

Nova Scotia Environmental Assessment Board Regulations

made under Section 49 of the
Environment Act
S.N.S. 1994-95, c. 1
O.I.C. 95-221 (March 21, 1995), N.S. Reg. 27/95
Citation

1 These regulations may be cited as the "Nova Scotia Environmental Assessment Board Regulations".

Definitions

2 In these regulations

- (a) "Act" means the Environment Act;
- (b) "Administrator" means a person appointed by the Minister under Section 3 of these regulations, and includes an acting Administrator;
- (c) "Board" means the Nova Scotia Environmental Assessment Board established pursuant to the Act;
- (d) "Chair" means the person designated pursuant to Section 42 of the Act;
- (e) "confidential business information" includes a trade secret and know-how, but does not include the environmental effects or associated mitigation measures of a proposed undertaking;
- (f) "day" means a calendar day;
- (g) "Department" means the Department of Environment and Labour;
- (h) "environmental awards program" means a process whereby individuals or organizations are recognized for their efforts in the preservation or protection of the environment in the Province;
- (i) "formal presentation" means a written submission and may include an oral summary by an intervenor who has registered with the Administrator in accordance with these regulations;
- (j) "hearing" means a public hearing or review before the hearing panel;
- (k) "hearing panel" means a committee of the Board appointed pursuant to clause 43(a) of the Act to conduct a hearing relating to the environmental assessment of an undertaking;
- (l) "Hearing Panel Chair" means a person appointed under Section 12 to preside as chair at a hearing;
- (m) "informal presentation" means an oral presentation by an intervenor who has registered with the Administrator in accordance with these regulations;
- (n) "intervenor" means a person with an interest in or affected by the subject matter of a hearing who has registered with the Administrator in accordance with these regulations;
- (o) "Minister" means the Minister of Environment and Labour;
- (p) "participant" is anyone who takes part in the proceeding before the Board;

(q) "pre-session conference" means a meeting with the participants in advance of a hearing pursuant to Section 18;

(r) "proponent" means a person who

(i) carries out or proposes to carry out an undertaking or activity, or

(ii) is the owner or person having care, management or control of an undertaking or activity;

(s) "public record" includes any correspondence, document, submission, transcript, exhibit, excluding confidential business information, filed with the Board after an environmental assessment report is referred to the Board, a report prepared under the Environmental Assessment Regulations, a report prepared by a hearing panel and the decision of the Minister;

(t) "regular members" means those members appointed pursuant to subsection 42(2) of the Act;

(u) "site" means the location of the proposed undertaking;

(v) "temporary members" means those members appointed pursuant to subsection 42(4) of the Act;

(w) "trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

(i) is used, or may be used, in business or for any commercial advantage,

(ii) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,

(iii) is the subject of reasonable efforts to prevent it from becoming generally known, and

(iv) the disclosure of which would result in harm or improper benefit;

(x) "undertaking" means an enterprise, activity, project, structure, work or proposal and may include, in the opinion of the Minister, a policy, plan or program that has an adverse effect or an environmental effect and may include, in the opinion of the Minister, a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking.

Administrator

3 The Minister may appoint an Administrator to administer these regulations.

Duties and responsibilities of Administrator

4 The Administrator shall

(a) administer and direct the day-to-day operations of the Board;

(b) organize all regular and special activities of the Board;

(c) supervise any public hearing or review process of the Board;

(d) co-ordinate the activities of the Board with those of Government; and

(e) perform such functions as are assigned by the Minister or the Governor in Council.

Regular or temporary members

5 (1) The Board shall consist of at least 3 regular members but not more than 5 regular members appointed by the Governor in Council.

(2) One of the regular members shall be designated by the Governor in Council as Chair.

(3) Where a matter is referred to the Board, the Chair may designate 1 or more members of the Board to act for the Board and for this purpose these members shall be the Board and shall have all of the powers of the Board.

(4) The Governor in Council shall appoint as regular members individuals who have knowledge or expertise in environmental, economic, industrial, business, social, cultural, heritage or human health matters.

(5) A member of the Board shall hold office during good behaviour for a term of up to 3 years and may be reappointed at the pleasure of the Governor in Council.

(6) Where the term of a member expires, the member shall, with the approval of the Chair, have and exercise the jurisdiction and power to complete any unfinished matter or thing heard and make a recommendation.

(7) (a) Upon the recommendation of the Chair, the Minister may appoint a temporary member to work on any matter or hearing referred to the Board.

(b) An individual appointed under clause (a) shall have relevant expertise or special knowledge with respect to the matter or hearing referred to the Board.

(c) A temporary member has and may exercise and perform the powers and duties of a regular member of the Board during their term of appointment.

(8) A regular or temporary member of the Board shall be paid remuneration as determined by the Governor in Council and shall be reimbursed for reasonable expenses incurred in connection with the discharge of their duties as a member of the Board.

Duties of the Board

6 The Board shall

(a) conduct a public hearing or review pursuant to subsection 42(2) of the Act;

(b) at the request of the Minister, conduct an investigation or a study;

(c) at the request of the Minister, carry out any activity related to alternate dispute resolution;

(d) at the request of the Minister, review environmental legislation and regulations;

(e) administer the environmental awards program; and

(f) perform such functions and exercise such powers as may be assigned by the Minister or the Governor in Council.

Public consultation

7 (1) For a Class I undertaking and all Class II undertakings referred to the Board, the Administrator shall within 12 days of the referral publish a notice in the manner provided in Section 29 of the Environmental Assessment Regulations announcing the release of the report to the public and shall invite the public to provide written comments to the Administrator within 48 days following publication of the notice.

(2) Where in the opinion of the Minister the 48 day review period referred to in subsection (1) is insufficient, the Minister may extend the review period and shall advise the proponent in writing.

Purpose of hearing

8 The purpose of a hearing under Section 43 of the Act shall be

- (a) to receive submissions and comments from any interested party;
- (b) to ask questions and seek answers respecting the environmental effect of an undertaking; and
- (c) to provide information which will assist the hearing panel in the preparation of its report and recommendations to the Minister.

Joint assessments or single hearings

9 Where the Minister has entered into an agreement respecting joint assessments under Section 47 of the Act, or a single hearing as authorized under Section 48 of the Act, the Minister may authorize the Board to conduct or participate in a public hearing, review or proceeding as prescribed in the Act.

Alternate dispute resolution

10 At any stage of a public hearing or review process, the Hearing Panel Chair or the Board may refer a matter, dispute or an issue to an alternate dispute resolution procedure in accordance with the provisions of the Act and regulations.

General format of hearings

11 (1) All hearings shall be conducted in a non-judicial, informal and non-adversarial format.

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

(3) Any hearing before the Board shall be conducted in a structured manner so as to permit a fair and full examination by the hearing panel of all information presented.

(4) Any person may present their case to the Board in the form of a written submission.

(5) In addition to subsection (4), any person may present their case in person to the hearing panel.

(6) Any person may be represented by legal counsel at the hearing.

Hearing panel

12 (1) The Chair or the Administrator shall appoint the members of the hearing panel and forward the names to the Minister.

(2) Any hearing conducted by the Board shall have at least 1 regular Board member who shall act as the Hearing Panel Chair or Co-Chair.

- (3) Any hearing panel shall consist of either 3 or 5 persons.
- (4) A majority of the hearing panel shall constitute a quorum.
- (5) During a hearing before the hearing panel, if a member is temporarily absent or unable to attend the hearing, the member or members remaining present may
 - (a) exercise and perform all the jurisdiction, powers and duties of the Board; or
 - (b) temporarily adjourn the hearing.
- (6) The Hearing Panel Chair shall conduct a hearing in accordance with the procedure established by these regulations.
- (7) Subject to these regulations, prior to, during and after the hearing, a member of the hearing panel shall not communicate in private with anyone except another panel member, a technical advisor, the Administrator, legal counsel to the Board and staff of government departments about the substantive issues under consideration by the hearing panel.
- (8) The hearing panel may retain a technical advisor to assist the panel in a public hearing or review and the Administrator shall make any report of such advisor available to any person upon request.
- (9) The hearing panel may, through the Administrator, permit consultations between a technical advisor retained by the Board and participants in the review process.

Representations or inquiries

- 13 (1) All representations or inquiries concerning the hearing process shall be directed to the Administrator.
- (2) The Administrator shall maintain a file containing all correspondence, documents and submissions respecting an undertaking after an environmental assessment report is referred to the Board.
- (3) Subject to Section 14, the Administrator may, upon request, make copies of material in the file available to anyone.

Confidential business information

- 14 (1) This Section is subject to the Freedom of Information and Protection of Privacy Act and regulations made thereto.
- (2) Subject to subsection (1), all information which is filed with the Board shall be public information and shall be open for inspection by the public during business hours at the library located in the head office of the Department in Halifax.
- (3) Information which a proponent considers to be protected under the Freedom of Information and Protection of Privacy Act, including confidential business information, shall be clearly identified to the Administrator.
- (4) During a public hearing or review process where a proponent claims information to be confidential business information, the Hearing Panel Chair shall review the claim and, until a decision is made pursuant to subsection (6), shall take adequate precautions to prevent disclosure of the information.

(5) When reviewing a claim pursuant to subsection (4), the Hearing Panel Chair may request additional information to support the claim, including what steps the applicant has taken to maintain the confidentiality of the information.

(6) Within 14 days following the date of receipt of the claim filed pursuant to subsection (4) or within such further time as may be agreed upon, the Administrator shall advise the proponent in writing whether the Hearing Panel Chair accepts or rejects the claim in whole or in part.

(7) An appeal from a decision under subsection (6) shall be to the Minister or a person designated by the Minister.

(8) Information accepted to be confidential business information pursuant to subsection (6) shall not be disclosed to the public and the Board shall take adequate precautions to prevent the disclosure of the information.

(9) Where the Hearing Panel Chair rejects a claim, the proponent shall notify the Board in writing that

(a) the proponent waives the claim and wishes to continue the assessment process under the Act and these regulations; or

(b) the proponent wishes to withdraw the registration of the undertaking, in which case the Board shall forthwith return to the proponent all of the information submitted with the registration.

On-site visits

15 (1) The hearing panel may request one or more meetings with the proponent prior to the hearing for the purpose of visiting or inspecting the site of the undertaking under review.

(2) Where the undertaking under review is visited or inspected, the Administrator shall record in writing the visit or inspection including the date, time and identity of persons in attendance.

Hearing locations

16 (1) The Board may hold a hearing in various locations in the Province depending on the nature of the undertaking.

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

(3) Where sessions of the hearing are held in a number of locations, the Hearing Panel Chair may, to prevent undue repetition of evidence, decide that the official transcript of evidence previously presented at a different location shall be considered part of the evidence at a subsequent location.

Notice of hearing

17 (1) The form of Notice of Hearing shall be prescribed by the Administrator and shall include the time, place and purpose or subject of the hearing.

(2) The Notice of Hearing shall be signed by the Administrator within 14 days of referral of the environmental assessment report to the Board.

(3) Unless directed otherwise by the Hearing Panel Chair, the first publication of the Notice of Hearing shall be issued no later than 21 days before the hearing is to commence.

(4) The second publication of the Notice of Hearing shall be issued no later than 14 days before the hearing is to commence.

(5) The first and second publication of the Notice of Hearing shall each be published

(a) once in a newspaper having province-wide coverage; and

(b) once in a newspaper having general circulation in the locality where the proposed undertaking is to be located.

(6) The Notice of Hearing shall be published once in the Royal Gazette.

(7) The Administrator may serve a Notice of Hearing upon any person, body or organization by ordinary mail and may invite any person, body or organization to make a presentation at the hearing.

(8) The Administrator may post a Notice of Hearing in a public building located near the site of the proposed undertaking.

(9) Service of any Notice of Hearing given in respect of a matter before the hearing panel shall be evidenced by an affidavit filed by the Administrator setting out when and how service was effected.

Pre-session conference

18 (1) In advance of any hearing, the Administrator and the Hearing Panel Chair may conduct a pre-session conference.

(2) The 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 other matter that may be considered appropriate.

(3) The form of notice of a pre-session conference shall be determined by the Administrator and the Hearing Panel Chair and, where practical, shall be given 3 days before the pre-session conference.

(4) The Administrator and the Hearing Panel Chair shall have the discretion to determine which participants shall be given notice to attend a pre-session conference.

Intervenors

19 (1) Any person with an interest in or affected by the subject matter of a hearing shall contact the Administrator no less than 14 days before the hearing is to commence to request a time period to appear personally or by counsel at the hearing.

(2) Any submission to the hearing panel shall be in writing wherever possible.

(3) Every intervenor shall be asked by the Administrator whether that person intends to make a formal presentation or an informal presentation to the hearing panel.

(4) Any written submission shall be delivered to the Administrator no later than 10 days before the hearing commences.

(5) The Hearing Panel Chair may direct that copies of any written submission be delivered to any other person or persons having an interest in or affected by the subject matter of the hearing.

Journals, studies or reports

20 (1) To facilitate the expeditious conduct of a hearing, a person wishing to submit to the hearing panel written material including journals, studies and reports shall submit copies of the same to the Administrator no later than 7 days before the hearing is to commence.

(2) Written material described in subsection (1) shall form part of the public record.

(3) Unless directed otherwise by the Hearing Panel Chair, a person who submits materials under subsection (1) shall, prior to the hearing, provide copies of the same to the proponent and such other persons as the Hearing Panel Chair deems appropriate.

(4) Where written material is submitted in accordance with this Section, any oral presentation in relation to that material shall be limited to highlighting essential features of the material and responding to questions on the material.

Summonses

21 Pursuant to Section 44 of the Act, a summons to a witness or a summons for production of documents or things shall be issued over the signature of the Administrator and a summons to a witness may be as prescribed in Form "A" of Schedule "A" and a summons to produce documents or things may be as prescribed in Form "B" of Schedule "A" to these regulations.

Oath/affirmation

22 (1) Evidence at a hearing shall be presented only after the person gives an oath or affirmation that the evidence will be the truth and shall be otherwise received only at the discretion of the Hearing Panel Chair.

(2) An oath or affirmation by a person at a hearing shall be administered by the Administrator and, in the absence of the Administrator, by the Hearing Panel Chair.

Presentation by proponent

23 (1) At the hearing the proponent shall provide a person or group of persons who are knowledgeable of the undertaking and who are available to answer questions which are directed to the proponent.

(2) The Hearing Panel Chair shall grant a reasonable amount of time to the proponent to present its case to the hearing panel and to address issues raised in the environmental assessment report.

(3) Subject to the procedure prescribed in Section 24, the Hearing Panel Chair shall permit questioning of the proponent by the hearing panel, intervenors and other persons.

Presentations by intervenors

24 (1) An intervenor who has requested to make a formal presentation shall make that presentation after the initial presentation by the proponent.

(2) An intervenor who has requested to make an informal presentation shall follow those persons who are to make formal presentations.

(3) Before commencing a presentation, the intervenor shall provide to the hearing panel the name, address and affiliation, if any, of the intervenor.

(4) The Hearing Panel Chair shall permit evidence to be given by a number of intervenors sitting as a group provided the hearing 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 to the hearing panel shall not exceed 20 minutes.
- (6) Any person who requires more than 20 minutes for a presentation shall make a request for extra time in writing to the Administrator who will forward the request to the Hearing Panel Chair for consideration.
- (7) The Hearing Panel Chair may extend the duration of a presentation at a hearing.
- (8) To prevent undue repetition, the Hearing Panel Chair may limit the duration of a presentation at a hearing.
- (9) Subject to the procedure prescribed in Section 26, the Hearing Panel Chair shall permit questioning of an intervenor by the hearing panel, proponent or other persons.

Written questions

25 Where written questions are submitted to the Administrator to be answered by the proponent prior to the hearing, the proponent shall make every reasonable attempt to provide written answers prior to the hearing.

Questioning in general

- 26 (1) Every question at the hearing shall be directed to the Hearing Panel Chair who may invite the appropriate person to respond to the question.
- (2) The Hearing Panel Chair may exclude any intervention or question which, in the opinion of the Hearing Panel Chair, is outside of the terms of reference of the hearing panel or is needlessly repetitive in nature.
- (3) The Hearing Panel Chair may limit the questions asked and may limit persons in presenting arguments and submissions.
- (4) Questions 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) Where a question is directed to a specific member of a group representing the proponent or an intervenor and that person is unable to answer due to lack of knowledge or qualification, the Hearing Panel Chair may permit another member of the group to provide the answer.
- (6) If the intervenor or the proponent is unable to answer the question without further consultation or research, the intervenor or proponent shall provide an undertaking to provide an answer on or before the close of the hearing or, if this is not possible, no later than 7 days after the close of the hearing whereupon the Administrator shall provide the response to the person who asked the question and to any other person upon request.

Open forum

- 27 (1) After the completion of presentations and questions by the proponent and of formal and informal presentations and questions by intervenors, the Hearing Panel Chair may, time permitting, allow presentations or questions from other persons in attendance at the hearing.
- (2) Presentations or questions and responses under subsection (1) shall form part of the public record.

Final response by proponent

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

Transcript of hearings

29 (1) The Administrator shall maintain a record of all testimony presented at a hearing.

(2) The Administrator shall ensure that a copy of the transcript is made available at the head office of the Department in Halifax and at the regional office of the Department which is located nearest to the site of the proposed undertaking for scrutiny by persons participating in the proceeding.

(3) Any corrections, errors or omissions in the transcript shall be reported to the Administrator within 14 days of the copy of the transcript becoming available.

(4) The Hearing Panel Chair shall make a final ruling on any dispute as to the contents of the transcript after which it shall become part of the public record.

(5) A copy of the transcript shall be available for scrutiny at the head office of the Department in Halifax and at the regional office of the Department which is located nearest to the site of the proposed undertaking.

Written argument/submission

30 (1) A participant at the hearing may within 14 days of the close of the hearing, or such other length of time as determined by the Hearing Panel Chair, present written arguments and submissions through the Administrator to the hearing panel.

(2) Copies of any written arguments or written submissions shall become part of the public record and the Administrator shall make these available upon request.

Adjournments/extensions

31 (1) Subject to subsection (2), the hearing panel may adjourn a hearing from time to time, may reopen a hearing and may grant such extensions of time as the Hearing Panel Chair deems proper.

(2) No hearing shall be reopened after the report of the hearing panel has been submitted to the Minister.

Legal counsel

32 The hearing panel may arrange for the attendance and assistance of legal counsel during a hearing to advise the hearing panel on any matter pertaining to the hearing and provide liaison with the parties and their counsel.

Media coverage

33 (1) Subject to the terms and conditions outlined in these regulations and any other terms and conditions stipulated by the Hearing Panel Chair, radio and television recordings of the hearings may be permitted by the Hearing Panel Chair.

(2) Where permission is sought under subsection (1), a request shall be made to the Administrator before the commencement of the part of the hearing sought to be recorded.

(3) Work tables shall be provided to members of the media at the hearings.

- (4) Before the commencement of the hearings, camera shots may be taken of the hearing panel, the persons participating and the audience.
- (5) After the hearing commences, photographic lights shall be shut off and cameras left on fixed mounts.
- (6) Photographic and audio equipment shall be positioned unobstructively before the hearing begins in locations approved by the Hearing Panel Chair and shall not be moved when the hearing is in progress.
- (7) Media personnel shall not move about while the hearing is in progress so as to distract the hearing.
- (8) Only photographic and audio equipment which does not produce distracting sound or light may be used in the room where the hearing is to be held.
- (9) Any media interviews of participants or members of the hearing panel shall be conducted at breaks in the hearing or outside the hearing room in a manner that will not interfere with the hearing.
- (10) The Hearing Panel Chair may disallow the video taping or recording of all or portions of the hearing if, in the opinion of the Hearing Panel Chair, such coverage would inhibit specific witnesses or disrupt the hearing process in any way.

Hearing panel report

- 34 (1) For the purposes of the Act and these regulations, the report of the hearing panel is a report of the Board.
- (2) Where the Minister refers an environmental assessment report to the Board, the Board shall submit its report and recommendations to the Minister not later than 110 days following the date of referral to the Board.
 - (3) The Minister may in writing extend the time period mentioned in subsection (1) and the Administrator shall advise the proponent of the extension and the reason for the extension.
 - (4) The Board shall determine the style and format of the report of the hearing panel to be submitted to the Minister.
 - (5) The report shall be dated and bear the signature of the Hearing Panel Chair and other members of the hearing panel.
 - (6) The report shall contain the names of all witnesses or other persons, bodies or organizations who have made contributions to the hearings and a bibliography of all documents and written materials submitted during the public hearing process.
 - (7) After the decision of the Minister under Section 40 of the Act, copies of the report of the hearing panel shall be made available to the public upon request and at a reasonable cost.

Public record

- 35 (1) The Department shall keep on file at the head office of the Department in Halifax, a copy of all documents forming part of the public record respecting a hearing.
- (2) Copies of the public record, or parts of the public record, shall be available to the public and a fee may be charged to pay reasonable costs in connection with production or copying.

Effective date

36 These regulations shall be effective on, from and after March 17, 1995.

Schedule "A" - Forms

Form A - Summons

IN THE MATTER OF A HEARING before the Environmental Assessment Board pursuant to the provisions of the Environment Act.

SUMMONS

TO:

ADDRESS:

You are required to attend before the Board _____, in the County of _____, on the ____ day of _____, 19__, at the hour of _____ o'clock in the _____ noon, 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 _____, this ____ day of _____, 19__.

Signed _____
Administrator
Environmental Assessment Board

Form B - Summons to Produce Documents

IN THE MATTER OF A HEARING before the Environmental Assessment Board pursuant to the provisions of the Environment Act.

SUMMONS TO PRODUCE DOCUMENTS

TO:

ADDRESS:

Take notice that you are hereby required to produce and show to the Board at a hearing to be held at _____, in the County of _____, Province of Nova Scotia, on the ____ day of _____, 19__, 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:

Dated at _____, in the County of _____, this ____ day of _____, 19__.

Signed _____

Administrator

Environmental Assessment Board

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Please send comments to: regofregs@gov.ns.ca

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