

Environmental Assessment Review Panel Regulations

made under Section 49 of the
Environment Act
S.N.S. 1994-95, c. 1

O.I.C. 2013-19 (January 22, 2013), N.S. Reg. 19/2013

Citation

1 These regulations may be cited as the Environmental Assessment Review Panel Regulations.

Definitions

2 In these regulations,

“Act” means the Environment Act;

“Administrator” means a person appointed by the Minister under the Act to carry out the responsibilities set out in Section 3, and includes an acting Administrator;

“Chair” means the person designated by the Minister to be the chair of a review panel;

“confidential business information” includes a trade secret and know-how, but does not include information about the environmental effects of or associated mitigation measures for a proposed undertaking;

“Environmental Assessment Regulations” means the Environmental Assessment Regulations made under the Act;

“formal presentation” means a written submission by an intervenor to a review panel, and includes any oral summary given by the intervenor at the hearing;

“hearing” means a public hearing or review conducted by a review panel under subsection 44(1) of the Act;

“informal presentation” means an oral presentation by an intervenor to a review panel;

“intervenor” means a person who has requested a time period to make a presentation at a hearing in accordance with Section 10;

“public record” includes all of the following:

(i) any correspondence, document, submission, transcript or exhibit filed with a review panel, excluding confidential business information,

(ii) a report prepared under the Environmental Assessment Regulations,

(iii) a report prepared by a review panel under Section 39 of the Act,

(iv) a decision made by the Minister under Section 40 of the Act following receipt of a report referred to in subclause (iii);

“trade secret” means a trade secret as defined in the Freedom of Information and Protection of Privacy Act.

Administrator’s responsibilities

3 The Administrator is responsible for all of the following:

- (a) administering and directing the operations of a review panel;
- (b) organizing all activities of a review panel, including maintaining a file containing all correspondence, documents and submissions respecting an undertaking after an environmental-assessment report is referred to a review panel;
- (c) except as prohibited by law, making copies available to anyone of material in the file referred to in clause (b);
- (d) receiving and responding to inquiries concerning the hearing process;
- (e) supervising a hearing;
- (f) performing any functions that are assigned by the Minister or the Governor in Council.

Review panel

4 (1) A review panel must have at least 3 members.

(2) A majority of a review panel constitutes a quorum.

(3) If a review panel member is temporarily absent or unable to attend a hearing, the member or members remaining present may

- (a) exercise and perform all the jurisdiction, powers and duties of the review panel; or
- (b) temporarily adjourn the hearing.

(4) The Minister may remunerate review panel members and reimburse them for reasonable expenses.

Public consultation

5 (1) The Administrator must publish notice of a referral of an environmental-assessment report to a review panel under clause 38(1)(b) or (c) of the Act in the manner provided in Section 29 of the Environmental Assessment Regulations and invite the public to provide written comments to the Administrator within the 48 days following the date the notice is published.

(2) The Minister may extend the period set out in subsection (1) for the public to provide written comments and must provide the proponent with written notice of any extension.

Hearing locations

6 (1) A review panel may hold sessions of a hearing in various locations in the Province depending on the nature of the undertaking.

(2) At least 1 session of a hearing must be held in the village, town or city located nearest to the site of the proposed undertaking, if in the opinion of the Chair it is practical to do so.

(3) If sessions of a hearing are held in various locations, the Chair may, to prevent undue repetition of evidence, decide that the official transcript of the oral evidence presented in a session held at one location is considered part of the evidence in a subsequent session held at a different location.

Notice of hearing

7 (1) The Administrator must sign a notice of hearing no later than 14 days after the date an environmental-assessment report is referred to a review panel under clause 38(1)(b) or (c) of the Act.

(2) A notice of hearing must be in the form approved by the Administrator and must include the time, place and purpose or subject of the hearing.

(3) A notice of hearing must be published twice in accordance with the following deadlines:

(a) unless directed otherwise by the Chair, the 1st publication of the notice of hearing must occur no later than 21 days before the date the hearing is to begin;

(b) the 2nd publication of the notice of hearing must occur no later than 14 days before the date the hearing is to begin.

(4) The 1st and 2nd publication of a notice of hearing must each be published in the manner provided in Section 29 of the Environmental Assessment Regulations, except that the publication need only appear once in the Royal Gazette.

(5) In addition to publishing it as required by subsection (4), the Administrator may post a notice of hearing in a public building located near the site of the proposed undertaking.

(6) The Administrator may serve a notice of hearing on any person, body or organization by ordinary mail and may invite any person, body or organization to make a presentation at the hearing.

(7) The Chair may accept an affidavit of the Administrator setting forth how and when service was effected as evidence that a notice of hearing was served.

On-site visit or inspection

8 (1) A review panel may request that a proponent whose undertaking is under review meet with the review panel 1 or more times before the hearing begins, to allow the review panel to visit or inspect the site of the undertaking.

(2) The Administrator must record in writing any visit or inspection under subsection (1), including the date and time of the visit or inspection and the identity of the persons in attendance.

Pre-session conference

9 (1) The Administrator and the Chair may conduct a pre-session conference before a hearing begins.

(2) A pre-session conference may include an explanation of the rules of procedure for the hearing, identification of the participants and witnesses, definition of the issues, estimation of the length of the hearing, and any additional matter that the Chair considers appropriate.

(3) Notice of a pre-session conference must be in the form determined by the Administrator and the Chair and, if practical, must be given no later than 3 days before the date of the pre-session conference.

(4) The Administrator and the Chair may determine which participants are to be given notice to attend a pre-session conference.

Intervenors

10 (1) Any person who has an interest in or is affected by the subject matter of a hearing may be an intervenor at the hearing.

(2) A person who wishes to be an intervenor must contact the Administrator no later than 14 days before the date the hearing is to begin to request a time period to appear personally or by counsel at the hearing.

(3) An intervenor must, if possible, make a formal presentation.

(4) An intervenor must advise the Administrator whether the intervenor intends to make a formal presentation or an informal presentation.

(5) An intervenor's written submission must be delivered to the Administrator no later than 10 days before the date the hearing is to begin.

(6) The Chair may direct that a copy of an intervenor's written submission be delivered to any additional person who has an interest in or is affected by the subject matter of the hearing.

Submitting written material to review panel

11 (1) A person other than an intervenor who wishes to submit written material, including journals, studies and reports, to a review panel must submit a copy of each item or document to the Administrator no later than 7 days before the date the hearing is to begin.

(2) Written material submitted under subsection (1) forms part of the public record.

(3) Unless directed otherwise by the Chair, a person who submits written material under subsection (1) must, before the hearing begins, provide copies to the proponent and to any additional persons specified by the Chair.

(4) Any oral presentation in relation to written material submitted under subsection (1) must be limited to highlighting essential features of the material and responding to questions on the material.

Summonses

12 (1) A summons to a witness or a summons for production of documents or things under Section 44 of the Act must be signed by the Administrator.

(2) A summons to a witness may be in Form 1 of Schedule A and a summons to produce documents or things may be in Form 2 of Schedule A.

General format of hearings

13 (1) At the discretion of the Chair, a hearing may be non-judicial, informal and non-adversarial.

(2) A review panel is not required to follow the strict rules of law, procedure and evidence required by a court.

(3) A review panel may determine the order of presentations at a hearing.

(4) Any person may be represented by legal counsel at a hearing.

(5) Subject to these regulations, before, during and after a hearing, a member of a review panel must not communicate in private with anyone except another panel member, a technical advisor, the Administrator, legal counsel to the panel and staff of a government department about the substantive issues under consideration by the panel.

(6) A review panel may retain a technical advisor to assist the panel in a hearing and the Administrator must make any report of the technical advisor available to any person on request.

(7) A review panel may, through the Administrator, permit consultations between a technical advisor retained by the panel and participants in the hearing process.

Questioning in general

14 (1) Each question at a hearing must be directed to the Chair, who may invite the appropriate person to respond to the question.

(2) The Chair may exclude any intervention or question that, in the opinion of the Chair, is outside of the terms of reference of the review panel or is needlessly repetitive in nature.

(3) The Chair may limit the questions asked and may limit persons in presenting arguments and submissions.

(4) A question addressed to a group of persons representing the proponent or an intervenor may be directed to a specific member of the group or, if available, the group in general.

(5) If a question is directed to a specific member of a group representing the proponent or an intervenor and that person is unable to answer because of a lack of knowledge or qualification, the Chair may permit another member of the group to provide the answer.

(6) If an intervenor or the proponent is unable to answer a question without further consultation or research, the intervenor or proponent must provide an undertaking to provide an answer on or before the close of the hearing or, if that is not possible, no later than 7 days after the close of the hearing and the Administrator must provide the response to the person who asked the question and to any other person on request.

Oath or affirmation

15 (1) A person giving evidence at a hearing must give an oath or affirmation that the evidence will be the truth, and evidence may be otherwise received only at the discretion of the Chair.

(2) An oath or affirmation must be administered by the Administrator and, in the absence of the Administrator, by the Chair.

Presentation by proponent

16 (1) At a hearing, the proponent must ensure that a person or group of persons who are knowledgeable of the undertaking are in attendance and are able to answer questions that are directed to the proponent.

(2) The Chair must grant a reasonable amount of time to the proponent to present their case to the review panel and to address issues raised in the environmental assessment report.

(3) Subject to the procedure for written questions prescribed in Section 18, the Chair must permit questioning of the proponent by the review panel, intervenors and other persons.

Presentations by intervenors at hearing

17 (1) An intervenor who is making a formal presentation at a hearing must make their presentation after the initial presentation by the proponent.

(2) An intervenor who is making an informal presentation at a hearing must follow those persons who make formal presentations.

(3) An intervenor who intends to make a presentation at a hearing must provide their name and address and details of any relevant affiliation to the review panel before making the presentation.

(4) A number of intervenors sitting as a group may give a joint presentation if the review panel is satisfied that in the particular case the tendering of evidence in this manner will result in a full and fair hearing.

(5) Any presentation by an intervenor at a hearing must not exceed 20 minutes in length.

(6) An intervenor who requires more than 20 minutes for a presentation at a hearing must make a request for extra time in writing to the Administrator to be forwarded to the Chair for consideration.

(7) The Chair may extend the duration of a presentation at a hearing.

(8) To prevent undue repetition, the Chair may limit the duration of a presentation at a hearing.

(9) Subject to the procedure for questioning prescribed in Section 14, the Chair must permit questioning of an intervenor by the review panel, proponent and other persons.

Written questions

18 If written questions are submitted to the Administrator to be answered by the proponent before a hearing begins, the proponent must make every reasonable attempt to provide written answers before the hearing begins.

Final response by proponent

19 Before the close of a hearing, the proponent must be given the opportunity to make a final presentation to the review panel in response to matters raised at the hearing.

Open forum

20 (1) After the completion of presentations and responses to questions by the proponent and formal and informal presentations and responses to questions by intervenors at a hearing, the Chair may permit presentations or questions from other persons in attendance at the hearing.

(2) Presentations and questions by other persons in attendance referred to in subsection (1), and responses to their questions, are part of the public record.

Transcript of hearing

21 (1) The Administrator must maintain a transcript of all oral evidence presented at a hearing.

(2) The Administrator must make a copy of a transcript of a hearing available at the head office of the Department and at the regional office of the Department that is located nearest to the site of the proposed undertaking.

(3) Any corrections, errors or omissions in a transcript of a hearing must be reported to the Administrator no later than 14 days after the date the copy of the transcript becomes available.

(4) The Chair must make a final ruling on any dispute as to the contents of the transcript of a hearing, after which it becomes part of the public record.

Written arguments or submissions

22 (1) No later than 14 days after the close of a hearing, or within another time period determined by the Chair, a person who participated at the hearing may present written arguments or written submissions through the Administrator to the review panel.

(2) Copies of any written arguments or written submissions presented under subsection (1) are part of the public record and the Administrator must make them available on request.

Adjourning or extending hearing

23 (1) Subject to subsection (2), a review panel may

- (a) adjourn a hearing;
- (b) reopen a hearing; and
- (c) grant any extension of time for a hearing that the Chair considers proper.

(2) A hearing must not be reopened after the review panel has submitted its report and recommendation to the Minister in accordance with Section 26.

Legal counsel

24 A review panel may arrange for legal counsel to attend and assist during a hearing to advise the review panel on any matter pertaining to the hearing and provide liaison with the parties and their counsel.

Media coverage

25 (1) Subject to the terms and conditions outlined in this Section and any other terms and conditions stipulated by the Chair, a Chair may permit radio and television recordings of a hearing.

(2) A request for permission under subsection (1) must be made to the Administrator before the beginning of the part of the hearing sought to be recorded.

(3) Work tables must be provided to members of the media at a hearing.

(4) Before a hearing begins, camera shots may be taken of the review panel, the persons participating and the audience.

(5) After a hearing begins, photographic lights must be shut off and cameras left on fixed mounts.

(6) Photographic and audio equipment must be placed before a hearing begins in locations approved by the Chair and must not be moved while the hearing is in progress.

(7) Media personnel must not move about while the hearing is in progress so as to distract the review panel or the participants, or to disrupt the hearing.

(8) Only photographic and audio equipment that does not produce distracting sound or light may be used in the room where a hearing is being held.

(9) Media interviews may be conducted only at breaks in the hearing or outside the hearing room and only in a manner that will not interfere with the hearing.

(10) The Chair may disallow the videotaping or recording of all or a portion of a hearing if, in the opinion of the Chair, the taping or recording would inhibit specific witnesses or disrupt the hearing in any way.

Review panel report

26 (1) A review panel must submit its report and recommendation under Section 39 of the Act to the Minister no later than 110 days following the date an environmental-assessment report is referred to the review panel.

(2) The Minister may in writing extend the time period specified in subsection (1) and the Administrator must advise the proponent of the extension and the reason for the extension.

(3) A review panel must determine the style and format of its report to the Minister.

(4) A review panel report must be dated and bear the signature of the Chair and each other member of the hearing panel.

(5) A review panel report must contain the names of all witnesses or other persons, bodies or organizations who have contributed to the hearing and a bibliography of all documents and written materials submitted during the hearing process.

(6) After the decision of the Minister under Section 40 of the Act following receipt of a review panel's report and recommendation, copies of the report of the review panel must be made available to the public on request and at a reasonable cost.

Public record

27 (1) The Department must keep a copy of each document that forms part of the public record respecting a hearing on file at its head office.

(2) Copies of the public record, or parts of the public record, must be available to the public and a fee may be charged to cover reasonable costs in connection with production or copying.

(3) Notes made personally by any member of a review panel in a hearing or in related preparation or deliberations are not part of the record of the matter for the purpose of subsection (1).

Irregularity does not invalidate proceedings

28 No proceedings before a review panel are invalid by reason of any defect in form or any technical irregularity.

Schedule A

Form 1: Summons

IN THE MATTER OF A HEARING before a review panel appointed under Section 42 of the Environment Act

SUMMONS

To:

Address:

You are required to attend before the review panel at _____, in the County of _____, on _____ (month and day), 20____, at _____ (time—specify a.m./p.m.), and so on from day to day until the matter is heard, to give evidence pertaining to:

(describe nature or subject of hearing as set out in Notice of Hearing)

Dated at _____, in the County of _____, Province of Nova Scotia, on _____ (month and day), 20____.

Signed _____

Administrator

Environmental Assessment Review Panel

Form 2: Summons to Produce Documents

IN THE MATTER OF A HEARING before a review panel appointed under Section 42 of the Environment Act

SUMMONS TO PRODUCE DOCUMENTS

To:

Address:

Take notice that you are hereby required to produce and show to the review panel at a hearing to be held at _____, in the County of _____, Province of Nova Scotia, on _____ (month and day), 20____, all books, letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matter in question at this hearing, in particular the following:

(list particular items)

Dated at _____, in the County of _____, Province of Nova Scotia, on _____ (month and day), 20____.

Signed _____
Administrator
Environmental Assessment Review Panel