

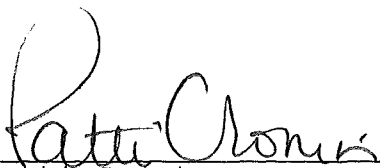
CR 84-43

STATE OF WISCONSIN )  
 ) SS  
WASTE FACILITY SITING BOARD)

I, Patti Cronin, Executive Secretary of the Waste Facility Siting Board and custodian of the official records do hereby certify that the annexed rules relating to rules concerning the conduct of all proceedings involving negotiation and arbitration before the board and before examiners, appointed pursuant to board action, in disputes, were duly approved and adopted by this board on August 2, 1984.

I further certify that this copy has been compared by me with the original on file in this board and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at the Waste Facility Siting Board at 149 East Wilson Street in the city of Madison, this 18<sup>th</sup> day of October, 1984.

  
\_\_\_\_\_  
Patti Cronin

RECEIVED  
OCT 23 1984  
2:00pm  
Revisor of Statutes  
Bureau

12-1-84.





**State of Wisconsin**  
**Waste Facility Siting Board**

149 E. Wilson Street, Madison, WI 53702 (608) 267-7854

ORDER OF THE  
WASTE FACILITY SITING BOARD  
ADOPTING RULES

An order to create chs. WFSB 1 to 12 relating to rules concerning the conduct of all proceedings involving negotiation and arbitration before the Wisconsin Waste Facility Siting Board and before examiners, appointed pursuant to board action, in disputes.

Analysis prepared the Waste Facility Siting Board.

Chapter 1 of the rules states the general provisions including the authority under which the rules are promulgated, the rules' purpose and construction, the policy which the rules will effectuate and terms defined. Terms which are defined in the statute have the meaning set forth there. Terms with specific application in the rules are defined in this section.

Chapter 2 outlines general procedures to be followed in all proceedings before the board. General procedures will be read in conjunction with chapters governing specific procedures and resolutions of conflicts between the general rules of ch. 2 and specific rules applicable to a particular type of proceeding will be resolved in favor of the specific rule. This chapter also specifies how proceedings are initiated, consolidated or severed. Document forms are specified and methods of submission denoted. Presentation and disposition of requests are explained with further explanation of requests to reschedule hearings. The purpose of prehearing conferences and methods of mandatory disclosure of evidence is set forth along with the procedures for the taking of depositions and other types of discovery. Various hearing procedures, the use of subpoenas, the powers and duties of the examiners, the application of procedures, close of hearings and waiver of procedures are also set forth.

Chapter 3 specifies the items to be included in the written request from the applicant to all affected municipalities for specification of local approvals under s. 144.44(1m)(b), Stats. The applicant is also required to attach the standard notice from the board, pursuant to s. 144.44(1m)(bn), and submit a copy of its request to the board with proof of submission.

Chapter 4 requires disclosure of economic interests affected by the proposed site which a local committee member and his or her immediate family has. Outlined are the requirements for the statement contents and instructions for obtaining a standard "Statement of Economic Interest" form. A person may not serve as



a committee member if they fail to file a statement of economic interest.

Chapter 5 outlines the policy of the board to cooperate with the Land Conservation Board pursuant to s. 91.03, Stats. The applicant is under a continuing obligation to notify the board, the Land Conservation Board and the Department of Agriculture, Trade and Consumer Protection if the proposed site includes land upon which there exists farmland preservation agreements, zoning for exclusively agricultural use or is located in a preservation area identified on a county preservation plan.

Chapter 6 provides that local committees may hold public informational hearings at any time in any municipality where the site is located concerning the negotiations of the agreement. It also requires that a copy or notice of any ratified negotiated agreement be sent to the board and the Department of Natural Resources within ten days of ratification.

Chapter 7 gives instructions for filing petitions on negotiability pursuant to s. 144.445(9)(b), Stats., including form, contents, submission, statement in response and provisions for withdrawal of the petition. The notice of hearing, specific hearing procedures and deadline for board decision on the petition are also given.

Chapter 8 specifies who may act as mediator and how the mediator is to be selected, the function of the mediator to effectuate settlements and the confidential nature of the position and the nature of mediation proceedings along with specifics on conducting mediation meetings.

Chapter 9 informs parties on filing petitions for default pursuant to s. 144.445(9)(d), Stats., including form, contents, submission, statement in response and provisions for withdrawal of the petition. The notice of hearing, specific hearing procedures and deadline for board decision on the petition are also provided. The rules also detail the considerations the board may consider in making its decision.

Chapter 10 describes the procedures for initiating an arbitrability proceeding including form, contents, submission, statement in response and provisions for withdrawal of the petition. The notice of hearing, specific hearing procedures and deadline for board decision on the petition are also provided. The rules provide that such a petition may be submitted by either party or jointly once only before submission of final offers. Other parties, as defined in ch. WFSB 1, may request to intervene in such a proceeding at the discretion of the examiner. Decisions made under this ch. shall be interim and will become final only when incorporated in an arbitration award between the same parties.



Chapter 11 provides for petitions to initiate arbitration pursuant to s. 144.445(10)(a),(b) and (c), Stats., including form, contents, submission, statement in response and provision for the withdrawal of the petition. The notice of status conference, conference procedures and deadline for board decision on the petition are also detailed. The rules also describe the order to continue negotiations, the considerations the board may utilize in making its decision and the ability of the board to delay arbitration pending the submission of a feasibility report or its substantial equivalent by the applicant to the affected municipalities.

Chapter 12 describes procedures during arbitration including mandatory public informational hearings to be held by the local committee on the proposed final offer under s. 144.445(10)(d), Stats., before the final offer is sent to the governing bodies for approval. A prehearing conference will be held at least 14 days prior to the scheduled arbitration hearing date. Procedures are set forth describing the public meeting between the applicant and local committee which will be held by the board concerning the arbitration. The rules also provide for on-site inspection of the proposed site by the board and a briefing schedule of the parties.

Pursuant to authority vested in the Waste Facility Siting Board by s. 144.445(4), Wis. Stats., the Waste Facility Siting Board adopts rules interpreting s. 91.03 and 144.445, Wis. Stats., as follows:

"Section 1. Chapters WFSB 1 to 12 are created to read:"





# WASTE FACILITY SITING BOARD

## ADMINISTRATIVE RULES

### Chapter WFSB 1

#### GENERAL PROVISIONS

**WFSB 1.01 Authority.** Chs. WFSB 1 to 12 are promulgated under the authority of s.144.445(4), Stats., for implementation of s. 144.445, Stats.

**WFSB 1.02 Purpose and construction.** Chs. WFSB 1 to 12 govern the conduct of all proceedings involving negotiation and arbitration before the Waste Facility Siting Board and before any examiner in disputes. Chs. WFSB 1 to 12 shall be liberally construed to effectuate the purposes and provisions of s.144.445, Stats. The examiner may waive any requirements of chs. WFSB 1 to 12 unless a party shows prejudice thereby.

**WFSB 1.03 Policy.** The policy of the state being to create and maintain an effective and comprehensive policy of negotiation and arbitration between affected parties involving waste facilities, nothing in chs. WFSB 1 to 12 shall be construed to prevent the examiner from using its or his or her best efforts to adjust any dispute arising between applicants and local committees representing affected municipalities.

**WFSB 1.04 Definitions.** (1) TERMS, DEFINED IN STATUTE. Any terms used in these rules that are defined in s.144.43(1) and 144.445(3), Stats., have the meaning set forth in those sections.

(2) In chs. WFSB 1 to 12:

- (a) "Public informational hearing" means a hearing where the local committee shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to a proceeding before the board or local committee.
- (b) "Public hearing" means a hearing conducted in any proceeding before the board where the parties to the proceeding or their representatives shall be afforded the opportunity to present facts, views or arguments relative to the proceeding.

- (c) "Public meeting" means a meeting conducted in any arbitration proceeding where the parties and only those parties to the arbitration or their representatives shall be afforded the opportunity to present facts, views or arguments relative to the arbitration.
- (d) "Examiner" means the board, or any of its members or any member of its staff, or any individual designated by the board to act on its behalf in any board proceeding.
- (e) "Party" means either the applicant or local committee, as defined in s. 144.445(3), Stats., in any board proceeding.

#### Chapter WFSB 2

#### PROCEDURES IN THE ADMINISTRATION OF S.144.445, STATS.

**WFSB 2.01 Special rules.** Chs. WFSB 3 to 12 sets forth special rules applicable to the proceedings described in chs. WFSB 3 to 12. This chapter sets forth general rules applicable to all types of proceedings.

**WFSB 2.02 Resolution of conflicts.** In any conflict between a general rule in ch. WFSB 2 and a special rule in another chapter applicable to a particular type of proceeding, the special rule shall govern.

**WFSB 2.03 Initiation of proceedings, method, forms, where to file.** A proceeding may be initiated by filing an appropriate document as specified in these rules. Standard language for initiating proceedings under s. 144.445, Stats., is set forth in chs. WFSB 3 to 12 governing particular proceedings. The initiating document shall be submitted to the board at its Madison office.

**WFSB 2.04 Consolidation and severance of proceedings.** Whenever the board deems it necessary, in order to effectuate the purposes of s. 144.445, Stats., or to avoid unnecessary costs or delay, proceedings under several subsections of s. 144.445, Stats., may be combined into a single proceeding or severed by issues.

**WFSB 2.05 Form of documents other than correspondence.**

(1) TITLE. Documents shall clearly show the title of the proceeding and the docket number. Titles are found in chs. WFSB 3 to 12 governing specific proceedings. Docket numbers will be assigned at the office of the board when the initiating petition is received. Docket numbers may be obtained from the board at its Madison office.

(2) WHERE TO SUBMIT. All documents and papers submitted prior to hearing shall be submitted to the board at its Madison office. During the course of the hearing, all matters shall be submitted to the examiner. After the close of the hearing, all matters shall be submitted to the board at its Madison office.

(3) NUMBER OF COPIES; FORM. Except as otherwise provided in these rules, any document submitted to the board, prior to, during, or after hearing shall be submitted with 9 copies in addition to the original. All matters submitted to the board shall be printed, typed or otherwise legibly duplicated.

(4) SIGNATURE. The original of each document submitted shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party itself, or by an officer of the party if it is a corporation or an unincorporated association.

**WFSB 2.06 Submission of papers other than letters.**

(1) EXTENSION OF TIME. The examiner may, by agreement of the affected parties for good cause shown, extend any time limit prescribed or allowed in chs. WFSB 3 to 12. Any such request to extend any time limit shall be in writing and, except for good cause shown, be received at least 3 working days before the expiration of such time limit. This section does not apply to deadlines prescribed in s.144.445, Stats.

(2) METHOD OF SUBMISSION. Notices of hearings, decisions, orders, and other process or papers issued by the examiner, or required to be submitted thereby, shall be submitted to parties residing or located in the state by certified mail and proof of submission established by return post office receipt.

(3) COMPLETION OF SUBMISSION. Papers required by s.144.445, Stats., this chapter, any other chapter, or order of the board, to be submitted to the examiner shall be deemed submitted when:

(a) delivered in person, or

(b) left at the principal office or place of business of the person served, or

- (c) addressed to the last known address of the person served and deposited in the United States mail, certified, return receipt requested, or
- (d) addressed to the last known address of the person served and deposited with a telegraph company.

(4) TO WHOM SUBMITTED. All papers, except papers relating to subpoenas, shall be submitted to all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law, and upon the board. Submission upon such counsel or representative shall constitute submission upon the party.

(5) PROOF OF SUBMISSION; WHEN REQUIRED. Proof of submission shall be submitted to the board only if the submission is challenged. In such a case, the party whose submission is challenged shall submit a copy of the return post office receipt to the board as proof.

**WFSB 2.07 Effect of failure to submit statement in response.**

Any party who fails to submit a statement in response to a petition, within the time provided under the rules governing particular procedures or by any extension granted, shall be deemed to admit the accuracy of the factual allegations made in the petition, and shall, unless good cause be shown, be precluded from introducing any evidence controverting any factual allegations in the petition.

**WFSB 2.08 Requests and statements in opposition.**

(1) In ch. WFSB 2:

- (a) "Request" means an application made, either in writing or orally, to the board, its agent, or hearing examiner for the purpose of obtaining a rule or order directing some act to be done in favor of the applicant.

(2) PRESENTATION. All requests shall be made in writing, except that requests made at a hearing may be stated orally on the record, and shall briefly state the order, ruling, or action sought and shall set forth specifically the reasons for the request. Alternate relief may be requested. Any party may request that the board or individual conducting the proceeding take any action which they are authorized to take by these rules. Any statement opposing a request shall be promptly filed and shall conform to the same requirements.

(3) DISPOSITION. Except for requests made at the hearing, the board shall rule upon requests submitted to it. Requests made during a hearing shall be ruled on by the individual conducting the hearing, except requests referred to the board, either during the hearing or at such time as the entire record is considered. All rulings on requests shall be in writing, or if announced at the hearing, may be stated orally on the record.

(4) RULINGS AND ORDERS PART OF THE RECORD. All requests, and any rulings or order thereon shall become part of the record.

(5) TO RESCHEDULE HEARING. A request by either party to reschedule hearing shall set forth

- (a) the reasons for the request,
- (b) alternate dates for rescheduling, and
- (c) the positions of all other parties, if known.

Except for good cause shown, any request for rescheduling must be received at least 2 working days before the date set for hearing.

**WFSB 2.09 Prehearing conference.**

(1) PURPOSE. Prehearing conferences are intended to provide an opportunity to consider:

- (a) formulation of a statement of the issue or issues presented by a proceeding.
- (b) whether the parties can reconcile differences and settle any issues among themselves.
- (c) the possibility of obtaining stipulations as to facts in the case.
- (d) designation of time and place for the public meeting in an arbitration.
- (e) which party shall present evidence first at public hearings and meetings.
- (f) any other issues which shall aid the board in performing its duties.

(2) MANDATORY DISCLOSURE. At prehearing conferences, the parties shall submit and exchange lists of their witnesses, and the originals or copies of the documentary and other physical evidence which they intend to utilize at the hearing, if available at that time. If the prehearing conference is conducted by conference telephone call, submission and exchange of these materials will be by mail. Following the prehearing conference, or if no prehearing conference is held, the parties

are under a continuing obligation to submit and exchange lists of further witnesses and further evidentiary matter which they intend to utilize at the hearing. With the exception of rebuttal matter, names of witnesses and copies of exhibits must be submitted more than 2 working days before the commencement of the hearing or will be subject to exclusion, unless good cause for the failure to comply is shown.

**WFSB 2.10 Depositions and discovery.**

(1) The examiner on application of any party may by issuance of a subpoena or other appropriate order authorize the taking of a deposition of a party or any other person for discovery or other purposes, in such manner and upon such terms and conditions as the examiner may prescribe. Such subpoenas or orders may require the production of documents or physical evidence. Depositions may be taken orally or in writing, or upon written interrogatories. Depositions may be authorized only for the purpose of obtaining information or evidence not otherwise readily available without the taking of a deposition, or which is reasonably calculated to lead to the discovery of admissible evidence. The taking of a deposition may be denied if it will result in undue delay of the proceedings. Upon motion of any party, or at any time the examiner determines, a proponent of procedures authorized in this section may be required to show good cause that such procedures are not being used for purposes of delay or are not otherwise unnecessary or duplicative.

(2) Depositions may be taken before any person having power to administer oaths. Examinations shall be conducted as on direct examination, except that adverse parties or hostile witnesses may be examined as under cross examination.

(3) Depositions under this section may be used as evidence if otherwise admissible under the same circumstances in which they may be admitted in civil actions in courts of law.

(4) If any part of a deposition is put in evidence, any party may require the production of the remainder, or any other portion of the deposition. Depositions under this section may be used for impeachment purposes.

(5) Copies of all written interrogatories and cross interrogatories shall be submitted to the examiner. Each interrogatory shall be fully and completely answered in writing and under oath. Answers, including objections, if any, shall be submitted to the requesting party, with a copy to the examiner, within 10 days after service of the interrogatory, or such other period as the examiner may specify. The requesting party may move for an order overruling objections which are without merit and compelling an answer within such period of time as may be designated by the examiner.

(6) In lieu of or in addition to procedures under subsection (5), any party may serve upon any other party, with a copy to the examiner, a demand to admit or deny the genuineness of relevant documents or the existence or truthfulness of relevant facts. If the party upon whom demand is made fails or refuses to comply with the demand or file objections setting forth grounds for such objections within 10 days after service of the demand, the facts included in the demand shall be taken as true. Answers or objections shall be under oath. The party making the demand may move for an order overruling objections which are without merit, and compelling an admission or denial in accordance with the demand.

(7) Upon failure of the party served to answer as required under subsections (5) and (6), the examiner may, upon motion of the requesting party, enter such order as may be fair and just, including:

- (a) An order that designated facts and documents shall be taken to be established in accordance with the claim of the party serving the demand to admit or deny.
- (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence.
- (c) An order striking out pleadings or parts thereof.

#### **WFSB 2.11 Hearings, transcripts.**

(1) PUBLIC HEARING. All hearings shall be public.

(2) RESCHEDULING OF HEARING. Upon its own motion or proper cause shown by any of the parties, the board may, prior to the opening of the hearing, reschedule the date of such hearing.

(3) RIGHTS OF PARTIES AT HEARING. Any party shall have the right to appear by counsel or by any other representative to present his case by oral, documentary, or other evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. Any party shall be entitled, upon request, to a reasonable period for oral argument at an appropriate time during the hearing.

(4) EFFECT OF FAILURE TO APPEAR. Any party failing to appear and participate after certified receipt of notice shall be deemed to have waived the rights set forth in sub. (2) above, to admit the accuracy of the uncontradicted evidence put forth by the parties present, and shall, unless good cause be shown, be precluded thereafter from introducing any evidence controverting any contentions or allegations. The examiner may rely on the record as made.

(5) OPENING STATEMENTS. Opening statements are optional and shall be confined to a brief summary of the nature of the case, the evidence intended to be offered, and the controlling legal authorities.

(6) EVIDENCE. Rules of evidence are governed by s.227.08, Stats.

(7) WITNESSES. (a) Normally, a witness shall be examined first on direct examination by the party calling the witness, unless the witness is called adversely, in which case the witness shall be first examined adversely by the party calling the witness.

- (b) Witnesses may testify either by answers to questions or in narrative form.
- (c) Cross-examination shall not be limited to matters to which the witness testified on direct.
- (d) A person examining or cross-examining a witness shall not approach the witness stand except to show the witness an exhibit.
- (e) Examination and cross-examination should be confined to questioning the witness and should not be interspersed with argument or commentary on the testimony. A party not represented by counsel should not make evidentiary statements while examining or cross-examining a witness. Such evidentiary statements should be restricted to the part of the case where the party is testifying on his or her own behalf.

(8) STIPULATIONS. Parties may stipulate to some or all of the facts, and the board may base its order upon such stipulation.

(9) EXHIBITS. All exhibits shall be marked and made available for inspection by the opposing party before being shown to the witness, unless the exhibit shall have been marked and a copy made available to the opposing party prior to the hearing.

(10) CONTINUANCES. Continuances, postponements, adjournments, recesses and extensions of time may be granted or directed by the board or individual conducting the hearing. Hearings may be recessed or adjourned at the request of any party adversely affected by the introduction of evidence constituting undue surprise to afford such party a fair and reasonable opportunity to examine and study such evidence.

(11) TRANSCRIPTS. A stenographic, electronic or other record of hearings and such other proceedings as the board may designate shall be recorded. The typed transcript or



other record will be available in the board office for the use of the parties. Copies of the tape recordings, transcripts or other records shall be furnished upon request, at cost.

(12) **CORRECTIONS OF TRANSCRIPT.** Corrections of the official transcript may be made only when they involve errors affecting substance and shall be made only in the manner provided here. Proposed corrections shall be submitted by stipulation or request. Corrections pursuant to a request, shall not be ordered except upon notice and opportunity for submission of statements in opposition. When corrections are so ordered the necessary physical corrections shall be made in the official transcript.

(13) **BRIEFS.** The board or individual conducting the hearing may require briefs and shall indicate the date on or before which they shall be submitted.

**WFSB 2.12 Hearing subpoenas.** The examiner may issue subpoenas requiring attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents in their possession or under their control. Application for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party, at whose request it was issued, and the proceeding involved.

**WFSB 2.13 Duties of examiners.** The examiner shall inquire fully into all matters in issue, to obtain a full and complete record upon which the duties of the board under s. 144.445, Stats., may be properly discharged.

**WFSB 2.14 Powers of examiners.** The examiner may take the following action, subject to these rules within the board's power.

- (1) To administer oaths and affirmations;
- (2) To issue subpoenas in the name of the board;
- (3) To rule upon offers of proof, receive relevant evidence, and exclude irrelevant, immaterial, or unduly repetitious evidence;
- (4) To question witnesses;
- (5) To take or cause depositions to be taken and to determine their scope;
- (6) To regulate the time, place and course of the hearing;

(7) To dispose of procedural requests or other similar matters;

(8) During the course of the hearing to hold conferences for the settlement, simplification or adjustment of the issues by consent of the parties; and,

(9) To take any other action necessary under the foregoing or authorized under these rules.

**WFSB 2.15 Procedures, application.** Procedures under this chapter shall only apply to public hearings and not public informational meetings.

**WFSB 2.16 Close of hearing.** A hearing shall be deemed closed when the evidence is closed and when any period fixed for filing of briefs, presentation of oral argument, if any, or both has expired. The hearing may be re-opened by the examiner on good cause shown by either party.

**WFSB 2.17 Waiver of procedures.** The parties to any proceeding may agree to waive any one or more of the procedural requirements or decisions which would otherwise precede the issuance of a final order or other final disposition issued by the examiner.

### Chapter WFSB 3

#### MUNICIPAL NOTIFICATION

**WFSB 3.01 Request for specification of local approvals.** The written request for specification of all local approvals, pursuant to sec. 144.44 (1m)(b), shall include the name and address of the applicant, the type of facility proposed, the location of the proposed facility including a map, a complete legal description of the site and a list of all affected municipalities. The request shall be mailed by certified mail, return receipt requested or by personal delivery, with a signed affidavit to the affected municipalities.

**WFSB 3.02 Notification of negotiation and arbitration process.** The applicant shall attach to its request a copy of the standard notice printed by the board which informs municipalities of the time limits and requirements for participation in the negotiation and arbitration process under s. 144.445, Stats. Standard notices may be obtained at no cost from the board at its Madison office.

**WFSB 3.03 Copy to Board.** The applicant shall submit to the board a copy of the request it submits to affected municipalities under this subdivision and a copy of the return post office receipts or affidavits as proof of submission.

Chapter WFSB 4

LOCAL COMMITTEE

**WFSB 4.01 Disclosure of private interests.** Each member of a local committee shall file a statement with the board within 15 days after the person is appointed to the local committee specifying the economic interests of the member and his or her immediate family members that would be affected by the proposed facility and its development.

**WFSB 4.02 Statement of economic interests.**

- (1) CONTENTS. The statement of economic interests shall contain:
  - (a) The name and address of the local committee member.
  - (b) The approximate location from the proposed site of any property owned by the local committee member or his or her immediate family in any of the affected municipalities.
  - (c) A description of any direct economic ties between the local committee member or his or her immediate family and the proposed facility or applicant.
- (2) STANDARD FORM; HOW TO OBTAIN. A standard "Statement of Economic Interest" form is available from the board. The form may be obtained at no cost from the board at its Madison office.

**WFSB 4.03 Failure to disclose private interests.** If a person fails to file a statement of economic interest as required under s. WFSB 4.01, he or she may not serve on the local committee and the position to which he or she was appointed is vacant.

Chapter WFSB 5

COOPERATION WITH LAND CONSERVATION  
BOARD UNDER S. 91.03, STATS.

**WFSB 5.01 Policy and purpose.** It is the policy of the state that all departments and agencies of state government shall cooperate with the Land Conservation Board and the Department of Agriculture, Trade and Consumer Protection in the exchange of information concerning projects and activities, including takings under eminent domain, which might jeopardize the preservation of lands contemplated by ch. 91, Stats. This rule governs the cooperation which this board extends the department and board pursuant to sec. 91.03, Stats.

**WFSB 5.02 Applicant notification to the board.** When the applicant submits to the board a copy of the request for specification of all local approvals under s. WFSB 3.03, the applicant shall include a statement to the best of its knowledge if the site of the proposed facility includes land upon which there exists farmland preservation agreements, zoning for exclusively agricultural use or is located in a preservation area identified on a certified county preservation plan. The statement shall contain a legal description of that portion of the land under an agreement, zoning regulation or certified county preservation plan.

**WFSB 5.03 Board and department notification.** If the proposed site includes land upon which there exists farmland preservation agreements, zoning for exclusively agricultural use, or is located in a preservation area identified on a certified county preservation plan, the applicant shall also notify the Land Conservation Board and the Department of Agriculture, Trade and Consumer Protection of the proposal and the information supplied to the board.

**WFSB 5.04 Notification, continuing obligation.** The applicant has a continuing obligation to notify the board, Land Conservation Board and Department of Agriculture, Trade and Consumer Protection if, at any time, the applicant has information that the site of the proposed facility includes land upon which there exists farmland preservation agreements, zoning for exclusively agricultural use or is located in a preservation area identified on a certified county preservation plan.

Chapter WFSB 6

NEGOTIATIONS

**WFSB 6.01 Public informational hearings; local committee.** The local committee may hold public informational hearings at any time concerning the agreement in any town, city or village where all or a portion of the facility is to be located.

**WFSB 6.02 Submission of agreement to board and department.** The applicant shall submit a copy or notice of any negotiated agreement approved by the appropriate governing bodies to the board and the department by mail within 10 days after the agreement is approved.

Chapter WFSB 7

PETITION ON NEGOTIABILITY AND DETERMINATION  
BY BOARD PURSUANT TO SECTION 144.445(9)(b)

**WFSB 7.01 Petition.** (1) WHO MAY SUBMIT. A petition for the determination of a dispute over the negotiability of an item or items may be submitted by an applicant, local committee or as a joint petition.

(2) FORM, NUMBER OF COPIES, SUBMISSION. The petition shall be in writing and its caption shall be as follows:

STATE OF WISCONSIN

BEFORE THE WASTE FACILITY SITING BOARD

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In the Matter of the (Joint) Petition .
Requesting a Determination of Negotiability .
Pursuant to Section 144.445(9)(b), .
Stats., Involving a Dispute Between .
(Name of Petitioner) .
and .
(Name of Other Party or Co-Petitioner) .
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The original of the petition shall be signed and the original and 9 copies of the petition shall be submitted to the board. The party submitting the petition shall, at the same time, submit a

copy to the other party, or its designated representative, by certified mail or personal delivery.

(3) CONTENTS. The petition shall include the following:

- (a) The caption in the form noted above.
- (b) The name and address of the applicant involved, and the name and address and telephone number of its principal representative.
- (c) The names and addresses of the members of the local committee involved, and the name and address and telephone number of its principal representative.
- (d) A clear and concise statement of the item or items over which a dispute has arisen concerning negotiability.
- (e) A complete statement of the agreed facts constituting the basis upon which the board is to make its determination in the matter.
- (f) A clear and concise statement of the position of the petitioner as to whether the item or items set forth in the petition are negotiable.

(4) A STATEMENT IN SUPPORT OF PETITION. The petition shall attach to the original and each copy of the petition a clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner.

**WFSB 7.02 Statement in response to petition.** (1) WHO SHALL SUBMIT. The party other than the petitioner shall, within 14 days of the receipt of the petition, submit to the board a statement in response to the petition.

(2) FORM, NUMBER OF COPIES, FILING AND SERVICE. The statement in response shall be in writing and shall include the caption of the case. The original and 9 copies shall be submitted to the board. The party submitting the statement in response shall at the same time submit a copy to the petitioner, or its designated representative, by certified mail or personal delivery.

(3) CONTENTS. The statement in response shall include the following:

- (a) A clear and concise statement of the position taken by the party as to whether the item or items are negotiable as set forth by the petitioner.

- (b) A clear and concise statement of the facts and arguments relied upon by such party in support of its petition with respect to the matter involved.
- (c) Corrections, as may be deemed necessary, to the names, addresses, telephone numbers and representatives set forth in the petition.

**WFSB 7.03 Withdrawal of Petition.** Any petition submitted under this chapter may be withdrawn at any time. If the petition is submitted by both parties, both must consent before withdrawal will be effectuated. If one party wishes to withdraw from a joint petition, it may do so and submit a statement in response to petition under the conditions prescribed in s. WFSB 7.02.

**WFSB 7.04 Notice of hearing when issued; contents.** Following the submission of a petition and statement in response to the petition, the board shall issue and serve upon each of the parties, a notice of hearing at a fixed place and, except in unusual circumstances, at a time not less than 10 days after the service of such notice.

**WFSB 7.05 Hearings.** (1) WHO SHALL CONDUCT. Hearings may be conducted by any examiner and, at any time, an examiner may be substituted for the examiner previously presiding.

(2) SCOPE OF HEARING. The hearing shall be limited by the examiner to the litigation of and oral arguments on genuine issues of fact or law raised by the parties and remaining for disposition concerning the negotiability of any items enumerated in the petition.

**WFSB 7.06 Decision concerning negotiability.** Within 14 days after submission of the case, the board shall issue a decision concerning the petition and notify the applicant and local committee of that decision. The date on which the last document necessary to the decision of the case is received or the date on which a hearing is closed, whichever is later, shall be regarded as the date of submission of the case.

## Chapter WFSB 8

### MEDIATION

**WFSB 8.01 Who may act as mediator.** A competent, impartial disinterested person designated by the board or selected by the parties may act as the mediator in the dispute.

**WFSB 8.02 Selection of mediator.** The board, after receiving a request for the appointment of a mediator, shall immediately submit to the parties a list of 5 mediators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed a mediator. The petitioning party shall notify the board in writing of the identity of the mediator selected. Upon receipt of such notice, the board shall formally appoint the mediator.

**WFSB 8.03 Function of mediator, effectuate settlement.** Upon the consent of the parties to mediation, it shall be the function of the mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute, but neither the mediator nor the board shall have the power to impose a settlement upon either party.

**WFSB 8.04 Mediation proceedings.** (1) NATURE. The mediator may hold separate meetings with the parties or their representatives and such meetings may be closed, pursuant to s. 19.85 (1)(e), Stats.

(2) WHEN AND WHERE CONDUCTED. Mediation meetings shall be conducted at such time and place agreed to by the mediator and the parties or their representatives.

(3) RECORDS. All records of meetings between the mediator and the parties are subject to the provisions of subch. II, ch. 19, Stats., Open Records Law.

#### Chapter WFSB 9

##### PETITION FOR DEFAULT AND DETERMINATION BY BOARD PURSUANT TO SECTION 144.445(9)(d), Stats.

**WFSB 9.01 Petition.** (1) WHO MAY FILE. A petition for default may be filed by an applicant or a local committee.

(2) FORM, NUMBER OF COPIES, SUBMISSION. The petition shall be in writing and its caption shall be as follows:



STATE OF WISCONSIN

BEFORE THE WASTE FACILITY SITING BOARD

----- .  
 .  
 In the Matter of the Petition .  
 Requesting a Determination of Default .  
 Pursuant to Section 144.445(9)(d), .  
 Stats., Involving a Dispute Between .  
 .  
 (Name of Petitioner) .  
 .  
 and .  
 .  
 (Name of Other Party) .  
 .  
 ----- .

The original of the petition shall be signed and the original and 9 copies of the petition shall be submitted to the board. The party submitting the petition shall, at the same time, submit a copy to the other party, or its designated representative, by certified mail or personal delivery.

(3) CONTENTS. The petition shall include the following:

- (a) The name and address of the applicant involved and the name and address and telephone number of its principal representative.
- (b) The names and addresses of the members of the local committee involved, and the name and address and telephone number of its principal representative.
- (c) A clear and concise statement of the position of the petitioner as to the reason for petitioning for default.

(4) A STATEMENT IN SUPPORT OF PETITION. The petitioner shall attach to the original and each copy of the petition a clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner.

**WFSB 9.02 Statement in response to petition.** (1) WHO SHALL SUBMIT. The party other than the petitioner shall, within 14 days of the receipt of the petition, submit to the board a statement in response to the petition.

(2) FORM, NUMBER OF COPIES, SUBMISSION. The statement in response shall be in writing and shall include the caption of the

case. The original and 9 copies shall be submitted to the board. The party submitting the statement in response shall, at the same time, submit a copy to the petitioner by certified mail or personal delivery.

(3) CONTENTS. The statement in response shall include the following:

- (a) A clear and concise statement of the position taken by the party as to whether or not it opposes default as set forth by the petitioner.
- (b) A clear and concise statement of the facts and arguments relied upon by such party in support of its petition with respect to the matter involved.
- (c) Corrections, as may be deemed necessary, to the names, addresses, telephone numbers and representatives set forth in the petition.

**WFSB 9.03 Withdrawal of petition.** Any petition submitted under this chapter may be withdrawn at any time.

**WFSB 9.04 Notice of hearing. When issued; contents.**

Following the submission of a petition and statement in response to the petition, the board shall issue and serve upon each of the parties, a notice of hearing at a fixed place and, except in unusual circumstances, at a time not less than 10 days after the service of such notice.

**WFSB 9.05 Hearings.** (1) WHO SHALL CONDUCT. Hearings may be conducted by any examiner and, at any time, an examiner may be substituted for the examiner previously presiding.

(2) SCOPE OF HEARING. The hearing shall be limited by the examiner to the litigation of and oral arguments on genuine issues of fact or law raised by the parties and remaining for disposition concerning the default enumerated in the petition.

**WFSB 9.06 Decision concerning default.** Within 30 days after submission of the case, the board shall issue a decision concerning the petition and notify the applicant and local committee of that decision. The last date on which objections to the examiner's proposed decision are allowed shall be regarded as the date of the submission of the case.

**WFSB 9.07 Considerations by the board.** (1) In making its decision concerning the petition, the board may consider:

- (a) The length of time which has passed from appointment of local committee members.
- (b) Whether the local committee has been meeting regularly as a body.
- (c) The number of times the petitioner has requested a joint session.

(2) A decision finding default will be entered only if the board finds a deliberate, repeated and flagrant failure to participate in negotiating sessions.

(3) The board shall not find default on the part of a local committee if a feasibility report or its substantial equivalent has not been made available to the participating municipalities.

#### Chapter WFSB 10

#### PETITION FOR ARBITRABILITY AND DETERMINATION BY BOARD.

**WFSB 10.01 Petition.** (1) WHO MAY SUBMIT. A petition for the determination of a dispute over arbitrability of an item or items may be submitted by an applicant, a local committee or as a joint petition.

(2) WHEN SUBMITTED. A petition for determination of arbitrability under this chapter may be submitted only once by either party or jointly before the submission of final offers. Any determination made when final offers are submitted shall be governed by s.144.445 (10)(g), Stats.

(3) FORM, NUMBER OF COPIES, SUBMISSION. The petition shall be in writing and its caption shall be as follows:

STATE OF WISCONSIN

BEFORE THE WASTE FACILITY SITING BOARD

----- .  
 In the Matter of the (Joint) Petition .  
 Requesting a Determination of Arbitrability .  
 Involving a Dispute Between .  
 (Name of Petitioner) .  
 and .  
 (Name of Other Party .  
 or Co-Petitioner) .  
 -----

The original of the petition shall be signed and the original and 9 copies of the petition shall be submitted with the board. The party submitting the petition shall, at the same time, submit a copy to the other party, or its designated representative, by certified mail or personal delivery.

- (4) CONTENTS. The petition shall include the following:
- (a) The caption in the form noted above.
  - (b) The name and address of the applicant involved, and the name and address and telephone number of its principal representative.
  - (c) The names and addresses of the members of the local committee involved, and the name and address and telephone number of its principal representative.
  - (d) A clear and concise statement of the item or items over which a dispute has arisen concerning arbitrability.
  - (e) A complete statement of the agreed facts constituting the basis upon which the board is to make its determination in the matter.
  - (f) A clear and concise statement of the position of the petitioner as to whether the item or items set forth in the petition are arbitrable.

(5) A STATEMENT IN SUPPORT OF PETITION. The petitioner shall attach to the original and each copy of the petition a clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner.

**WFSB 10.02 Statement in response to petition.** (1) WHO SHALL SUBMIT. The party other than the petitioner shall, within 14 days of the receipt of the petition, submit to the board a statement in response to the petition.

(2) FORM, NUMBER OF COPIES, SUBMISSION. The statement in response shall be in writing and shall include the caption of the case. The original and 9 copies thereof shall be submitted to the board. The party submitting the statement in response shall, at the same time, submit a copy to the petitioner by certified mail or personal delivery.

(3) CONTENTS. The statement in response shall include the following:

- (a) A clear and concise statement of the position taken by the party as to whether the item or items are arbitrable as set forth by the petitioner.
- (b) A clear and concise statement of the facts and arguments relied upon by such party in support of its petition with respect to the matter involved.
- (c) Corrections, as may be deemed necessary, to the names, addresses, telephone numbers and representatives set forth in the petition.

**WFSB 10.03 Withdrawal of petition.** Any petition submitted under this chapter may be withdrawn at any time. If the petition is submitted by both parties, both must consent before withdrawal will be effectuated. If one party wishes to withdraw from a joint petition, it may do so and submit a statement in response to petition under the conditions presented in s. WFSB 10.02.

**WFSB 10.04 Notice of hearing. When issued; contents.** Following the submission of a petition and statement in response to the petition, if it appears that further proceedings are warranted, the board shall issue and serve upon each of the parties, a notice of hearing at a place fixed therein and, except in unusual circumstances, at a time not less than 10 days after the service of such notice.

**WFSB 10.05 Intervention.** Any party desiring to intervene in a determination of arbitrability proceeding shall file a request

with the board. Such requests shall state the reasons why such party claims an interest. Intervention may be permitted and upon such terms as the board or the individual conducting the proceeding may deem appropriate.

**WFSB 10.06 Hearings.** (1) WHO SHALL CONDUCT. Hearings may be conducted by any examiner and, at any time, an examiner may be substituted for the examiner previously presiding.

(2) SCOPE OF HEARING. The hearing shall be limited by the examiner to the litigation of and oral arguments on genuine issues of fact or law raised by the parties and remaining for disposition concerning arbitrability enumerated in the petition.

**WFSB 10.07 Decision concerning arbitrability.** (1) ISSUING DATE. Within 30 days after submission of the case, the board shall issue a decision concerning the petition and notify the applicant and local committee of that decision. The date on which the last document necessary to the decision of the case is received or the date on which a hearing is closed, whichever is later, shall be regarded as the date of submission of the case.

(2) DECISION; INTERIM. All determinations of arbitrability decided prior to the submission of final offers are interim and become final only when incorporated into an arbitration award between the same parties issued by the board.

#### Chapter WFSB 11

PETITION FOR ARBITRATION AND DETERMINATION  
OF BOARD PURSUANT TO SECTION 144.445(10)(a), (b) and (c), STATS.

**WFSB 11.01 Petition.** (1) WHO MAY SUBMIT. A petition for the initiation of arbitration may be submitted by an applicant or a local committee or as a joint petition.

(2) FORM, NUMBER OF COPIES, SUBMISSION. The petition shall be in writing and its caption shall be as follows:

STATE OF WISCONSIN

BEFORE THE WASTE FACILITY SITING BOARD

----- .  
 In the Matter of the (Joint) Petition .  
 Requesting Initiation of Arbitration .  
 Pursuant to Section 144.445(10)(b), .  
 Stats., Involving a Dispute Between .  
 (Name of Petitioner) .  
 and .  
 (Name of Other Party or .  
 Co-Petitioner) .  
 -----

The original of the petition shall be signed and the original and 9 copies of the petition shall be submitted to the board. The party submitting the petition shall, at the same time, submit a copy to the other party, or its designated representative, by certified mail or personal delivery.

(3) CONTENTS. The petition shall include the following:

- (a) The caption in the form noted above.
- (b) The name and address of the applicant involved, and the name and address and telephone number of its principal representative.
- (c) The names and addresses of the members of the local committee involved, and the name and address and telephone number of its principal representative.
- (d) A clear and concise statement of the position of the petitioner as to the reason for petitioning to initiate arbitration.
- (e) A complete statement of the agreed facts constituting the basis upon which the board is to make its determination in the matter.

(4) A STATEMENT IN SUPPORT OF PETITION. The petitioner shall attach to the original and each copy of the petition a clear and concise statement of the facts and arguments relied upon by the petitioner in support of the position taken by the petitioner.

**WFSB 11.02 Statement in response to petition.** (1) WHO SHALL SUBMIT. The party other than the petitioner shall, within 14 days of the receipt of the petition, submit with the

board a statement in response to the petition.

(2) **FORM, NUMBER OF COPIES, SUBMISSION.** The statement in response shall be in writing and shall include the caption of the case. The original and 9 copies thereof shall be submitted to the board. The party submitting the statement in response shall, at the same time, submit a copy to the petitioner by certified mail or personal delivery.

(3) **CONTENTS.** The statement in response shall include the following:

- (a) A clear and concise statement of the position taken by the party as to whether or not it opposes initiation of arbitration as set forth by the petitioner.
- (b) A clear and concise statement of the facts and arguments relied upon by such party in support of its petition with respect to the matter involved.
- (c) Corrections, as may be deemed necessary, to the names, addresses, telephone numbers and representatives set forth in the petition.

**WFSB 11.03 Withdrawal of petition.** Any petition submitted under this chapter may be withdrawn at any time. If the petition is submitted by both parties, both must consent before withdrawal will be effectuated. If one party wishes to withdraw from a joint petition, it may do so and submit a statement in response to petition under the conditions prescribed in s. WFSB 11.02.

**WFSB 11.04 Notice of status conference.** Following the submission of a petition, if it appears to the board that further proceedings are warranted, the board may request a status conference between both parties and the examiner, at a fixed place or by conference call and, except in unusual circumstances, at a time not less than 7 days after the service of such notice.

**WFSB 11.05 Status Conferences.** (1) **WHO SHALL CONDUCT.** Status conferences may be conducted by any examiner and, at any time, an examiner may be substituted for the examiner previously presiding.

(2) **SCOPE OF STATUS CONFERENCE.** The status conference shall be limited by the examiner to the discussion of genuine issues enumerated in the petitions concerning whether arbitration can be avoided by the negotiation of any remaining issues.



**WFSB 11.06 Decision concerning arbitration.** Within 15 days after submission of the petition, the board shall issue a decision concerning the petition and notify the applicant and local committee of that decision.

**WFSB 11.07 Order to continue negotiation.** The board may issue a decision ordering the applicant and the local committee to continue negotiating for a fixed time period of at least 30 days after the date of the notice if, in the judgment of the board, arbitration can be avoided by the negotiation of any remaining issues. If the board issues a decision ordering the applicant and the local committee to continue negotiation, the petition to initiate arbitration may be resubmitted after the extended period of negotiation.

**WFSB 11.08 Considerations by board.** In making its decision concerning the petition, the board may consider:

- (a) Whether parties have utilized the services of a mediator or have considered making such utilization.
- (b) Whether either party believes further negotiations will result in the settlement of any issues.
- (c) Whether one party has refused to negotiate concerning any items not arbitrable but negotiable.

**WFSB 11.09 Decision to delay arbitration pending submittal of feasibility report.** The board may issue a decision to delay the initiation of arbitration until the board is notified that the affected municipalities have received a feasibility report for the facility proposed by the applicant. The board may decide to delay the initiation of arbitration under this paragraph if the applicant has not made available information substantially equivalent to that in a feasibility report. The petition to initiate arbitration may be resubmitted after the feasibility report is submitted.

## Chapter WFSB 12

### ARBITRATION

**WFSB 12.01 Public informational hearings; local committee.**

(1) HEARINGS BEFORE APPROVAL. The local committee shall conduct one or more public informational hearings on the

proposed final offer prior to submitting the final offer to the governing bodies under s. 144.445(10)(d), Stats., for approval.

(2) HEARING NOTICE. The notice of the public informational hearing shall clearly state in bold print that the hearings concerning the final offer shall be the final opportunity for public input in the arbitration proceeding. The notice shall also clearly state in bold print that the public may not participate separately from the local committee at the public meetings of the arbitration proceeding before the board in accordance with s. 144.445(10)(f), Stats.

(3) HEARINGS. Public informational hearings held by the local committee shall conform to subch. IV, ch. 19, Open Meetings Law.

(4) FAILURE TO HOLD HEARINGS. The board shall refuse to accept any local committee's final offer if subs. (1) and (2) are not complied with by the local committee.

**WFSB 12.02 Pre-hearing conference; when held.** A pre-hearing conference will be held at least 14 days before the scheduled meeting date. WFSB 2.09 shall govern all other matters pertaining to conference.

**WFSB 12.03 Public meeting.** A public meeting will be held so that parties may present arguments and evidence in support of their final offer. Hearings will be conducted in accordance with WFSB 2.

**WFSB 12.04 On-site inspection; when held.** Following the public informational meeting and public hearing, the board may fix a date and time to make such an inspection and notify the parties of that decision. Parties may attend the on-site inspection of the board.

**WFSB 12.05 Briefs; when submitted.** Briefs may be submitted by either party no later than 14 days following the public hearing.

**WFSB 12.06 Decision on final offers.** Within 90 days after submission of the final offers, the board shall issue a decision concerning the final offers and notify the applicant and local committee of that decision.