

Public Nuisance Dispute Mediation Act Enforcement Rules

*Original 38 articles promulgated by Environmental Protection Administration order on
February 24, 1993*

Revisions promulgated by Environmental Protection Administration order on April 19, 2000

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2004*

Article 1

These Rules are determined pursuant to Article 50 of the Public Nuisance Dispute Mediation Act (herein referred to as this Act).

Article 2

The party applying for mediation or arbitration is referred to as the applicant and the other party is referred to as the counterpart.

The applicant and the counterpart are all parties to the public nuisance dispute.

Article 3

The application for mediation referred to in Article 14, Paragraph 1 of this Act shall record the following items and be signed by the applicant:

- I. the party's full name, sex, date of birth, profession and permanent residence address or temporary residence address. If the applicant is a juridical person or other group with manager(s) or representative(s), the name of the juridical person or organization and the full name(s), permanent residence address and temporary residence address and qualification verification documents of the manager(s) or representative(s) at the organization's principal office address(es) or business address(es).
- II. if the parties have legally appointed representative(s) or agent(s), their name(s), sex, date of birth, profession and permanent residence address and temporary residence address
- III. itemized request

- IV. source and facts of the public nuisance dispute
- V. provision of investigative proof
- VI. name and number of attached documents
- VII. name of the mediation committee
- VIII. date of application

Agents should submit a letter of appointment.

The two foregoing paragraphs shall apply to application for arbitration.

Article 4

Copies of an application for mediation shall be provided to the counterpart or the elected parties.

Should an application for mediation not conform with the format or lack information, the mediation committee may notify the applicant to make corrections within a certain period.

Paragraph 1 shall apply to a reply submitted by the counterpart.

Article 5

When there are changes to the representatives of relevant agencies referred to in Article 5, Paragraph 2 of this Act, the relevant agency may appoint another representative to serve out the original term.

Article 6

The resignation of a mediation committee member defined in Article 6, Paragraph 2 of this Act means that any of the following situations apply to the member:

- I. dismissal pursuant to Article 7 of this Act
- II. resignation
- III. disappearance for more than one year
- IV. death

Article 7

A special municipality mayor, county commissioner or city mayor may appoint an appropriate individual to succeed a mediation committee member to whom any of the Subparagraphs of the foregoing article apply.

Article 8

A name list of the committee's members registering the committee members shall be prepared by and kept at the mediation committee, and it shall record the following items:

- I. full name, sex, date and place of birth
- II. education and work experience
- III. profession and current position
- IV. specialization
- V. beginning and ending date of term

The name list referred to in the foregoing paragraph shall be submitted to the local district court and arbitration panel for future reference. The procedure referred to in the foregoing paragraph shall apply to changes in mediation committee membership.

The foregoing two paragraphs shall apply to the arbitration panel.

Parties may submit a request to the mediation committee to read, copy or photocopy the mediation committee membership list.

Article 9

Within one month of receiving an application for mediation, the mediation committee shall set a mediation date, and it shall produce a mediation notification stating the day, time and place of mediation and forward it to the parties concerned. Notification in person by a mediation committee member requesting the presence of a party stating day, time and place of mediation, and where an explicit record is kept, shall have the same force as a delivered notification. This shall also apply when a party has stated in writing that he or she will be present on the mediation date.

The first notification of mediation date shall be delivered seven days prior to the mediation date.

Article 10

Parties may jointly elect one or several committee members to mediate a dispute.

Following the election referred to in the foregoing paragraph, committee members not elected may be absent from mediation on the date of mediation.

Article 11

When there is an application to have jurisdiction assigned to a mediation committee pursuant to Article 16, Paragraph 1 of this Act, the relevant documents shall be submitted to the arbitration panel, and the chairman of the arbitration panel shall designate three or five members to decide the dispute in a panel discussion.

Based on an application referred to in the foregoing paragraph, the Arbitration Panel may assign jurisdiction to the mediation council in a special municipality, county or city.

Upon designation of jurisdiction, the Arbitration Panel shall promptly notify the parties and the mediation council in a special municipality, county or city to which jurisdiction has been assigned. If the dispute is being accepted by another mediation committee, that committee shall also be notified.

Article 12

When the conditions referred to in Article 17 of this Act apply to a mediation committee member without that member recusing him or herself, or when there are sufficient facts causing concern that the member would be biased in the execution of his or her duties, the chairman shall, pursuant to his or her authority or an application from a party to the dispute, take the decision to excuse that member.

Article 13

The term illegal applications referred to in Article 18, Paragraph 1 of this Act means that any of the following conditions may apply to the application:

- I. the applicant or the counterpart do not fulfill the requirements for being a party to the dispute
- II. the applicant or the counterpart are incapable of exercising his or her rights, or have only limited capacity to do so
- III. the application is submitted by an agent, but there are shortcomings in the agent's rights
- IV. the parties do not meet the proper requirements
- V. the application does not conform with the format or lacks information
- VI. the fees pursuant to Article 43 of this Act have not been paid

- VII. the same subject matter is being accepted pursuant to this Act, or a lawsuit has been brought pursuant to Article 31, Paragraph 1 or Article 39, Paragraph 1 of this Act.
- VIII. investigatory hearings concerning the same subject matter in a court of the first instance are concluded , or the mediation accord, agreement or arbitration decision has already been approved by the court
- IX. legal title for compulsory enforcement already exists in the subject matter pursuant to other laws and regulations

Article 14

When a mediation committee refers a dispute as referred to in Article 18, Paragraph 3 of this Act, the committee shall submit the relevant documentation to the mediation committee to which the dispute has been referred, and it shall promptly notify the parties. The same procedure shall apply to situations when the parties have agents.

Article 15

When several persons sharing a common interest in a public nuisance dispute apply for mediation of the same public nuisance, the applications may be combined by the mediation committee when proceeding with the mediation procedures.

Article 16

When several persons sharing a common interest in a public nuisance dispute carry out an election pursuant to Article 20, Paragraph 1 of this Act, the mediation committee may forgo requesting that anyone not elected be present at the mediation on the date mediation.

Such election will become valid after notification has been delivered to the counterpart.

Should an elected person lose his or her qualifications due to death or any other reason, the other elected persons may still apply for and proceed with mediation.

When the mediation committee finds that an excessive number of persons have been elected, it may recommend or assist parties in a new election pursuant to Article 21 of this Act.

Article 17

Mediation procedures may proceed at the mediation committee's premises or at any other suitable premises.

Committee members or persons handling mediation matters shall maintain secrecy concerning all mediation matters that have not already been made public.

Article 18

If a person present during mediation proceedings resorts to violence, threats or fraud during mediation proceedings or to obstruct mediation, or is suspected to be involved in other criminal behavior, the members of the mediation committee may request that police assist in the removal of that person and that he or she is handled pursuant to the law.

Article 19

A mediation committee may investigate evidence pursuant to its authority without being restricted by evidence submitted by a party to the dispute or a party's request for investigation of evidence.

Article 20

When necessary for the investigation of evidence, the mediation committee may use the following methods:

- I. ask the parties or other persons concerned to submit documents, statistical forms or objects
- II. hear the parties' opinions, interview common or expert witnesses, or obtain the written opinion of the parties, and common or expert witnesses.
- III. ask relevant agencies to assist by providing relevant documents, statistical forms and objects
- IV. proceed with examinations or appraisals

Article 21

Prior to the mediation date, the chairman of the mediation committee may designate one committee member to review the application for mediation or investigate evidence, and to present his or her opinion during the meeting.

Article 22

During the mediation proceedings, the parties or their agents may request to read, copy or photocopy the relevant documents, statistical forms and objects.

Article 23

Where appropriate, the provisions of Articles 4 and 9 and Articles 15 to 22 shall apply to arbitration proceedings.

Articles 6, 7 and 12 shall apply to the members of the arbitration panel.

Article 24

When the counterpart refuses the mediation in writing or orally on the mediation date, a mediation will not have been achieved.

When one of the parties is absent from two consecutive mediation dates without valid reason, mediation will be deemed not to have been achieved. However, if the mediation committee deems there is hope of achieving a mediation, the committee may separately determine another mediation date.

Article 25

When a mediation cannot be achieved, the mediation committee shall issue a notification of unachieved mediation and deliver it to the parties within seven days.

Article 26

(Deleted)

Article 27

The phrase Court holding jurisdiction referred to in Article 28, Paragraph 1 and Article 39, Paragraph 2 of this Act means the court holding jurisdiction where the mediation committee and arbitration panel are located.

Article 28

Terms used in Article 30, Paragraph 2 of this Act are defined as follows.

I. Environmental protection agreement means a signed written agreement between an enterprise and the local residents or government agreeing that the two parties shall take or not take certain action in order to protect the environment and prevent public nuisances from occurring.

- II. Local residents means residents who at the time of signing the agreement actually reside in the same area as the enterprise or in neighboring areas and who have completed household registration procedures.
- III. Local government means the special municipality, county or city government or township, town and city public offices where the enterprise is located.

Article 29

An environmental protection agreement shall explicitly state the following items and be signed by both parties:

- I. signatories to the agreement
- II. target of the agreement
- III. environmental protection measures
- IV. emergency response plan
- V. other items relevant to the environmental protection agreement
- VI. period of agreement validity
- VII. signature date

Article 30

When the arbitration panel conducts an inquiry pursuant to Article 35 of this Act , it shall order its staff to produce an inquiry record, where the following items shall be explicitly recorded:

- I. place and date of inquiry
- II. full name of the arbitration panel member and staff in charge of keeping the record
- III. subject matter of the public nuisance dispute
- IV. full names of parties, representatives and agents present
- V. whether or not the proceedings are public. If proceedings are not public, the reason for this shall be recorded.
- VI. statements or declarations by the parties
- VII. witness declarations and the result of expert witness appraisals

The inquiry record referred to in the foregoing paragraph shall be read aloud to the parties or given to them to read, and they shall be requested to sign the record.

The arbitration panel member conducting the inquiry and the staff keeping the record shall sign the record.

Article 31

When one of the parties, after having been legally notified, is absent from the arbitration panel's inquiry proceedings, the present party may, on his or her application, make a statement and an arbitration decision may be made. When an absent party still does not attend despite renewed notification, the arbitration panel may, pursuant to its authority, make an arbitration decision based on the statements of one party.

When there is a written statement from someone who already has made a statement or investigated evidence or is absent, that written statement shall be considered during the arbitration referred to in the foregoing paragraph.

Article 32

A report over the mediation activities handled during the foregoing six month period, together with mediation accords approved by a court of law, shall be submitted every six months by the special municipality, county and city mediation committees to the arbitration panel for future reference.

Mediation and arbitration documentation shall be compiled into one file per case for archive management.

Article 33

The application referred to in Article 16, Paragraph 1 and Article 33, Paragraph 1 of this Act may be submitted individually or jointly by several parties sharing a common interest in a public nuisance dispute.

Article 34

(Deleted)

Article 35

When a party is applying for arbitration, that party may apply for the Arbitration Panel to decide that the fee paid pursuant to Article 43

of this Act be proportionately split between the parties or that it be borne by the counterpart.

Article 36

Special municipality, county and city governments and township and city district offices shall compile the data relevant to public nuisance disputes into dossiers that shall be categorized and put together for safekeeping, and the general progress shall be reported to the next superior agency for forwarding to the Environmental Protection Administration, Executive Yuan, for future reference.

Article 37

Public nuisance disputes that, prior to the promulgation of these Rules, already are being handled by other competent authorities pursuant to the law, may, upon the approval of the parties concerned, be referred to the competent mediation committee for mediation, without the parties having to pay the mediation fee.

Doubts regarding whether or not the applicant may be exempt from paying the mediation fee.

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I. The reason behind Article 37 in the Public Nuisance Dispute Mediation Act Enforcement Rules is that if parties to a dispute wish to proceed with mediation according to the procedures stated in the Public Nuisance Dispute Mediation Act in an issue that already is being handled by another legally designated competent authority, but that had not yet been resolved by the time these regulations were promulgated, the parties are exempt from paying the mediation fee based on the principle of not overturning past decisions.

II. Based on the facts of the case stated in the letter and the attached applicant's Public Nuisance Dispute Mediation Agreement, the foregoing regulations shall apply. Even though the case handled by the mediation committee mentioned has been referred by the competent authority concerned pursuant to the Article mentioned, the matter has not been resolved, and the payment of the mediation fee is disadvantageous to the applicant. Since the applicant obviously is not trying to find fault with administrative procedure, a lenient attitude will be adopted.

III. Article 38

These Rules shall take effect on the date of promulgation.