assessment committee and the mediator, if any, shall within seven days of the expiration of said time period submit joint or separate reports to the Council and the Department indicating resolved and unresolved issues and whether, in their opinion, an impasse has been reached, or whether continued negotiations are

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11.03: continued

worth pursuing and, if so, a target date by which negotiations can be reasonably expected to be completed. In all cases the negotiations status report submitted by the local assessment committee must be approved by a majority of said committee.

11.04: Determination Whether an Impasse Exists

(1) At any time subsequent to the submission of a negotiation status report pursuant to 990 CMR 11.03, the Department, the developer or the local assessment committee may notify the Council that an impasse in the negotiation of a siting agreement exists.

(2) In response to such notification and upon investigation the Council may

(a) determine that such an impasse exists, or

(b) may determine that an extension of negotiations for a period of 30 days appears warranted. The Council may extend the period for negotiations beyond this additional 30 day period only upon written request of both the developer and the local assessment committee. Such joint request shall state the basis for the parties' belief that a further extension would lead to the execution of a siting agreement.

(3) The Council shall notify the local assessment committee and the developer of its decision, either that an impasse exists or that an extension of the time for negotiations appears warranted.

REGULATORY AUTHORITY:

990 CMR 11.00: M.G.L. c. 21D, § 4.