

990 CMR 13.00: ARBITRATION

Section

13.01: Timing

13.02: Selection of Arbitrators

13.03: Compensation for the Arbitrator

13.04: Conduct of Hearings

13.05: Standards for Arbitration

13.06: Outcome of Arbitration

13.01: Timing

- (1) Initiation of Arbitration. Arbitration proceedings shall be initiated:
  - (a) in the case of a host community, when the Council has declared that an impasse exists in negotiations between the developer and the local assessment committee; or
  - (b) in the case of an abutting community, when either the developer or an abutting community files a request for arbitration indicating dissatisfaction with the Council's determination of the compensation to be paid by the developer to the abutting community.
- (2) Duration. Unless granted an extension of time by the Council, the arbitration panel or the single arbitrator shall determine within 45 days of appointment by the Council the terms and conditions of a siting agreement or the amount of compensation to be paid to an abutting community by the developer.
- (3) Agreement to Terminate. If at any time during the arbitration proceeding the developer and the local assessment committee agree upon and submit a siting agreement to the Council, or the developer and the abutting community agree upon compensation to be paid the abutting community, the Council shall request that the arbitration be terminated, and upon such request the Chairman of the arbitration panel or the single arbitrator shall immediately terminate the proceeding.

13.02: Selection of Arbitrators

- (1) Host Community. In the case where the Council has declared that an impasse exists in negotiations between the developer and the local assessment committee of a host community, arbitration shall be by single impartial arbitrator, jointly selected by the developer and the local assessment committee, if they so choose, or by majority vote of an arbitration panel comprised of three arbitrators, one selected by the developer, one selected by the local assessment committee and a third, impartial arbitrator, who shall act as chairman of the panel, jointly selected by the developer and the local assessment committee.
- (2) Abutting Community. In the case where either the developer or an abutting community files a request for arbitration indicating dissatisfaction with the Council's determination as to the compensation to be paid by the developer to the abutting community, arbitration shall be by a single impartial arbitrator, jointly selected by the developer and the chief executive officer of the abutting community, if they so choose, or by majority vote of an arbitration panel comprised of three arbitrators, one selected by the developer, one selected by the chief executive officer of the abutting community and a third, impartial arbitrator, who shall act as chairman of the panel, jointly selected by the developer and the chief executive officer of the abutting community.
- (3) Procedure. In either case, the Council shall provide both parties with a list of available arbitrators. If the parties do not agree on the arbitrator to be jointly selected, selection of that arbitrator shall be as follows:
  - (a) Each party shall eliminate any arbitrator from the list it finds clearly unacceptable, and rank the remaining arbitrators according to preference. The ranking given each arbitrator shall be compared and the arbitrator with the highest ranking by both parties shall serve as the jointly selected arbitrator.

13.05: continued

- (b) If an arbitration panel or single impartial arbitrator has not been selected within 30 days after arbitration proceedings have been initiated pursuant to 990 CMR 13.01(1), the Chairman shall appoint the single arbitrator or the arbitrators necessary to complete the three-person panel.

13.03: Compensation for the Arbitrator

The Council shall compensate an arbitrator for each day or part thereof of his services, as the Council shall determine. The Council shall also reimburse an arbitrator for all reasonable expenses actually and necessarily incurred in the performance of his official duties.

13.04: Conduct of Hearings

(1) Schedule. Upon selection, the arbitrator(s) shall schedule a prehearing conference and a formal hearing. The arbitrator(s) shall hold a prehearing conference with the parties or their counsel for clarification of the issues and stipulation of uncontested facts, so as to expedite the arbitration proceedings. The formal hearing and any subsequent hearings may be held when and as often as the arbitrator(s) deem(s) necessary, within the 45 day time period for arbitration.

(2) Ex Parte Communications. No party or other person directly or indirectly involved in arbitration shall submit to the arbitrator(s) any evidence, argument, analyses or advice, whether written or oral, regarding any matter at issue in the arbitration unless such submission is part of the record or made in the presence of all parties. 990 CMR 13.04 does not apply to consultation among arbitrators.

(3) Right to Attend. Members of the local assessment committee, the developer or his representatives, witnesses, legal counsel and technical experts for either party are entitled to attend hearings. The arbitrator or the chairman of the arbitration panel shall otherwise have the authority to determine the propriety of the attendance of any other person, and shall further have the authority to exclude any person whom he determines is disrupting the orderly process of the hearing.

13.05: Standards for Arbitration

The arbitrator(s) shall determine the terms, conditions and provisions of a siting agreement or the amount of compensation to be awarded to abutting communities. In reaching such determination the arbitrator(s) shall consider:

- (1) the factual stipulations of the parties;
- (2) any interests of the community, including:
  - (a) all potential adverse impacts to the health, safety, and social and economic security of the community;
  - (b) all potential adverse impacts to the environment and natural resources of the community;
  - (c) fiscal impacts, such as the effects of added service costs, financing costs for any needed capital improvements and demonstrable secondary costs;
  - (d) the impact on property values;
  - (e) the benefits to the community of the proposed project and of any compensation offered by the developer or requested by the community;
- (3) any interests of the developer, including:
  - (a) the projected profitability of the facility;
  - (b) the cost of impact mitigation and redesign alternatives;
  - (c) the costs to the developer of any compensation offered by the developer or requested by the community;
  - (d) the financial risks and uncertainties borne by the developer;

990 CMR: HAZARDOUS WASTE FACILITY SITE SAFETY COUNCIL

13.05: continued

(4) abutting community interests. In the case of arbitration involving a host community the arbitrator(s) shall also consider the impacts specified in 990 CMR 13.05(2) on abutting communities. In the case of arbitration involving an abutting community, the arbitrator shall consider the impacts specified in 990 CMR 13.05(2) on other abutting communities;

(5) all relevant information available to the arbitrator(s), which may include:

- (a) the PPIR;
- (b) studies produced under state technical assistance grants;
- (c) reports submitted by the negotiating parties; and
- (d) the draft license issued by the Department of Environmental Quality Engineering;

(6) past management and operational history of the developer.

13.06: Outcome of Arbitration

After the last arbitration hearing and pursuant to the standards set forth in 990 CMR 13.05, the single arbitrator or the chairman of the arbitration panel shall prepare a draft siting agreement or a draft determination of the compensation to be paid an abutting community by the developer. The draft shall be reviewed by the two other arbitrators in the case of a three person panel or by a single designee of each party in the case of a single arbitrator. After consideration of the comments made by the reviewing parties, the single arbitrator or the chairman of the arbitration panel shall prepare a final draft of the siting agreement or of the compensation to be paid and submit it to the Council.

REGULATORY AUTHORITY:

990 CMR 13.00: M.G.L. c. 21D, § 4.