Attachment 3
Waste Facility Siting Board – Standard Notice Form

State of Wisconsin
Waste Facility Siting Board
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STANDARD NOTICE

TIME LIMITS AND REQUIREMENTS FOR MUNICIPALITIES TO PARTICIPATE IN THE NEGOTIATION AND ARBITRATION PROCESS FOR THE SITING OF A SOLID OR HAZARDOUS WASTE FACILITY UNDER SEC. 289.33, WISCONSIN STATUTES.

PLEASE READ ALL PAGES CAREFULLY.

This notice informs a municipality of the actions and deadlines required to qualify for participation in negotiations and arbitration concerning the proposed siting of all new or expanded solid or hazardous waste facilities in the state of Wisconsin.

This standard notice shall be submitted with any written requests for local approvals by the applicant to the clerk of each affected municipality and to the main public library in each affected municipality. s. 289.22(1m)(2) and s. 289.32, Wis. Stats.

Who is the Waste Facility Siting Board?

The Waste Facility Siting Board is an impartial body composed of six members. These members include the secretaries, or their formally appointed designees, of the Departments of Agriculture, Trade and Consumer Protection; Commerce; and Transportation; and two town elected officials and one county elected official appointed by the governor for three year terms.

What does the Waste Facility Siting Board do?

The Waste Facility Siting Board administers the negotiation and arbitration process for the siting of every solid and hazardous waste facility in the state of Wisconsin.

The board's authority is created by law in Chapter 289, Subchapter III, Wis. Stats. The intent of the law is to create and maintain a comprehensive and effective policy of negotiation and arbitration between an applicant for a waste facility license and a local committee representing the affected municipalities.

Who is an Applicant?

An "applicant" is any person applying for a license or the owner or operator of a facility.

What is an Affected Municipality?

An affected municipality is any town, village, city, or county:

(a) where any or all of the proposed waste site will be located, or
(b) whose boundary is within 1500 feet of the facility designated in the feasibility report for the disposal of solid waste or the treatment, storage or disposal of hazardous waste.

An applicant that is a municipality or is under contract with a municipality for development of the site, is not considered an affected municipality for purposes of negotiation.

What is an Additional Municipality?

An additional municipality is any town, city, village, or county which does not qualify as an affected municipality but is included in the negotiation and arbitration process by written agreement of the applicant and the participating affected municipalities.

How does the negotiation-arbitration process begin?

The process is initiated by the applicant. Before submitting a feasibility report to the Department of Natural Resources (DNR), the applicant must submit by certified mail to the clerk of each affected municipality a written request for specification of all applicable local approvals. The municipality has 15 days to respond.

What is a "local approval"?

The term "local approval" is defined in s. 289.33(3)(d), Stats. It essentially means any requirement, restriction, condition, or prohibition imposed by a municipality on a waste facility site by ordinance, resolution, or regulation.

The law gives special weight to "pre-existing local approvals." Pre-existing local approvals are those that have been in effect at least 15 months before the applicant submits to DNR an initial site report or a feasibility report, whichever happens first. A new or expanded waste facility is subject to pre-existing local approvals unless specified as inapplicable in a negotiated agreement or an arbitration award. A new or expanded waste facility is not subject to other local approvals unless specified as applicable in a negotiated agreement.

If an Affected Municipality wants to negotiate with the applicant concerning the site what is required?

There are three requirements.

First, an affected municipality must pass a siting resolution within 60 days of receipt of the applicant's initial written request for local approvals. If this deadline is missed, a municipality

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may not participate in negotiations. A copy of the siting resolution must be sent to the board within 7 days of passage.

Each affected municipality that wishes to negotiate with the applicant about the proposed facility must pass a siting resolution which shall state the following:

(1) the name and location of the municipality,
(2) the name and location of the applicant,
(3) the specific location of the proposed facility, and
(4) the municipality's intent to negotiate and, if necessary, arbitrate with the applicant concerning the proposed facility.

Second, an affected municipality must appoint members to the local committee within 60 days of receipt of the applicant's request for local approvals. Names and addresses of local committee members must be sent to the Waste Facility Siting Board within 7 days of appointment.

Each affected municipality that wishes to negotiate with the applicant must appoint members to the local negotiating committee. Each town, village, or city where all or part of the proposed waste facility is to be located may appoint 4 members, or 2 more than the total number of all other members, whichever number is greater; no more than 2, however, may be elected officials or municipal employees. Each county where all or any part of the proposed waste facility will be located may appoint 2 members. Every other town, village, city, or county within 1500 feet of the proposed waste facility may appoint 1 member. Appointment of members may be included in the siting resolution or in a separate resolution.

Third, each member appointed to the local committee must file with the Waste Facility Siting Board a Statement of Economic Interests within 15 days of appointment. A member who fails to file a Statement of Economic Interests may not serve on the local committee.

These forms are available at no cost from the Waste Facility Siting Board.

What is required if an Additional Municipality wants to negotiate with the applicant concerning the site?

There are four requirements.

First, an additional municipality must receive written agreement of all parties to be added to the process.

Second, an additional municipality must pass a siting resolution within 30 days of the agreement between the parties to allow participation by the additional municipality. A copy of the siting resolution must be sent to the board within 7 days of passage.

The siting resolution must state the following:

(1) the name and location of the municipality,
(2) the name and location of the applicant,
(3) the specific location of the proposed facility, and
(4) the municipality's intent to negotiate and, if necessary,

arbitrate with the applicant concerning the proposed facility.

Third, an additional municipality must appoint one member to the local committee within 60 days. The name and address of the local committee member must be sent to the Waste Facility Siting Board within 7 days of appointment.

Fourth, the appointed member to the local committee must file with the Waste Facility Siting Board a Statement of Economic Interests within 15 days of appointment. A member who fails to file a Statement of Economic Interests may not serve on the local committee.

These forms are available at no cost from the Waste Facility Siting Board.

When may negotiations begin?

Negotiations may begin at any time after notification by the Waste Facility Siting Board. The board will send a notification of participation to the applicant and the clerk of each participating municipality within 5 days after the board receives copies of the resolutions and names and addresses of members appointed to the local committee, or within 72 days after all affected municipalities have received written request for local approvals. This notice will identify the participating municipalities, identify the names of the members of the local committee, and inform the parties that negotiations may begin.

If, for error or change in plans, the applicant must add any other affected municipality following the board's notification of participation, that affected municipality shall have the same rights and obligations as outlined above. The board may issue an order delaying negotiations until that affected municipality has time to act. This procedure is outlined in s. 289.33(6)(c), Stats.

Either the applicant or the local committee may initiate negotiations. The time and place of negotiating sessions are determined by agreement between the applicant and the local committee. Negotiating sessions must be open to the public.

What issues can be negotiated?

Any subject may be negotiated except the need for the facility and any proposal that would make the applicant's responsibilities less stringent than required by the Department of Natural Resources. Either party may petition the board in writing for a determination as to whether a proposal is negotiable. The board will conduct a hearing and issue a binding decision in 14 days.

If a negotiated settlement is reached, what is required?

There are two requirements.

First, the agreement must be approved by all appropriate bodies.

An appropriate body is the governing body of each town, city, or village where all or a portion of the waste facility is to be located. If the agreement is approved by all of the appropriate bodies, the agreement is binding on all participating municipalities.

Second, if the agreement is approved, the applicant shall send a copy or notice of any negotiated agreement to the Waste Facility Siting Board and to the Department of Natural Resources within 10 days after the agreement is approved by all appropriate bodies. If the agreement is not approved by all of the appropriate bodies, the agreement is void. The parties may resume negotiations, begin mediation, or initiate arbitration.

Who initiates mediation?

Either party may request a mediator at any time during the negotiation.

Who is the mediator?

The board maintains a list of competent, impartial, disinterested persons consisting of lawyers, retired judges, and professional mediators who serve as mediators.

Who chooses the mediator?

Upon receipt of a request for a mediator, the board will immediately send the parties a list of 5 mediators. The parties shall alternately strike names until one name is left who will be appointed by the board.

What is the role of the mediator?

The role of the mediator is to encourage a voluntary settlement. The mediator may not impose a settlement on either party.

Who pays for the mediator?

Unless specified in the negotiated agreement or the arbitration award, the costs of the mediator will be shared equally by the applicant and the local committee.

What happens if the mediator fails to bring settlement?

The parties may resume negotiations or initiate arbitration.

Who initiates arbitration?

The applicant or the local committee may petition the board jointly or separately to initiate arbitration.

Arbitration may not be initiated until at least 120 days after the appointment of the local committee.

A statement in response to a unilateral arbitration petition must be filed within 14 days.

What issues can be arbitrated?

Only eight issues can be arbitrated. These issues are:

1. Any proposal to make the applicant's responsibilities under the approved feasibility report or plan of operation less stringent.

1m. Reimbursement of reasonable costs, but not to exceed $20,0000, incurred by the local committee relating to negotiations, mediation and arbitration activities under this section.

2. Screening and fencing related to the appearance of the facility. This item may not affect the design capacity of the facility.
3. Operational concerns including, but not limited to, noise, dust, debris, odors and hours of operation but excluding design capacity.
4. Traffic flows and patterns resulting from the facility.
5. Uses of the site where the facility is located after closing the facility.
6. Economically feasible methods to recycle or reduce the quantities of waste to the facility. At facilities for which the applicant will not provide or contract for collection and transportation services, this item is limited to methods provided at the facility.
7. The applicability or non-applicability of any pre-existing local approvals.

If requested by either party, the board will rule on the arbitrability of a specific issue.

Once initiated, how does the arbitration process work?

Within 15 days of receipt of a petition to initiate arbitration, the board will issue a decision either to have the parties continue negotiation for at least 30 days, delay arbitration until a feasibility report is submitted, or order the parties to submit their final offers within 90 days. If, when ordered by the board, the applicant fails to submit a final offer within 90 days, the applicant may not construct or operate the facility. If the local committee fails to submit a final offer in 90 days the local committee loses all rights to further negotiation and the facility is not subject to any local approval.

Within 30 days after the last day for submitting final offers, the board shall conduct a public meeting for the parties to explain their final offers.

Within 90 days after the last day for submitting final offers, the board will issue an arbitration award. If the board fails to issue an award because it lacks the necessary five votes, the governor will issue an arbitration award within 120 days after the last day for submitting final offers.

The board's arbitration award is binding on the applicant and the participating municipalities.

The information presented here serves as a guide to help affected and additional municipalities comply with the negotiation-arbitration laws concerning siting of solid and hazardous waste facilities under s. 289.33, Stats. For specific legal advice, or changes in the statute or administrative rules, an applicant or affected municipality should consult its attorney or contact the Waste Facility Siting Board, 5005 University Avenue, Suite 201, Madison, Wisconsin 53705-5400, (608) 266-7709, FAX: (608) 264-9885.

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