



Province of Alberta

NATURAL RESOURCES  
CONSERVATION BOARD ACT

**RULES OF PRACTICE OF THE  
NATURAL RESOURCES  
CONSERVATION BOARD  
REGULATION**

**Alberta Regulation 77/2005**

With amendments up to and including Alberta Regulation 65/2018

Current as of May 11, 2018

Office Consolidation

© Published by Alberta Queen's Printer

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### **Note**

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(Consolidated up to 65/2018)

**ALBERTA REGULATION 77/2005**

**Natural Resources Conservation Board Act**

**RULES OF PRACTICE OF THE NATURAL RESOURCES  
CONSERVATION BOARD REGULATION**

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- (c) “application” includes all information required to be given to the Board in respect of the application;
- (d) “claim for funding” means a claim for funding made under section 11 of the Act;
- (e) “Crown” means Her Majesty in right of Alberta;
- (f) “eligible intervener” means an intervener referred to in section 11(1) of the Act;
- (g) “employee of the Board” means a person employed or engaged by the Board, including a person appointed under section 23 of the Act;
- (h) “hearing” means a hearing conducted under the Act;
- (i) “intervener” means a person who makes a submission;
- (j) “notice of application” means a notice under section 8;
- (k) “notice of hearing” means a notice under section 9;
- (l) “notice to attend” means a notice issued under section 21;
- (m) “preliminary notice of application” means a notice under section 7;
- (n) “proceedings” means the process by which the Board considers an application for approval of a reviewable project, including a hearing to review the application and a meeting held by the Board in place of, or preparatory to, a hearing;
- (o) “submission” means a submission filed by a person under section 12.

(2) In these Rules, a reference to an applicant or intervener includes the agent or counsel of the applicant or intervener.

#### **Application of rules**

**2(1)** Unless otherwise directed by the Board, these Rules apply

- (a) to proceedings that arise from an application to the Board for an approval of a reviewable project, and
- (b) to proceedings that are initiated by the Board on its own motion or at the request of the Lieutenant Governor in Council.

(2) These Rules do not apply to a review conducted under the *Agricultural Operation Practices Act*.

## **Part 1 Proceedings**

### **Application to Board**

#### **Information**

**3(1)** An application must include the following:

- (a) the name and address of the applicant, the type of business it is engaged in, the location of its head office and any other relevant information about its operations;
- (b) a statement of the proposed project and the approval applied for;
- (c) the provision of the enactment under which the application is made;
- (d) the information required to be given to the Board under an enactment;
- (e) the reasons why the applicant believes the Board should grant the approval;
- (f) a list of the statutes and regulations in force in Alberta
  - (i) under which, in relation to the proposed project, a licence, permit, approval or other authorization must be issued, or
  - (ii) that impose, in relation to the proposed project, another requirement;
- (g) the address in Alberta of the applicant to which notices or other communications may be sent;
- (h) any other information required by the Board.

**(2)** An application for the approval of a project must be signed or executed by the applicant.

**(3)** An application that includes a technical report or material of a technical nature must set out the technical qualifications of the person signing or taking responsibility for the report or material.

**Project-specific information**

- 4(1)** The Board, from time to time, may establish guidelines for specific types of projects that set out the type of information that should be included in an application in order to establish the detailed information required for the review of the project.
- (2)** A person who will be applying for a review of a project that requires an environmental impact assessment report may ask the Board for its project-specific information requirements before making the report.
- (3)** The Board may provide its project-specific information requirements to the person referred to in subsection (2) without an application being made under the Act.
- (4)** The Board's project-specific information requirements may be fulfilled by
  - (a) using them in the preparation of the environmental impact assessment report, and
  - (b) incorporating them in the environmental impact assessment report when it is submitted under the *Environmental Protection and Enhancement Act*.

**Filing with Board**

- 5(1)** An applicant must file with the Board
  - (a) 12 paper copies of the application,
  - (b) 12 paper copies of the information accompanying the application, and
  - (c) unless the Board directs otherwise, an electronic copy of both the application and the information accompanying it.
- (2)** An applicant must pay a fee of \$1000 or, if the circumstances so warrant, any other amount prescribed by the Board.
- (3)** The fee must accompany the application when it is filed.

**Additional information**

- 6(1)** Before publishing a notice of application, the Board may request that an applicant provide it with any additional information that the Board requires.
- (2)** Despite subsection (1), the Board may, at any time during the proceedings, request that an applicant provide it with any additional information that the Board requires.

(3) If, in the Board's opinion, an applicant has not provided the additional information requested, the Board may give notice to the applicant specifying the information required and when it is to be provided.

(4) If the applicant does not provide the additional information within the time set out in the notice under subsection (3), the Board may defer consideration of the application or dismiss it.

#### **Preliminary notice of application**

**7(1)** The Board may publish a preliminary notice of application if

- (a) the Board has received an application but has not yet determined whether the applicant will be required to provide further information under section 6, or
- (b) further information has been requested or required under section 6 but has not been received.

**(2)** A preliminary notice of application must

- (a) briefly describe the proposed project and the purpose of the application,
- (b) state that the application is not yet completed,
- (c) state the name and address in Alberta of the applicant, and
- (d) include any other matter that the Board considers should be included.

#### **Notice of application**

**8(1)** On receipt of an application, including the information required to accompany it, the Board must publish a notice of application.

**(2)** A notice of application must

- (a) briefly describe the proposed project and the purpose of the application,
- (b) state the time and place at which submissions concerning the application may be filed,
- (c) state that the Board may approve the proposed project without a hearing if there are no submissions filed by a person the Board considers
  - (i) may be directly affected, or

- (ii) has a bona fide interest in the matter,
  - (d) state that copies of the application and the information accompanying it
    - (i) may be obtained from the applicant, and
    - (ii) are available at a location open to the public,
  - (e) state the name and address in Alberta where the application and information may be obtained from the applicant,
  - (f) state the address of the public location where the application and information are available and the hours during which they may be reviewed, and
  - (g) include any other matter that the Board considers should be included.
- (3) A notice under subsection (1) is not required if
- (a) a hearing is to be held in connection with the application, and
  - (b) a notice of hearing under section 9 is published.

**Notice of hearing**

- 9(1)** If a hearing is to be held in connection with an application, the Board must publish a notice of hearing not less than 30 days before the date of the hearing.
- (2) A notice of hearing must
- (a) briefly describe the subject-matter of the hearing,
  - (b) state the date, time and place of the hearing,
  - (c) state that copies of the application and the information accompanying it
    - (i) may be obtained from the applicant, and
    - (ii) are available at a location open to the public,
  - (d) state the name of the applicant and the address in Alberta where the application and information may be obtained from the applicant,

- (e) state the address of the public location where the application and information are available and the hours during which they may be reviewed,
- (f) state the time and place for filing submissions,
- (g) if the Board considers it appropriate, state a time and place for notifying the Board of an intention to file a submission,
- (h) state that individuals or groups of individuals who are or may be directly affected by the proposed project may apply to the Board for funding to assist in the preparation and presentation of an intervention, and
- (i) include any other matter that the Board considers should be included.

**Information available**

**10(1)** From the date of publication of a notice of application until the later of the date provided for the filing of submissions as set out in the notice of application and the date for a hearing as set out in a notice of hearing,

- (a) the applicant must supply a copy of the application and the information included with it to a person with an established interest in the matter who requests them, and
- (b) the Board must deposit for examination by any person a copy of the application and the information included with it at the public location set out in the notice of application or the notice of hearing.

**(2)** If there is a dispute as to whether a person has an established interest in a matter, the Board must determine whether the person has an established interest.

**Submission by Interveners****Content of submission**

**11(1)** An intervener's submission must include the following:

- (a) the name and address of the intervener;
- (b) a statement of the disposition of the application that the intervener advocates, if any;
- (c) the information the intervener proposes to present in evidence;

- (d) the reasons why the intervener believes the Board should decide in the manner advocated by the intervener;
  - (e) whether or not the intervener proposes to confine the intervener's participation to cross-examination and argument at the hearing;
  - (f) the address in Alberta of the intervener to which notices or other communications may be sent;
  - (g) any other information required by the Board.
- (2) A submission must be signed by the intervener.
- (3) A submission that includes a technical report or material of a technical nature must set out the technical qualifications of the person signing or taking responsibility for the report or material.

**Filing of submissions**

- 12(1)** An intervener must file with the Board within the time specified in the notice of hearing
- (a) 7 paper copies of the submission,
  - (b) 7 paper copies of the information accompanying the submission, and
  - (c) if the Board directs the intervener to do so, an electronic copy of both the submission and the information accompanying it.
- (2) An intervener must provide a paper copy of the submission to the applicant.
- (3) A submission is deemed to be filed at the time it is actually received at the office of the Board regardless of when or how it was sent.
- (4) A submission that is received at the office of the Board later in the day than the office's normal business hours is deemed to be filed on the next day that the office is open.

**Copies to other persons**

- 13(1)** The Board may direct that an intervener supply, in a manner specified by the Board, additional copies of the submission or the information accompanying it to the Board or to any other person.

(2) The Board must deposit, for examination only, a copy of the intervener's submission and the information accompanying it at the public location set out in the notice of hearing.

#### **Filing of additional material**

**14(1)** An applicant or an intervener must not file additional information with respect to an application or submission after the date referred to in the notice of hearing.

(2) Despite subsection (1), the Board, on the request of an applicant or intervener, may permit additional information in respect of an application or submission to be filed.

(3) If the Board permits additional information to be filed under subsection (2), the Board may direct that the applicant or intervener filing the information pay the costs to the Board or to other participants in the review that the Board determines are reasonable and appropriate to compensate for any delays, rescheduling or inconvenience caused by the late filing.

#### **Submission filed by Board employee**

**15(1)** An employee of the Board may file a submission under these Rules as an intervener with respect to an application if the Board or the employee considers that the applicant should be made aware of an opinion of the Board or the employee.

(2) An employee who files a submission under subsection (1) is an intervener for the purposes of these Rules.

(3) An employee who files a submission under subsection (1) may be examined by the Board and may be cross-examined by the applicant, an intervener or the Crown.

#### **Matters raised in submission**

**16(1)** If the Board is of the opinion that a matter raised by or set out in a submission is not a response to the particular application, the Board may

- (a) direct the amendment of, deletion from or amplification of the application or the submission that the Board considers to be desirable, or
- (b) order that the matter not be considered at the hearing of the application.

(2) If the Board is of the opinion that a matter raised by or set out in a submission has implications of importance beyond its reference to the application, the Board may

- (a) direct the amendment of, deletion from or amplification of the application or the submission that the Board considers to be desirable, or
  - (b) order that the matter not be considered at the hearing of the application.
- (3)** If the Board makes an order under subsection (1)(b) or (2)(b), the matter may be
- (a) heard separately as another application, or
  - (b) referred to the full Board for its consideration.

**Pre-hearing conference**

**17** The Board, on its own motion or on the request of an applicant or intervener, may direct that the applicant and interveners attend a pre-hearing conference to discuss procedural matters, the exchange of documents, witness statements or similar matters in order to promote the efficient use of hearing time.

**Alternative dispute resolution**

**18** The Board may direct that the applicant and interveners participate in alternative methods of dispute resolution before a hearing or other proceeding.

**Presentation of Evidence**

**Presentation at proceeding**

**19(1)** At a proceeding in which evidence is presented in writing, unless the Board otherwise provides, the evidence must be presented by a witness who

- (a) prepared it,
- (b) supervised or participated substantially in its preparation, or
- (c) has special knowledge of the evidence.

**(2)** A witness must testify only to matters the Board considers are adequately set out in the written evidence, unless the Board otherwise directs.

**(3)** Witnesses must state their technical qualifications when they first appear before the Board if they are presenting technical reports or technical evidence.

**Production of documents**

**20(1)** The Board may direct that a document be provided to the Board by the person in possession of the document if, in the Board's opinion, the production of the document would assist the Board.

**(2)** If the Board directs that a person produce a document, it may also require the person to name an individual who is a suitable witness to speak to the content of the document.

**Notice to attend**

**21(1)** The Board may cause a person to be served with a notice to attend before the Board if it considers the attendance of the person at a proceeding to be desirable.

**(2)** A notice to attend before the Board must be signed by a member of the Board.

**Evidence and argument**

**22(1)** Evidence given to the Board by a person at a hearing must

- (a) be given only to support the allegations in the application or in a submission filed with respect to the proceedings, or
- (b) arise from evidence presented in cross-examination in the proceedings.

**(2)** Argument given in proceedings must be based on the evidence given in the proceedings and properly before the Board.

**Examination of witness**

**23** A witness in proceedings before the Board may be

- (a) examined by the Board or an employee of the Board, and
- (b) cross-examined by the parties or the Crown.

**Evidence not confidential**

**24(1)** Subject to subsection (5), evidence or information submitted by an applicant, intervener or the Crown with respect to an application at any time before the application is disposed of by the Board is not confidential and must not be withheld from persons interested in the application.

**(2)** A person may request a determination from the Board that some or all of the information that will be submitted to the Board must be treated as confidential.

- (3) The person requesting the determination must provide the Board with the following:
- (a) a statement designating the information that the person wishes to be kept confidential, together with an explanation as to why that information should be kept confidential;
  - (b) a summary of the information to be kept confidential in sufficient detail to convey a reasonable understanding of the substance of the information.
- (4) The person requesting the determination must provide the summary referred to in subsection (3) to all other parties to the proceedings.
- (5) The Board may make a determination that all or part of the information referred to in subsection (3) be kept confidential and must be withheld.

## **Part 2**

### **Costs and Funding**

#### **Calculation of costs**

- 25(1)** The Board may, in determining the amount of costs or advance funding for costs to be awarded in a proceeding,
- (a) prescribe the maximum hourly rate allowable for legal, expert or consulting costs,
  - (b) prescribe a maximum amount of reimbursement for disbursements, or
  - (c) prescribe any other costs to be eligible or ineligible.
- (2) Despite subsection (1), a witness attending as a result of a notice to attend is entitled to be paid allowances in accordance with Schedule B to the *Alberta Rules of Court* (AR 124/2010).
- (3) In addition to the allowances referred to in subsection (2), the Board may award a special allowance
- (a) to a skilled witness, or
  - (b) in respect of professional tests or inspections carried out by the witness.

AR 77/2005 s25;164/2010

**Cost of notices**

**26** The expense of publishing a notice of application, a preliminary notice of application or a notice of hearing must be borne by the applicant.

**Inquiries and investigations**

**27** If the Board initiates an inquiry or investigation, whether on its own motion or at the request of the Lieutenant Governor in Council, the Board may provide or arrange for funding to assist interveners in preparing and presenting submissions to the Board.

**Funding for Eligible Intervenors**

**Claim for funding**

**28(1)** Individuals or groups of individuals who claim to be intervenors to whom section 11 of the Act applies may make a claim for funding in accordance with this section to the Board in respect of costs that are reasonable and are directly and necessarily related to the preparation and presentation of the intervener's submission.

**(2)** The claim must be made to the Board and a copy provided to the applicant

- (a) within 30 days after the final day of a public hearing respecting an application, or
- (b) within 30 days after the Board gives notice that a proceeding, other than a public hearing, respecting an application is closed.

**(3)** The claim must be set out in the form provided by the Board.

**(4)** The claim must set out the following:

- (a) subject to subsection (5), the name of the intervener and the mailing address in Alberta for the intervener;
- (b) the proceedings in which the intervener's submission was presented;
- (c) a description of how the intervener is or may be directly affected by the proposed project;
- (d) details of the costs, including receipts, invoices, statements or other documents that are evidence of the expense incurred;

- (e) the extent to which the intervener undertook the preparation and presentation of the intervener's submission;
  - (f) any other information required by the Board.
- (5) If the intervener is a group of individuals, the claim must set out
- (a) the names of the directors and officers of the group or, if the group does not have any directors and officers, the name of each member of the group, and
  - (b) the address for the intervener's representative in Alberta.
- (6) The Board may direct the intervener who makes a claim for funding to provide additional information with respect to the costs claimed.
- (7) An intervener who makes a claim for funding must provide a copy of the claim to the applicant.

**Comments respecting claim**

- 29(1)** Within 14 days after receiving a copy of a claim for funding, the applicant must provide to the Board and the intervener any comments the applicant may have respecting the claim.
- (2)** Within 14 days after receiving the applicant's comments, the intervener must provide to the Board and the applicant any reply the intervener may have respecting the comments of the applicant.

**Appearance before the Board**

- 30(1)** The Board may require an intervener who makes a claim for funding to appear before the Board for the purpose of considering
- (a) the status of the intervener as an eligible intervener, or
  - (b) the particulars of the costs claimed.
- (2)** The applicant must be given an opportunity to question an intervener who appears before the Board under subsection (1).

**Award or denial of claim**

- 31(1)** The Board may determine that an intervener is an eligible intervener whether or not a claim for funding is made by the intervener.

- (2) The Board may make an award of costs to an eligible intervener in respect of costs that, in the Board's opinion, are reasonable and are directly and necessarily related to the preparation and presentation of the eligible intervener's submission.
- (3) The Board may deny a claim for funding, in whole or in part,
- (a) if the Board determines that the intervener is not an eligible intervener,
  - (b) if the claim does not comply with the requirements of section 28,
  - (c) if the Board is not satisfied that the costs were reasonable and directly and necessarily related to the preparation and presentation of the eligible intervener's submission,
  - (d) if the Board is not satisfied that the eligible intervener was in need of legal or technical assistance in the preparation and presentation of the eligible intervener's submission,
  - (e) if the Board is not satisfied that the intervention was conducted economically,
  - (f) if, in the Board's opinion,
    - (i) the intervention and its presentation were unnecessary, irrelevant, improper or intended to delay the proceedings with respect to an application, or
    - (ii) the claim is excessive, having regard to the nature of the application and the intervention,
- or
- (g) for any other reason the Board considers appropriate.
- (4) The Board, when considering a claim for funding, may have regard to the following:
- (a) any comments, replies or information that is provided by the intervener or the applicant;
  - (b) whether the intervention was presented by or on behalf of an eligible intervener;
  - (c) whether the eligible intervener represents an interest that should have been represented before the Board;

- (d) whether the representation of such an interest contributed to the proceedings;
- (e) whether the interest was adequately represented by other interveners;
- (f) whether the eligible intervener attempted to bring related interests together and pool resources;
- (g) any other thing the Board considers appropriate.

**Payment of costs**

**32(1)** Unless the Board otherwise orders, costs awarded under section 11 of the Act to an eligible intervener must be paid by the applicant.

**(2)** The Board, in making an award of costs, may provide that the payment be made to any person that the eligible intervener designates.

**Service**

**33(1)** An award of costs made under section 11 of the Act must be served

- (a) on the eligible intervener making the claim for funding, and
- (b) on the person liable for the payment of the costs.

**(2)** If the Board denies a claim for funding, it must serve a copy of its decision on the intervener making the claim.

**Review of Board decision**

**34(1)** If the Board makes an award of costs or denies a claim for funding, the intervener who made the claim or the person liable for the payment of costs awarded may make a request to the Board to review the decision and vary the existing award or make an award.

**(2)** A request to review a decision must set out the following:

- (a) the name of the party requesting the Board to review the decision;
- (b) the Board number of the award, if an award was made;
- (c) the nature of the variation being sought;
- (d) the grounds for the request.



- (e) if the intervener is a group of individuals, the background of the group and its commitment to the interest that is the subject of the application before the Board;
  - (f) reasons why funds are required in advance;
  - (g) any other information required by the Board.
- (4)** A detailed budget referred to in subsection (3) must
- (a) outline all expenses, the nature of those expenses and how the advance funding will be used,
  - (b) identify legal expenses, including estimated hours and hourly rates,
  - (c) identify expenses for experts, including estimated hours and hourly rates, and
  - (d) outline all proposed disbursements.
- (5)** The Board may direct that the intervener who made the request provide the Board with any additional information with respect to the request that it requires.

#### **Appearance before the Board**

- 38(1)** The Board may require an intervener who makes a request for advance funding to appear before the Board for the purpose of considering
- (a) the status of the intervener as an eligible intervener,
  - (b) the particulars of the costs claimed, or
  - (c) the reasons for the request for advance funding of the costs.
- (2)** The applicant must be given an opportunity to question an intervener who appears before the Board under subsection (1).

#### **Award or denial of advance funding**

- 39(1)** The Board may award advance funding for costs to an intervener if the Board is satisfied that
- (a) the intervener is an eligible intervener,
  - (b) the eligible intervener has demonstrated that the advance funding requested is necessary before any proceeding is held, and

- (c) the costs claimed are reasonably anticipated to be incurred in the preparation and presentation of the eligible intervener's submission.

**(2)** The Board may deny a request for advance funding, in whole or in part,

- (a) if the Board determines that the intervener is not an eligible intervener,
- (b) if the request for advance funding does not comply with the requirements of section 37,
- (c) if the Board is not satisfied that the anticipated costs are reasonable and directly and necessarily related to the preparation and presentation of the eligible intervener's submission,
- (d) if the Board is not satisfied that the eligible intervener is in need of legal or technical assistance in the preparation and presentation of its submission,
- (e) if the Board is not satisfied that the intervention will be conducted economically,
- (f) if, in the Board's opinion,
  - (i) the intervention and its presentation are unnecessary, irrelevant, improper or intended to delay the proceedings with respect to an application, or
  - (ii) the claim is excessive, having regard to the nature of the application and the intervention,

or

- (g) for any other reason the Board considers appropriate.

**(3)** The Board, when considering a request for advance funding, may have regard to the following:

- (a) any comments, replies or information that is provided by the intervener or the applicant;
- (b) whether the intervention was presented by or on behalf of an eligible intervener;
- (c) whether the eligible intervener represents an interest that should be represented before the Board;
- (d) whether the representation of the interest will contribute to the proceedings;

- (e) whether the interest will be adequately represented by other interveners;
- (f) whether the eligible intervener attempted to bring related interests together and pool resources;
- (g) whether the eligible intervener has a clear proposal for the funding;
- (h) whether the eligible intervener has adequate controls in place for the expenditure of any funding received;
- (i) any other thing the Board considers appropriate.

**Payment of advance funding**

**40(1)** Unless the Board otherwise orders, advance funding of costs awarded to an eligible intervener must be paid by the applicant.

**(2)** The Board, in awarding advance funding of costs, may provide that payment may be made to a person the eligible intervener designates.

**Service of award**

**41(1)** An award of advance funding of costs must be served

- (a) on the eligible intervener making the request, and
- (b) on the person liable for the payment of costs.

**(2)** If the Board denies a request for advance funding of costs, it must serve a copy of its decision on the intervener making the request.

**Repayment of advance funding**

**42(1)** If the Board awards advance funding of costs, it may impose conditions for the repayment of the advance funding by the eligible intervener in the event that the final award of costs is less than the advance funding paid.

**(2)** Despite subsection (1), if the Board awards advance funding and pays it from the Board's funds, the Board, at the time of the final award of costs in the proceedings, may direct the person who received the advance funding to reimburse the Board, in whole or in part, for the funds advanced by the Board.



- (a) *Funding for Eligible Interveners Regulation* (AR 278/91);
- (b) *Rules of Practice of the Natural Resources Conservation Board* (AR 345/91).

**(2)** Despite the repeal of the *Funding for Eligible Interveners Regulation* (AR 278/91) and the *Rules of Practice of the Natural Resources Conservation Board* (AR 345/91), those regulations continue to apply to an application to the Board made before the coming into force of this Regulation.

**50** Repealed AR 65/2018 s2.







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