

## 990 CMR: HAZARDOUS WASTE FACILITY SITE SAFETY COUNCIL

### 990 CMR 14.00: THE SITING AGREEMENT

#### Section

14.01: Elements of a Siting Agreement

14.02: Council Approval of a Siting Agreement

14.03: Council Declaration of Operative Siting Agreement

#### 14.01: Elements of the Siting Agreement

(1) The siting agreement shall be a non-assignable contract binding upon the developer and the host community, and shall be enforceable against the parties in a court of competent jurisdiction. The agreement, whether executed by the host community and the developer pursuant to 990 CMR 11.00 or established by arbitration pursuant to 990 CMR 13.00, must address or include, but shall not necessarily be limited to, the following:

- (a) facility construction and maintenance procedures;
- (b) operating procedures and practices, the design of the facility and its associated activities;
- (c) monitoring procedures, practices and standards necessary to assure and continue to demonstrate that the facility will be operated safely;
- (d) the services to be provided the developer by the host community;
- (e) the compensation, services and special benefits that will be provided to the host community by the developer, and the timing and conditions of their provision;
- (f) the services and benefits to be provided to the host community by agencies of state government, and the timing and conditions of their provision;
- (g) any provision(s) for tax pre-payments or accelerated payments, or for payments in lieu of taxes;
- (h) provision(s) for renegotiation of any of the terms, conditions or provisions of the siting agreement, and methods for amending or extending the agreement;
- (i) provision(s) for resolving any disagreements in the construction and interpretation of the siting agreement that may arise between the parties;
- (j) a statement that in the event any section, clause, sub-clause or other part of the siting agreement is found or determined to be in conflict with any federal, state or local statute, regulation, bylaw, permit or license, such section, clause, sub-clause or other conflicting part of the siting agreement shall be void and of no force or effect without affecting the rest of the siting agreement. This provision shall not be construed to limit the ability of the parties to agree upon terms which are more stringent than any federal, state or local statute, regulation, bylaw, permit or license;
- (k) provision(s) for the conditions under which the developer may expand or modify the facility, its operations or the types of wastes handled;
- (l) appendices pertaining to any compensation to be paid abutting communities as determined pursuant to 990 CMR 12.00, provided however, that such appendices shall, unless otherwise agreed upon, be attached for informational purposes only.

(2) The siting agreement may address, but not need be limited to, the following:

- (a) provision(s) for direct monetary payments from the developer to the host community in addition to payments for taxes and special services and compensation for demonstrable adverse impacts;
- (b) provision(s) to assure the health, safety, comfort, convenience and social and economic security of the host community and its citizens;
- (c) provision(s) to assure the continuing economic viability of the project; and
- (d) provision(s) to assure the protection of the environment and natural resources.

(3) The developer shall agree in writing on a form prescribed by the Council that, as a condition precedent to the declaration by the Council that a siting agreement is operative, he shall accept the amount determined by the Council or by arbitration as the amount of compensation to be paid an abutting community. The developer shall also agree, as an essential part of said condition precedent, that he will expressly authorize one of his officers to sign an agreement with the chief executive officer of an abutting community, which agreement shall be a nonassignable contract binding on the developer and said abutting community, and enforceable as such in any court of competent jurisdiction.

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14.02: Council Approval of a Siting Agreement

- (1) Within 30 days of receipt of a siting agreement, whether executed by negotiation between a developer and a local assessment committee pursuant to 990 CMR 11.00 or established by arbitration pursuant to 990 CMR 13.00, the Council shall approve said agreement unless it finds that it does not comply with the procedural requirements of 990 CMR 11.00 or 13.00 or with the provisions of M.G.L. c. 21D.
- (2) If the Council finds for any reason that the agreement does not comply with these requirements, the Council shall return said agreement along with a statement of reasons supporting its finding to:
  - (a) the developer and the local assessment committee, in the case of a siting agreement executed by negotiations; or
  - (b) to the single arbitrator or chairman of the arbitration panel, in the case of a siting agreement established by arbitration.
- (3) If the Council approves the siting agreement, it shall promptly send notice thereof to the developer and the chairman of the local assessment committee.
- (4) Any agreement so approved by the Council shall be binding only when declared operative by the Council pursuant to 990 CMR 14.03.

14.03: Council Declaration of Operative Siting Agreement

- (1) Within 30 days of the determination by the Council that the Final Socio-Economic Appendix is adequate, the Council shall declare that a siting agreement, approved pursuant to 990 CMR 14.02, is operative. In no case, however, shall the Council declare the Siting Agreement to be operative until it has received the fee(s) required pursuant to 990 CMR 16.02(2).
- (2) Such declaration that a siting agreement is operative and is to be given full force and effort shall establish the siting agreement as binding upon both parties. Notice of such declaration shall be given in writing to the following persons:
  - (a) Director, Bureau of Solid Waste Disposal, Department of Environmental Management;
  - (b) Director, Division of Hazardous Waste, Department of Environmental Protection;
  - (c) the developer;
  - (d) the local assessment committee; and
  - (e) the chief executive officer of the host community and of each abutting community affected by the agreement.

REGULATORY AUTHORITY

990 CMR 14.00: M.G.L. c. 21D, § 4.