



Ohio Revised Code

Section 3734.35 Affected community may request compensation agreement.

Effective: October 31, 1996

Legislation: House Bill 122 - 121st General Assembly

(A) As used in this section, "affected community" means any municipal corporation, township, or county that meets all of the following conditions with respect to a proposed publicly owned sanitary landfill or proposed modification to a publicly owned sanitary landfill as provided in division

(A)(2)(d)(i) of section 3734.05 of the Revised Code ;

(1) All or part of it is located one kilometer or less from the property boundary of the landfill;

(2) It is not the municipal corporation, township, or county in which the landfill is located;

(3) It is not located in the same solid waste management district as the landfill.

(B) If, upon the issuance of a permit for a new publicly owned sanitary landfill under division (A) of section 3734.05 of the Revised Code or for a modification of such a landfill under division

(A)(2)(d)(i) of that section, there is only one affected community in a county with respect to that landfill, that community shall represent itself in any negotiations under division (C) of this section, any arbitration under division (D) of this section, or any court proceeding under division (E) or (H) of this section. If, upon the issuance of a permit for such a new landfill or for a modification of such a landfill, there is more than one affected community in a county with respect to that landfill, all the affected communities in that county shall be represented in any negotiations under division (C) of this section, any arbitration under division (D) of this section, or any court proceeding under division (E) or (H) of this section by the board of county commissioners of the county in which those affected communities are located.

(C) On or after the effective date of this section and not later than fifteen days after a permit for a new publicly owned sanitary landfill or modification of a publicly owned sanitary landfill as provided in division (B) of this section is issued, the environmental protection agency shall deliver written notice of the issuance of the permit to the solid waste management district in which the landfill or proposed landfill is or is to be located. Not later than thirty days after receiving the notice,



the solid waste management district shall deliver written notice of the issuance of the permit to each affected community and to the board of county commissioners of each county in which there is more than one affected community. Not later than forty-five days after receiving notification from the solid waste management district, an affected community or a board of county commissioners representing affected communities, as applicable, may deliver to the solid waste management district in which the landfill or proposed landfill is or is to be located a written request to negotiate an agreement to compensate the affected community or communities for any or all of the following expenses that have been or will be incurred by the affected community or communities as a result of the siting, operation, or closure of the landfill:

- (1) Road improvements and maintenance;
- (2) Emergency services;
- (3) Litter prevention and reduction;
- (4) Collection and analysis of samples from public or private water wells;
- (5) Enforcement of applicable public health codes;
- (6) Enforcement of applicable environmental laws.

The request shall state with particularity the nature and extent of the alleged impacts upon the affected community or communities for which compensation is sought, the amount of compensation sought, and the terms of payment of compensation sought. The affected community or board of county commissioners representing affected communities shall deliver a copy of the request to the solid waste management district in which the affected community or communities are located.

If a mutually acceptable agreement is entered into under this division, it may include a provision requiring the agreement to be renegotiated beginning on a specified date, or at intervals, as agreed by the affected community or board of county commissioners representing affected communities, as applicable, and the solid waste management district.



(D) If the solid waste management district in which a publicly owned sanitary landfill or proposed publicly owned sanitary landfill as provided in division (B) of this section is or is to be located and an affected community or board of county commissioners representing affected communities fail to reach a mutually acceptable agreement on compensation not later than ninety days after the affected community or board of county commissioners submits a request for compensation to the district under division (C) of this section, not later than thirty days thereafter either party may deliver to the other party a written request for binding arbitration. A party that requests binding arbitration shall deliver a copy of the request to the solid waste management district in which the affected community or communities are located.

Within thirty days after a request for binding arbitration is first delivered by one party to the other party, each party shall select an arbitrator. Within ten days after the arbitrators are selected, they shall select a third arbitrator. If they are unable to agree on a third arbitrator, they shall so notify the director of environmental protection in writing. Not later than thirty days after receiving the notice, the director shall select the third arbitrator. The selection of the third arbitrator by the director is not appealable and is not a final action under Chapter 3745. of the Revised Code. An arbitrator chosen by the director shall not be a state employee. Serving as an appointed member of an arbitration team under this section does not constitute holding a public office or position of employment under the laws of this state and does not confer a right to compensation from the environmental protection agency or any other agency of this state.

Not later than thirty days after selection of the arbitration team, each party to the arbitration shall deliver to the team a recommendation for compensation of the affected community or communities, as applicable. Not later than sixty days after selection of the arbitration team, the team, by a majority vote, shall approve one of the recommendations submitted by the parties.

The arbitration team shall deliver to each party, and to the solid waste management district in which the affected community or communities are located, a written statement of the arbitration award that sets forth with particularity the nature and extent of the impacts upon the affected community or communities for which compensation is awarded, the amount of compensation awarded, and the terms upon which compensation shall be paid.

The parties shall abide by the arbitration award unless it is appealed under division (E) of this section



and one of the parties delivers to the other party a written request to stay the arbitration award pending the appeal. If such a request is delivered, the arbitration award shall be suspended pending the appeal. The arbitration award otherwise shall be enforced, upon petition by either party, by the court of common pleas in the county in which the affected community or communities are located. A party that requests a stay of an arbitration award shall file a copy of the request with the court to which the award has been appealed and deliver a copy of the request to the solid waste management district in which the affected community or communities are located.

(E) Within thirty days after the arbitration team renders its decision, either party to the arbitration may appeal the arbitration award to the court of common pleas in the county in which the affected community or communities are located. A party that appeals an arbitration award shall deliver a copy of its notice of appeal to the solid waste management district in which the affected community or communities that are party to the appeal are located. The arbitration award shall be stayed pending appeal if either party requests a stay under division (D) of this section. The court shall uphold the arbitration award if it is supported by substantial evidence. If the court finds that the arbitration award is not supported by substantial evidence, the court shall order an award that is equitable to the parties. The court shall deliver a copy of its order to the solid waste management district in which the affected community or communities that are party to the appeal are located.

If the affected community or board of county commissioners representing affected communities, as applicable, prevails on appeal and the arbitration award has been stayed pending appeal at the request of the solid waste management district in which the landfill or proposed landfill is or is to be located, the court shall award interest at the rate specified under division (A) of section 1343.03 of the Revised Code, based upon the amount of compensation that would have been payable to the affected community or communities under the arbitration award under division (D) of this section or a judicial order under this division during the time the stay was in effect.

(F) A solid waste management district and an affected community or board of county commissioners representing affected communities, as applicable, by mutual consent, may modify an agreement between them entered into under division (C) of this section, an arbitration award rendered under division (D) of this section, or a judicial order rendered under division (E) of this section with respect to compensation of the affected community or communities by the district for impacts described in divisions (C)(1) to (6) of this section. Any modification shall be in writing, and a copy



of it shall be delivered to the solid waste management district in which the affected community or communities are located. If the parties agree to modify a judicial order with respect to compensation of the affected community or communities, the affected community or board of county commissioners, as applicable, shall file a copy of the modified agreement with the court that issued the order.

(G) The parties to an arbitration under division (D) of this section shall share equally the cost of the arbitration and each shall bear the cost of its own attorney's fees and other expenses related to the arbitration.

(H) If a solid waste management district that is subject to an agreement under division (C) of this section, an arbitration award under division (D) of this section, or a judicial order under division (E) of this section is not in compliance with the requirements of the agreement, award, or order, or any modification thereto agreed to under division (F) of this section, any affected community or board of county commissioners representing affected communities, as applicable, may deliver to the district written notice of noncompliance. The notice shall specify the nature of the noncompliance, including, but not limited to, the provisions of the agreement, award, or order, or modification thereto, with which the district is not complying.

If the district has not complied with the agreement, award, or order, or modification thereto, not later than thirty days after receiving notice of noncompliance, the affected community or board of county commissioners, as applicable, may deliver a copy of the notice of noncompliance to the court of common pleas in the county where the affected community or communities are located and request the court to hold a hearing to determine if the district is in compliance with the agreement, award, or order, or modification thereto. The affected community or board also shall deliver a copy of the notice and request to the solid waste management district in which the affected community or communities are located. As promptly as reasonably practicable after receiving a notice of noncompliance and a request for a hearing, the court shall hold a hearing to determine if the district is in compliance with the agreement, award, or order, or modification thereto. The district and the affected community or board of county commissioners, as applicable, shall be parties to the hearing.

The court shall issue written findings of fact and conclusions of law with respect to the hearing and shall deliver a copy of them to the district, the affected community or board of county



commissioners, as applicable, and the solid waste management district in which the affected community or communities are located.

If the court determines as a result of the hearing that the district is not in compliance with the agreement, award, or order, or modification thereto, the court shall issue an order directing the district to comply. The court shall deliver a copy of any order issued under this division to the district, the affected community or board of county commissioners, as applicable, and the solid waste management district in which the affected community or communities are located.

The party that does not prevail in a hearing under this division shall bear the costs of the hearing and pay reasonable attorney's fees incurred by the prevailing party as a result of the hearing.