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# Manitoba Clean Environment Commission Manitoba Clean Environment Commission

## Participants Handbook

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## **1. Introduction**

Public review of environmental assessment and approval processes has become a standard and legislated way of doing business in Manitoba and in Canada. It is imperative that this review process be efficient, meaningful and adaptable to the current circumstances. There are many environmental groups surveying and commenting on global and national issues. It is also important that the citizens that are directly affected by developments or changes to their immediate environment have access and input to the process. The licensing procedures prescribed by *The Environment Act* and its regulations and, the Public Registry maintained by Manitoba Conservation, allow public input to the environmental licensing process in Manitoba. The magnitude of the developments and the input of citizens may trigger environmental hearings. The body designated by *The Environment Act* to facilitate such hearings is the Manitoba Clean Environment Commission (CEC). Manitoba is also party to the Canada-Manitoba Agreement for Environmental Assessment Co-operation which coordinates review of environmental proposals, under *The Canadian Environmental Assessment Act*, for projects that include federal jurisdiction. The Clean Environment Commission also serves a role in this process.

This document provides an overview of the environmental hearing process in Manitoba, identifies the participants and sets out the general procedures used to facilitate a successful hearing. These procedures are directed by guidelines that are somewhat flexible and can be adapted to fit specific situations to ensure that there is a fair and equitable review of the issues at hand.

## **2. The Environmental Review Process**

The environmental licensing process in Manitoba begins with the proponent or the party(ies) wishing to undertake an activity or development. Usually, prior to making an application to the Department of Conservation, Environmental Assessment and Licencing Branch (see contact information Appendix D), consultation has taken place with departmental representatives to outline what category the development may fall in, what specific environmental standards must be met and what information is required on the application.

On filing an application, the information provided becomes part of the public record and the official process begins. This application is placed in the public registry for a specified time to allow for public review and comment. The proposal is also reviewed by a Technical Advisory Committee (TAC) to determine whether there is a need for, more information, a full Environmental Impact Statement (EIS), and in some cases public hearing. The TAC consists of representatives from provincial and federal government departments.

The screening or review of the proposal may identify the need for further information; this information can be gained directly by questioning the client or by the issuance of Guidelines for the preparation of a full Environmental Impact Statement (EIS) on the development. The EIS is also reviewed through the Public Registry and by the TAC.

The *Environment Act* provides authority for the Minister of Conservation to call public hearings to consider proposals filed under the Act. Hearings are not mandatory, but generally are called when a development proposal is of general interest to, or will affect, a large number of Manitobans or where, through the screening process, there are significant public concerns identified.

When called, hearings are conducted by an independent panel, the **Clean Environment Commission**. Created under Section 6 of *The Environment Act* (1988) the Manitoba Clean Environment Commission provides an additional mechanism through which the public can participate in the environmental review process. The Commission's role is to provide advice and recommendations to the Minister based on evidence received during the hearing process.

During such a hearing, the CEC receives representations from the project proponent, the general public - both supporters and opponents, and from the various government departments responsible for reviewing the proposal. The CEC reviews the evidence and information presented at the hearing and prepares a report containing advice and recommendations for the Minister. The Commission makes no regulatory decisions, does not issue the licence and does not monitor the project.

Upon receipt of the Commission's report, the Minister may choose to accept all or part of its recommendations but is under no legal obligation to do so. If, however, the Commission's recommendations are not acted upon, or incorporated into the licence under review, written reasons must be provided by the Minister of Conservation and these must be filed in the Public Registry.

The final decision on the development proposal rests with Manitoba Conservation and, ultimately the Minister. At the conclusion of the assessment and approval process the department makes a decision to either issue a licence with limits, terms and conditions or to refuse a licence based on adverse environmental effects. The Minister provides direction to the Environmental Assessment and Licensing Branch to prepare the appropriate documents and conditions.

For further information on the role of the Manitoba Clean Environment Commission, see our mandate in Appendix A or at [www.cecmanitoba.ca](http://www.cecmanitoba.ca).

### **3. Public Participation**

Public participation in the environmental review process is essential. If effects of developments were not of concern, there would not be a need for their review. Those who will be most affected by the development are given the opportunity to provide their perspective.

#### **Why get involved?**

There is an expectation that Proponents have conducted some form of public or stakeholder consultation while preparing their development proposals. The public will then have some indication of what the development proposal involves and the potential impact on them. Projects subject to environmental assessment have the potential to impact a community or region. Even though some public consultation has taken place, Proponents may not be able to identify all issues of concern or have a full understanding or appreciation of the development impacts. Public input is important in identifying these issues and furthering the understanding of the project impacts. This assists in ensuring that all factors are taken into consideration in the environmental assessment. Public participation in the environmental assessment process helps to ensure that community values and public goals for community development are considered in project planning and decision-making.

#### **When to get involved**

The public and stakeholders are advised to get involved as early as possible in the review process. Early identification of potential impacts and issues can assist in project planning to minimize negative effects and enhance positive effects. Necessary design changes can more easily be incorporated early in the process rather than waiting until plans are near completion. Opportunities to comment on proposals exist through the Public Registry as well as participation in a public hearing through the Clean Environment Commission.

#### **How to Participate**

Public participation in environmental review is welcome. However, public input should remain focussed on the project under review. Comments on relevant environmental, economic, social, heritage and/or health effects will be taken under consideration. Participants may address such aspects as:

- methodology and scope of the environmental assessment
- substantive concerns about the project impacts
- the adequacy of the proponents consultation program.

Comments about a proposal should be as clear and comprehensive as possible. When available, factual information should be provided to support any comments.

It should be remembered that Clean Environment Commission hearings are usually high-level reviews that determine the overall acceptability of a project. In many cases, specific details related to mitigation design, environmental protection or operating plans are considered after the environmental assessment, when individual permit applications are reviewed.

To help you stay informed and assist with your participation:

- Ensure you receive all relevant information and notices by confirming that you are on the mailing/e-mail list with the Environmental Assessment and Licensing Branch and the Clean Environment Commission regarding the proposal and/or hearing of interest. You may register with the CEC by contacting the office or through the website [www.cecmnitoba.ca](http://www.cecmnitoba.ca).
- Visit the Public Registry and/or the Clean Environment Commission websites regularly to keep up-to-date on new information that becomes available. Sign-up for automatic notification with the CEC.
- Attend open houses or public meetings regarding the proposal or hearing of interest.
- Learn about the technical issues and become familiar with the technical language and principles to assist in understanding the project, its impacts and possible mitigative actions.
- Establish contact with other stakeholders or interested parties. A project that requires environmental assessment probably has a number of different interests. Find out who else may share your interests or concerns and meet with them; there may be opportunities to join forces and coordinate representation.
- Contact Manitoba Conservation, Environmental Assessment and Licensing Branch if you have questions about the licensing process.
- Contact the Secretary to the Clean Environment Commission should you have any questions about the hearing process and procedures or, require guidance in the preparation of your presentation or representation.

## Questions to Ask

Many participants wish to make a contribution but do not know where to begin. It must be kept in mind that each proposal or project will differ in one or more aspects. Following are some general questions that can be considered when reviewing an environmental proposal.

*What are the possible impacts of the project on the environment and human health?*

This may involve impacts (positive or negative) on air, water and soil quality, noise concerns, biodiversity conservation and habitat protection.

*What are the expected social and economic impacts of the project?*

This may involve an assessment of the impact on the local, regional or provincial economy including the labour market, employment opportunities (long and short-term) and, whether the local infrastructure can support the proposal.

*What will be the effects on heritage resources?*

This could include impacts and opportunities related to local archaeological sites, historical sites, heritage buildings or sites, and landscape features.

*What level of detail is addressed during the assessment phase and what will be dealt with at the permitting phase?*

The environmental assessment or hearing process addresses the overall design of the project and usually results in the issuance of an environmental license. Operational details and specific standards are usually addressed with permits.

*What are the sources of information used to develop the proposal?*

Are the available technical reports providing assurance that your interests are addressed and understood; are additional technical studies being conducted? Are the information sources credible?

*What are the views of government departments/agencies and stakeholders?*

Is there consensus about the methods and the findings? How are differences of opinion resolved?

*What mitigation measures are recommended to address your concerns?*

How and when will they be applied? Who will be responsible for their success? What resources are required to ensure success?

*Are there past projects or precedents that can be used for comparison?*

Find out if there are others with similar experiences that could be contacted for advice.

## **How to Present**

Once you have reviewed the available information, consulted with those with similar interests and have decided that you want to make your concerns heard, you have several options to make your case to the CEC.

You may:

- Form or join a stakeholders group, that enrolls as a Participant or Presenter and may elect to engage technical experts to assist with the presentation. A written submission may be developed and a spokesperson(s) from the group makes the presentation to the CEC panel.
- Make an oral presentation on your own behalf, enrolling as a Participant, Presenter or private citizen depending upon your level of commitment and technical knowledge.
- Submit a written presentation if you are not available during the hearing dates and times, or do not feel comfortable making an oral presentation. A written presentation may be a short comment or you may provide technical detail and background.

Whichever path you choose, your input is important to the environmental review process. Your contact point regarding hearings is the Commission Secretary. Advice on sources of information, possible cooperating organizations/individuals, and the development of a submission and/or a presentation can be gained through the Clean Environment Commission office.

## **4. Public Hearing Process**

Once a hearing has been called by the Minister of Conservation, the Clean Environment Commission will follow the general procedures provided. The CEC has developed process and practice guidelines to direct the participation, format and conduct at public environmental hearings. The guidelines also govern the processes leading up to these hearings. These guidelines set the stage for productive and meaningful exchange with the public. The following will summarize these guidelines in light of the specific actions required by participants in the public hearing process. The full text of the Process Guidelines can be found in Appendix B or at [www.cecmanitoba.ca](http://www.cecmanitoba.ca).

### **Hearing Status**

There are many parties to a Hearing Process of the CEC: the Hearing Panel, the Proponent, funded and non-funded Participants, Presenters and the General Public.

The following is intended to describe these various parties and set out the rights of those appearing before the Panel. Furthermore, these guidelines should help to ensure that the hearings remain fair and open forums for all parties. It is intended that the hearings remain informal, but with some structure.

### **Hearing Panel**

In accordance with *The Environment Act*, the CEC Chairperson appoints a panel of at least three members to conduct the hearing. One of the members is designated to be chairperson of the Panel.

The Panel conducts the hearings, considers the evidence presented and reports to the Minister its recommendations. It must conduct its hearings in accordance with the Terms of Reference given by the Minister.

### **Proponent**

The Proponent is the corporation, organization or agency which has made application under the *Act* for an environmental licence to proceed with the proposed Project.

When instructed by Environmental Assessment and Licensing Branch, it is the Proponent's responsibility to develop an Environmental Impact Statement (EIS) in respect of the proposed Project. It is this EIS that is usually the principal matter under review during the CEC Hearing process.

## Participants

The following are Participants and shall be referred to as such from now on:

- (a) Persons or organizations which have applied for, and been granted, funding under the Participant Assistance Program (see following section);

Persons or organizations which have applied for, but not been granted, funding under the Participant Assistance Program and which express a desire to have participant status (this may be done on the PAP application or by writing to the hearing Panel);

- (c) Persons or organizations which request participant status and are so specified by the Panel for all or part of the proceeding, and on such conditions as the Panel considers appropriate (this is to be done by written application to the hearing Panel).

In deciding whether to name a person or organization as a Participant to the proceeding, the Panel may consider relevant matters including whether:

- (a) A person's interests may be directly and substantially affected by the Hearing or its result;
- (b) A person has a genuine interest in the subject matter of the proceeding;
- (c) A person is likely to make a useful and distinct contribution to the Panel's understanding of the issues in the proceeding.

## Role of a Participant

A participant to the proceeding before the Panel may:

- (a) Bring motions;
- (b) Be a witness at the Hearing;
- (c) Be questioned by the Panel, the Proponent and the participants;
- (d) Call witnesses at the hearing;
- (e) Cross-examine witnesses presented by the Commission, the Proponent or other participants;
- (f) Make submissions to the Panel, including final argument; and
- (g) Receive copies of all documents exchanged or filed by the Proponent and other participants.

A participant may not cross-examine a Presenter. The Panel may reduce the procedural obligations of a participant depending on the interests and resources of the participant.

## Expectations of Participants

Participants shall co-operate with each other in matters such as scheduling, disclosure, procedure and agreements on uncontroverted facts to the fullest extent that is compatible with their interests.

Participants are expected to keep abreast of hearing activities, either by attending all hearings or reading the transcripts. The purpose of this is to avoid duplication of questions or submissions.

## Presenters

The Panel may name persons to be presenters in all or part of a proceeding on such conditions as the Panel considers appropriate. A Presenter to a proceeding is not a Participant in the proceeding.

### Role of a Presenter

A presenter in a Hearing:

Shall present his or her relevant evidence at a pre-arranged time,  
either during a Hearing's regular session or at a special session;

May be questioned by the Panel.

A presenter in a Hearing may not:

- (a) Call witnesses;
- (b) Cross-examine witnesses;
- (c) Bring motions;
- (d) Make opening and/or closing statements at the Hearing; or
- (e) Be guaranteed to receive a copy of documents exchanged by the participants that are relevant to the presenter's interests.

The Panel may direct persons who have similar interests to designate one person to act as their representative or to co-ordinate their participation in the proceeding.

## **General Public**

These Guidelines do not preclude the General Public from participating in the hearing process.

### **Statements**

At specific, designated times, a member of the public may make a statement in respect of the subject under consideration. The person must make his or her intention to make a statement known to the CEC Secretary, prior to the designated period. Public statements can be made only once during the hearing process.

Such statements must be relevant and must not exceed 15 minutes in length. The public presenter may be questioned by Panel members, following the presentation.

### **Questions**

At specific, designated times, members of the public may ask questions of the Proponent, in respect of the EIS under review.

## **Communications with the Panel**

Written communication to the Panel shall occur only through the Commission Secretary, and shall be copied to all parties or their representatives.

Oral communication with the Panel about a current proceeding shall occur only in the presence, or with the consent, of all participants.

Where a participant has a representative, all communication between the Panel and the participant shall be through the representative<sup>1</sup>, including of notices of the Hearing.

## **Written Submissions**

Written submissions are also accepted by the CEC during the public hearing process. Written submissions can be provided to the CEC office before the close of the hearing or to the Secretary at the hearing sites. Written submissions will be part of the hearing record (i.e. exhibits) and will be circulated to the CEC panel, the Proponent and Participants as information to be considered.

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<sup>1</sup> "Representative" means legal counsel or an agent who is authorized to represent a person in a proceeding;

## 5. Participant Assistance Program (PAP)

The Participant Assistance Program (PAP) was authorized by the Minister of Conservation by regulation under *The Environment Act*. PAP provides funding or other assistance to qualifying people and organizations to ensure effective public participation in the environmental assessment and review of major projects. Any person or group of people who intend to participate in a public hearing may apply.

Under the program, the project proponent is required to provide assistance to approved Participants who, in turn, must comply with conditions set in advance of the hearing. The Minister of Conservation will determine if the Participant Assistance Program will be applied to a project subject to a public hearing. If so, the Participant Assistance Program will be advertised to the public and applications may be submitted to the Secretary to the Clean Environment Commission who will forward them to a Participant Assistance Committee, composed of CEC Commissioners.

The Participant Assistance Committee will hold a public assistance meeting after it has had sufficient time to review all the applications for assistance. During the meeting, the applicants for participant assistance will be able to explain their request, and may be questioned by the Participant Assistance Committee and Proponent.

After the participant assistance meeting, the Participant Assistance Committee will make recommendations to the Minister regarding conditions for a provisional order of participant assistance. The provisional order will specify which applicants will be eligible for assistance, the type and timing of assistance, and any other conditions which the Proponent and Participants must meet. These conditions may require various Participants to cooperate and share assistance in preparing and presenting information. There is also a general requirement that all Participants who receive assistance must act responsibly and contribute substantially to the hearing process.

Up to 30% of the assistance may be provided before the hearings. These funds may help provide start-up funds to prepare for the hearings and/or could include the contracting of experts or other resources to participants.

After the hearings are complete, the Participant Assistance Committee will receive itemized invoices from the Participants, decide whether each Participant has complied with the conditions of the provisional order, the committee will then make recommendations regarding a final payment to each Participant.

For complete information on eligibility and how to apply see Appendix C or at [www.cecmanitoba.ca](http://www.cecmanitoba.ca).

## **6. The Hearing**

### **Notice of Hearing**

The Commission may decide on the method and timing to inform the public of hearings. The usual method is to publish an advertisement in the appropriate newspapers and advise the local media a minimum of 14 days, but usually 30 days, before the hearings are to begin. The notice will also occur on the CEC website ([www.cecmanitoba.ca](http://www.cecmanitoba.ca)) and the on the Public Registry on Manitoba Conservation website ([www.gov.mb.ca/conservation/envapprovals](http://www.gov.mb.ca/conservation/envapprovals)). Other methods and venues may be considered depending upon circumstances.

The Chairperson will decide on the location and timing of the hearing. Where the project/issue in question encompasses a large geographic area, several locations may be chosen for the hearing. It is also up to the Chairperson to decide whether evidence given at one location will be repeated at the other location(s).

### **Pre-Hearing Conference**

Where deemed necessary by the Commission, a meeting of the Proponent and Participants may be held to exchange information, documents, exhibits, facilitate comments or questions regarding submissions or other matters related to content that require to be resolved prior to the public hearing.

### **Pre-Hearing Meeting**

A meeting of the Proponent and Participants will be called to discuss procedural matters relating to the hearings. This meeting will take place at least 14 days before the beginning of the hearings. The pre-hearing meeting is restricted to the discussion of procedures, agendas, schedules and other matters directly related to the format and scheduling of the hearings.

### **Procedural Fairness**

It is recognized that fairness must not only occur, but that there must be a perception of fairness and impartiality during the hearing process. It is recognized that Participants do not have the same degree of access to the expert advice and resources available to the Proponent. It is also recognized that Participants critically questioning the merits and aspects of the proposed project are doing so for the public good. During the hearing process Participants will be given the benefit of the doubt, flexibility and common sense will be exercised

over rigid bureaucratic rules. The Panel will be the final arbiter of procedural fairness in adapting to the circumstances that arise.

## **Hearing Format**

Hearings will be structured yet informal. All Participants shall appear in person or through a designated representative (legal representative, consultant). Participants shall be given a minimum of 15 minutes for the presentation of a submission. Participants will be given a reasonable amount of time, beyond 15 minutes, to make their case provided they have made arrangements with the Commission Secretary at least **7 days prior** to the start of the hearings. All efforts will be made to accommodate reasonable requests for specific time slots and length of presentations.

It is incumbent on the Participants to keep abreast of the proceedings, especially if they move more quickly or more slowly than expected. The Commission Secretary will advise Participants of the best method to contact the Commission during the hearing, should a change in scheduling be required.

Presenters and the General Public will be held to a maximum of 15 minutes.

**All enquiries regarding the hearing process shall be directed to the Commission Secretary!!!!**

## **Submissions**

All Participants wishing to make a submission must advise the CEC Secretary at least 2 weeks prior to the beginning of the hearings. A copy of the submission must be provided to the CEC, the Proponent, all other Participants and others as designated by the CEC at least **2 weeks** prior to their appearance. Should this not be done, the Participant may not bring “new evidence” into the hearing, could be ruled out of order and may not be able to make a presentation. The submission must include:

- (a) The name, address, telephone, FAX and/or e-mail of the Participant;
- (b) Describe the particular interest of the Participant;  
Contain a clear and concise statement of the position to be taken by the Participant;  
Contain a list of documents to be relied upon; and,  
Contain a list and CVs of the expert witnesses to be relied upon.

A copy of the submission must be circulated to the CEC, the Proponent, other Participants and others designated by the Commission.

These documents may be provided in hard copy-- delivered by mail or courier, by FAX or by electronic means (CD or e-mail). It is recommended, for your own protection, that copies distributed on CD or e-mail be in PDF format or other read-only format.

**It is the Proponent's and Participants responsibility to ensure all documents they will be relying on are circulated to all Participants and identified parties by the deadlines set out by the CEC prior to the start of the hearing. Should these procedures not be followed, any resulting evidence may not be brought into the hearing.**

## **Proceedings**

All those representing the Proponent and Participants as well as Presenters and members of the General Public making statements will take an oath.

Transcripts of the proceedings will be available on a website as soon as practicable following the close of the day's proceedings. Printed transcripts will also be available for purchase.

To avoid undue corrections to the transcripts, the Proponent and Participants **shall provide a written listing, with the correct spelling of all their presenters/witnesses** to the Commission Secretary prior to the beginning of their presentation. Presenters are also encouraged to speak clearly into the microphone and at a speed that facilitates transcription. Should presenters become unintelligible, they will be interrupted and be asked to speak more clearly.

Although submissions have been circulated to all participating parties, the presentations are often a summation or a more visual representation of the materials contained in the submission. It is for this reason that all presenters, Proponent, Participants and Presenters are to provide sufficient copies of their presentations before or on the day of their presentation. Copies are required for the CEC and associated staff and consultants, including the transcriber, the Proponent and all Participants, often including more than one representative from the group or organization, and for the general public who may be in attendance that day. **The CEC Secretary will advise you ahead of time as to the number of copies required.** It is also advisable to provide a CD or other electronic format of your presentation to the CEC for future reference.

All submissions, supporting documents and presentations will be entered as exhibits. It is important that the CEC have the most current copies that are presented. Should your submission/presentation change from the time of submission to presentation please provide the edited materials so that they can

become part of your submission on record. **If a copy (paper or electronic) is not provided to the Secretary it will not be part of the official record.**

The general flow of the proceeding is as follows:

- (a) CEC Chairperson opens the proceeding.
- (b) Introduction of project/setting by proponent.  
Overview of environmental review process to date by Department of Conservation.
- (d) Provision of Ministerial request to provide a hearing and introduction of terms of reference.  
Presentation of proposal by Proponent.
- (g) Cross examination of Proponent by the CEC, Participants and the general public.
- (h) Participant presentations, cross-examination by Proponent, CEC and other Participants.  
Presenters/Public statements, questions by CEC.  
Re-examination of the Proponent by CEC.  
Closing statements by Participants  
Closing statement by Proponent.  
Adjournment.

Once the hearings are completed all exhibits, transcripts and other supporting materials will be housed with the CEC. The Panel will then begin their deliberations and the preparation of a report for the Minister of Conservation. The report with the Clean Environment Commission recommendations is to be submitted to the Minister 90 days after the end of the hearing. The Minister then reviews it and usually releases it about 2 weeks after receiving it.

The Proponent, all Participants, Presenters and others who have requested reports will receive a copy once it is released. It is therefore important that the correct and complete addresses for you or your group and the number of copies you may need is provided to the Commission.

## **7. Summary**

Upon request of the Minister of Conservation, the Manitoba Clean Environment Commission (CEC) facilitates public environmental hearings. The public hearing process is to be a fair and open forum where all can be heard. There are varying levels of participation in the process and associated responsibilities. The Proponent and those who are designated Participants are required to bring the greatest amount of information to the forefront. The Environmental Impact Statement (EIS) prepared by the Proponent is the document under examination throughout the hearings. Through a formal process Participants may question any aspect of the Proponent's proposal, with or without expert assistance. The EIS and the Participants statements and questions become part of the public record. The hearing process is open to all, where members of the public are able to provide their personal statements to the Commission regarding the Proponent's proposal. After hearing all sides of the debate, the CEC then provides a report and recommendations to the Minister. The Minister determines whether an environmental license is to be issued. If the Minister does not accept the licencing recommendations of the Commission, written reasons are to be provided and made available to the public.

## NOTES

## NOTES

## **Appendix A – CEC Mandate**

### **Mandate**

The Clean Environment Commission is established under *The Environment Act* (1988) to provide an avenue through which the public can participate in the decision making process regarding the environment in Manitoba. The Commission also provides advice and recommendations to the Minister and plays a role in the application of *The Contaminated Sites Remediation Act*.

Commission membership includes a full-time Chairperson and part-time Commissioners appointed by Order-in Council. Commissioners come from a wide variety of backgrounds and disciplines as well as different regions of the province.

The Commission may engage in the following activities to assist in environmental management:

### **Public Hearings**

As part of the provincial environmental assessment process, the public is invited to submit comments and/or objections regarding a proposed project through the Public Registry. In response to valid concerns, the Minister of Conservation may request the Clean Environment Commission to convene a public hearing. During such a hearing the Commission receives representations from the project proponent, the general public-both supporters and opponents, and from various government departments responsible for reviewing the proposal. The Commission reviews the evidence and information presented at the hearing and prepares a report containing advice and recommendations for the Minister.

Upon receipt of the Commission's report, the Minister may choose to accept all or part of its recommendations but is under no legal obligation to do so. If, however the Commission's recommendations are not acted upon, or incorporated into the licence under review, written reasons must be provided by the Minister or the Department of Conservation and these must be filed in the Public Registry.

In addition to licensing matters, some environmental issues require public involvement before government policy can be developed. In these cases, the Minister of Conservation can request that the Commission convene a hearing to gather public opinion.

Manitoba Conservation has also signed onto a Canada-Manitoba Agreement on Environmental Assessment Cooperation with Environment Canada. As part of this agreement, regarding projects where there is also federal jurisdiction, a

process is set out respecting joint review. Commission hearings may be used as a source of information for the federal review or there may be a joint review panel formed for specific projects. Commission members would be part of these panels.

### **Investigations**

*The Environment Act* allows the Commission, on its own volition, to investigate any matter of environmental concern and to provide advice and recommendations to the Minister of Conservation.

### **Mediation**

The Commission can provide mediation services to parties involved in an environmental management dispute. These activities are undertaken at the request of the Minister of Conservation. All Commission assisted mediations require a voluntary agreement of all parties to participate in the process in good faith. The Commission reports to the Minister regarding the outcome of any mediation exercises in which it becomes involved.

## Appendix B – Process Guidelines Respecting Public Hearing

### MANITOBA CLEAN ENVIRONMENT COMMISSION

## PROCESS GUIDELINES

## RESPECTING PUBLIC HEARINGS

(aussi disponible en Français)

### Preamble

These *Process Guidelines* have been prepared to provide information on how business will be conducted at the public hearings convened by the Manitoba Clean Environment Commission. They are intended to ensure that the hearings remain fair and open forums for the exchange of information and ideas, and that they provide a full opportunity for public involvement in the environmental management process in Manitoba.

These *Guidelines* will be reviewed and amended as appropriate to ensure that they remain relevant and responsive to changing public needs and aspirations.

### Definitions

- 1 In these *Process Guidelines*,
  - (a) "Act" means The Environment Act;
  - (b) "Chairperson" means the Chairperson of the Commission and the member of the Commission who chairs any hearing, as the context may allow or require;
  - (c) "Commission" means the Clean Environment Commission;
  - (d) "Commission Secretary" means the individual appointed as Secretary to the Commission;
  - (e) "Director" means an employee of the Department of Conservation appointed as such by the Minister;
  - (f) "participant" or "participants" means a person or group of persons, including the proponent or proponents, who wish to make a submission before the Commission at a hearing;

- (g) "proponent" or "proponents" means a person or group of persons who is undertaking, or proposes to undertake a development, or who has been designated by a person or group of persons to undertake a development in Manitoba on behalf of that person or group of persons;
- (h) "proprietary information" means information or data provided to the Commission on a confidential basis which includes without limitation a trade secret and/or know-how, but does not include the environmental effects or associated mitigation measures of a proposed undertaking;
- (i) "Public Registry" means a file of information as established under *The Environment Act* and accessible to the public;
- (j) "submission" means a written, visual, or oral presentation by a proponent or proponents and/or any other participant or participants who have registered with the Commission Secretary in accordance with the provisions established in these process guidelines;
- (k) "telecommunications link" includes a connection via telephone or satellite between a person and a public hearing.

### **Notice of Hearing**

- 2 (1) Where the Commission undertakes to hold a hearing pursuant to the *Act*, it shall give notice of the hearing, in such form as may be prescribed by the Commission, which shall include the time, date, and location of the hearing.

### **Pre-Hearing Meeting**

- 3 (1) The Commission may arrange in advance of any public hearing a Pre-Hearing Meeting with the proponent and such other participants as deemed appropriate by the Commission in order to facilitate the following:
  - (a) to finalize agendas and schedules;
  - (b) to outline the procedures to be followed at the hearing; and
  - (c) such other matters as may aid in the presentation of the evidence and the progress of the proceedings.

### **Pre-Hearing Conference**

- 4 (1) The Commission may arrange in advance of any public hearing a Pre-Hearing Conference with the proponent and such other participants as deemed appropriate by the Commission in order to facilitate the following:

- (a) the mutual exchange by the participants of documents and exhibits proposed to be submitted at the public hearing;
- (b) identification of participants;
- (c) determination of the necessity or desirability of amending a submission or reply for the purpose of clarification, amplification or limitation;
- (d) identification, and/or definition and/or simplification of issues;

### **Hearing Times and Locations**

- 5 (1) The Commission shall sit at such times and places as the Chairperson of the Commission may designate.
- (2) Where sessions of the hearing are held in a number of locations, the Chairperson may, in order to prevent undue repetition of evidence, decide that the evidence recorded at one location shall be considered part of the evidence at another location.

### **General Format of Hearings**

- 6 (1) All public hearings of the Commission, while structured in nature, shall be informal.
- (2) All participants making submissions to the Commission shall appear in person or through a designated representative.
- (3) Participants making a submission to the Commission shall have a minimum of fifteen minutes to make their presentation.
- (4) Any participant requiring more than fifteen minutes for the presentation of a submission is requested to give prior notice to the Commission Secretary not later than seven business days prior to the opening of the hearing including an estimation of the time required for the completion of the presentation.
- (5) Subject to subsection (6), all participants to the hearing shall have reasonable opportunity of submitting evidence to the hearing and of questioning any participants whose evidence has been submitted.

- (6) The Chairperson may
- (i) exclude submissions or questions that, in the opinion of the Commission, are outside its terms of reference or are needlessly repetitive in nature,
  - (ii) limit questioning where participants have similar interests in the proposed development,
  - (iii) limit the duration of a submission
  - (iv) prescribe the manner in which a submission is to be presented.
- (7) Unless the Commission directs otherwise, the order of appearance at a public hearing shall be as follows:
- (a) the proponent;
  - (b) other participants (including government departments and/or agencies);
  - (c) the Provincial Department of the Conservation
- (8) Subject to prior approval, the Chairperson may permit evidence to be given by a number of participants sitting as a group provided that the Commission is satisfied that in the particular case the tendering of evidence in this manner will result in a full and fair hearing.
- (9) The Commission may, where it deems advisable to do so, direct that a written brief be submitted by the participants to a hearing in addition to or in lieu of oral presentation and, in such cases, the brief shall be served on other participants as the Commission may direct.
- (10) (a) Subject to clause (b) the Commission shall conduct all public hearings in accordance with these *Process Guidelines*.
- (b) Where the situation requires, the Commission may vary these *Guideline* sto suit that situation and such variation shall be in substantial compliance with these Guidelines.
- (11) Subject to prior approval, the Commission may permit the use of a telecommunications link to facilitate the receipt of evidence from parties unable to attend a hearing. (Note: Specific Guidelines for the use of telecommunications links during hearings are available through the office of the Commission.)

**Commission Secretary**

- 7 All inquiries concerning the hearing process shall be directed to the Commission Secretary.

### **Submissions**

- 8 (1) A participant shall notify the Commission in the time specified in the *Notice of Hearing* that he/she intends to make a submission to the Commission at the hearing, and shall file a copy of that submission with the Commission fourteen days prior to the commencement of the hearing.
- (2) A submission shall:
- (a) set forth the name, address and telephone number of the participant,
  - (b) describe the particular interest of the participant;
  - (c) contain a clear and concise statement of the position to be taken by the participant; and,
  - (d) contain a list of all documents that will be relied upon by the participant.
- (3) A participant shall serve a copy of the submission at least fourteen days before the day fixed for the hearing upon participants to the hearing and upon such other persons as the Commission may designate.

### **Reply to Submissions**

- 9 Within seven days after a participant is served with a copy of a submission, that participant may file with the Commission a reply thereto and shall serve a copy of the reply upon the participant originally serving the submission.

### **Production and Inspection of Documents**

- 10 (1) Any documents which a participant intends relying upon at a hearing shall be filed with the Commission at least fourteen days prior to the hearing date and all other participants to the hearing may review and make copies of such documents at their expense.
- (2) Where a participant to a hearing fails to comply with Section 10(1), that participant may not put any document into evidence that was not filed with the Commission in time unless that participant satisfies the Commission that there is sufficient cause for not complying, and that no prejudice results to the other participants or proponents as a result of the late filing.
- (3) Unless the Commission advises otherwise, the proponent and each participant shall be responsible to ensure that all other participants to the

hearing shall receive copies of all relevant information being presented at the hearing or for ensuring that convenient access to that material is provided.

- (4) Participants are encouraged to formulate written questions in advance of the hearing and to submit them either to the Commission or directly to other participants with a copy to the Commission. Where such questions are submitted, written responses are required from the other participants if the questions have been submitted sufficiently early to permit time for a written response. These questions and responses may become part of the record of the hearing.

### Motions

- (11) The Commission will accept motions respecting procedural matters from any registered hearing participant subject to the following conditions:
  - (1) All motions must be prepared in writing and with sufficient copies to allow distribution to all panel members, and other participants as directed by the Commission Secretary.
  - (2) Where possible, Notice of Motions should be prepared and served upon the Commission prior to the opening of a hearing session.
  - (3) The motion must set out the following information:
    - (a) the precise relief sought;
    - (b) the grounds to be argued, including a reference to any statutory provisions or rules to be relied on; and
    - (c) the documentary evidence to be used or relied upon.
  - (4) All motions shall be presented before the Commission panel, and an opportunity will be provided for all interested participants to respond.
  - (5) On hearing of the motion, the Commission may allow, dismiss or adjourn the motion, in whole or in part, and with or without terms.
  - (6) Motions will not be accepted following the close of the hearing.

### Service and Filing

- 12 (1) Any document may be served upon a participant by personal delivery, registered mail, by facsimile transmission or electronically.
- (2) Where a document is served by registered mail, it shall be deemed to have been served on the fourth day following the day on which it was mailed.

- (3) Where a document is served by e-mail, it shall be deemed to have been served once confirmation of receipt, has been received.
- (4) Any document, including proposals, notices, submissions and replies, may be filed with the Commission by personal delivery, registered mail, by facsimile transmission or electronically to the Commission Secretary.
- (5) Where a document is filed with the Commission by registered mail, it shall be deemed to have been filed on the fourth day following the day on which it was mailed.
- (6) Where a document is filed with the Commission by e-mail, it shall be deemed to have been filed once confirmation of receipt, has been received.

### **Proprietary Information**

- 13 (1) At the request of a participant, the Commission may, if in its opinion the public interest will be best served by so doing, restrict public access to part of a hearing and treat all material or business information filed with the Commission as confidential.
- (2) All proprietary material shall be marked as "confidential" and sealed.

### **Witnesses**

- 14 (1) A participant to a hearing may request the Commission to compel the attendance of any person at the hearing as a witness and the Commission may, by subpoena or summons, require that witness to give evidence either orally or in writing, and to produce such documents and things as the Commission deems necessary to the full investigation of the matter it is hearing.
- (2) When a party or parties requests the Commission to issue a subpoena or summons and the reason for the request is not clear, the Commission panel reviewing the matter may hear submissions from the parties prior to deciding whether or not to issue the subpoena or summons.

### **Truth in Proceedings**

- 15 All participants shall be required to provide evidence which is truthful, and all participants making a submission to the Commission shall be asked to acknowledge this obligation.

### **Legal Counsel**

- 16 (1) A participant may be represented at a hearing by legal counsel.
- (2) No participant is required to be represented at a hearing by legal counsel.

### **Suspension of Proceedings**

- 17 The Commission may require a participant to any proceedings before the Commission to provide such information, particulars or documents as it may require and may suspend the proceedings until such time as it receives the required information, particulars or documents.

### **Transcript of Hearings**

- 18 (1) The Commission shall maintain a record of all testimony presented at a hearing.
- (2) Final transcripts shall be made available to the public within a reasonable time period and the Commission Secretary may require any person requesting a copy of the same to pay reasonable costs in connection with the copying.
- (3) Copies of the final transcript shall be available for viewing at the office of the Commission and at such other locations as deemed appropriate by the Commission.

### **Objections Based on Form**

- 19 No proceedings shall be defeated by any objection based solely upon defects in form.

### **Adjournment**

- 20 The Commission may adjourn a hearing from time to time, may reconvene a hearing and may grant extensions of time.

### **Powers of the Commission under the Evidence Act**

- 21 The Clean Environment Commission shall have the same protection and powers and will be subject to the same requirements as are conferred on Commissions appointed under Part V of the *The Manitoba Evidence Act*.

(November, 1996, amended March 2005)

## Appendix C – PAP Guidelines and Application

### Participant Assistance Program Application Guide



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#### Purpose

The Participant Assistance Program provides funding or other assistance to qualifying people and organizations to ensure effective public participation in the environmental assessment and review of major projects.

#### Right to Apply

Any person or group of people who intend to participate in a public hearing may apply.

#### Participant Assistance Committee (PAC)

Under the program, the project Proponent is required to provide assistance to approved Participants who, in turn, must comply with conditions set in advance of the hearing.

The Minister of Conservation will determine if the Participant Assistance Program will be applied to a project subject to a public hearing. If so, the Participant Assistance Program will be advertised to the public and applications may be submitted to the Secretary to the Clean Environment Commission who will forward them to a Participant Assistance Committee appointed by the Minister.

#### Participant Assistance Meeting

The Participant Assistance Committee will hold a public assistance meeting after it has had sufficient time to review all the applications for assistance. During the meeting, the applicants for participant assistance will be required to explain their request, and may be questioned by the Participant Assistance Committee and Proponent.

#### Provisional Order for Assistance

After the participant assistance meeting, the Participant Assistance Committee will make recommendations to the Minister regarding conditions for a provisional order of participant assistance. The provisional order will specify which applicants will be eligible for assistance, the type and timing of assistance, and any other conditions which the Proponent and Participants must meet. These conditions may require

various Participants to cooperate and share assistance in preparing and presenting information. There is also a general requirement that all Participants who receive assistance must act responsibly and contribute substantially to the hearing process. Depending upon the length of the hearing, interim financial reports may also be required.

Up to 30% of the assistance may be provided before the hearings. These funds may help to provide start-up funds to prepare for the hearings and may include the procurement of expert services or other resources by Participants.

### **Final Order for Assistance**

After the hearings are complete, the Participant Assistance Committee will receive itemized accounting, including copies of invoices from each funded Participant. After determining whether each Participant has complied with the conditions of the provisional order, the Committee will make recommendations regarding a final payment to each Participant.

### **Eligibility**

Normally, only organizations with some record of concern or commitment to a particular interest relevant to the hearing will be eligible for participant assistance. However, any person who feels that he/she could be directly affected by a project may apply for assistance. Funding eligibility is subject to the following conditions, set out in *Manitoba Regulation 125/91 under The Environment Act*.

- *"The applicant has clearly demonstrated an interest in the potential environmental or related social, economic or health impacts of the proposal under review ..."*

The applicant will show how he/she or other people (including the general public) whom they represent may be affected by the environmental or related impacts from the proposal under review.

- *"If the applicant is a group of persons ... an established record of concerns or demonstrated commitment to the interest must be provided;"*

This criteria ensures that funding is directed to organizations with a specific interest in the environmental impacts of the particular project. However, individuals and newer organizations who want to represent the public interest may also receive funding, provided that they can show commitment to the issue.

- *" ... the applicant has attempted to bring related interests of which it is aware into an umbrella group to represent the related interests at the hearing;"*

This criteria ensures that the funds do not lead to duplication or repetition. As well, as many groups as possible will be able to participate in the

review and no group will participate in the review to the exclusion of any other.

- *"The work ... assists the panel's investigations into the potential effects of the development and would contribute substantially to the hearing;"*

The Participant Assistance Committee will convene a participant assistance meeting after the hearing to recommend final payments, based on the original provisional order and the applicant's contribution to the hearing.

- *"The applicant has a clear proposal for the use of any assistance that it might be given;"*

Applicants will use the prescribed application form and will include an activity plan of action with the application (Item 4). The plan may be submitted in any form provided that the explanation is concise and readable. The plan should indicate the type of environmental issues and information which the applicant wishes to raise, the types of activities to be undertaken and must coincide with the Panel's terms of reference.

- *"The applicant does not have sufficient financial resources to enable it to adequately represent its interest ... and has identified all other financial support it has applied for ... relating to the review;"*

Participant assistance will be awarded on the basis of demonstrated need. The participant must not have sufficient financial resources to adequately represent its interest without assistance, and the applicant should have made reasonable efforts to raise funds.

- *"The applicant must have appropriate financial controls to ensure that the assistance ... is spent for the purposes for which it is given;"*

Appropriate financial controls consist of an appropriate accounting system that details all funding commitments and expenses incurred in relation to the participation assistance. The provisional order will list the conditions upon which the participant funding is based and each participant will be required to meet the conditions as outlined in the order. The financial plan will outline the purpose and all activities for which the funding is being sought. These activities may include the use of research staff, legal counsel and expert witnesses.

A summary of these accounts must be submitted to the Participant Assistance Committee on the prescribed form, along with a detailed accounting and supporting invoices and statements on completion of the hearing.

## **Eligible Expenditures**

Participants will be able to receive assistance for eligible expenditures, such as the following:

- Professional fees for expertise; (Technical and Legal)
- Salaries for coordination and secretarial staff for time spent on activities directly related to the hearing;
- Travel and accommodation expenses;
- Acquisition of relevant information such as maps, documents and reports;
- Information collection and dissemination;
- Accounting and audit services;
- Photocopying, postage and stationary;
- Telephone rental and charges over and above normal office operation;
- Translation services;
- Transcript acquisition;
- Other expenses as approved by the Minister.

## **Ineligible Expenses**

- Lost income such as wages lost as a result of attending meetings and hearings;
- Capital expenditures;
- Promotion;
- Expenditures not directly related to the assessment, including but not restricted to core activities e.g. monthly phone services, office machine rental, usual office operation and supplies, staff salaries not related to the hearing, etc.

## How to Apply

Applications for participant assistance may be obtained from the Clean Environment Commission website [www.cecmanitoba.ca](http://www.cecmanitoba.ca) or from the Clean Environment Commission office:

305-155 Carlton St.  
Winnipeg, MB R3C 3H8  
945-0594  
1-800-597-3556 (toll free in Manitoba)

Completed applications should be submitted to:

Secretary to the Clean Environment Commission  
305-155 Carlton St.  
Winnipeg MB R3C 3H8  
FAX: 945-0090  
[cajohnson@gov.mb.ca](mailto:cajohnson@gov.mb.ca)



# Participant Assistance Program Application Form



## 1) Applicant Information

Name of Applicant:		
Mailing Address:		City/Town:
Province:	Postal Code:	Telephone: Fax:
Please list all executive members who have been employed with the Manitoba or Federal Government during the past twelve months.		

## 2) Organization Information

How many members are in your organization?	How long has the organization been in operation?
What are the objectives of the organization? (Please attach separate sheet if necessary.)	

Has the organization appeared and/or requested funding before any public hearings prior to this application? (Attach a separate sheet if necessary.)

### **3) Financial Need**

What other sources of funding have you obtained in the past (ie. govt. funding, donations, membership fees)?

Have you requested and/or obtained any funding from any other source(s) which are related to the present funding request?

To what extent will your intervention be affected if no assistance is granted?

1

#### **4) Funding Information**

Please attach an activity plan to this application indicating activities for which assistance is being sought consistent with the terms of reference for the review. Please limit the activity plan to 2 to 3 typewritten pages.

Please define the nature of your participation in the hearing and the issues which are of concern to you. (Attach an additional sheet if necessary.)

Please describe the financial controls which you will put in place to ensure that the funds, if awarded, are spent for the purposes of the award.

Has your organization contacted other potential interveners in order to bring a number of interests within one representative group? If so, please list these groups.

Please complete Attachments A, B and C, where applicable.

## Attachment "A"

### Budget Information

Please attach your organization's financial statements for the past two years.

### Proposed Budget

<b>General Disbursements:</b>	<b>\$ Amount</b>
Typing	
Printing	
Photocopying	
Transcripts	
Telephone Expenses (over normal base monthly costs)	
Transportation	
Accommodation	
Meals (out of town only)	
Translation	
Accounting (audit expense)	
Postage/Other communication expense	
Parking	
<b>Other:</b> (please specify)	
<b>Direct Expenses:</b>	
Maps	
Research reports	
Salaries (secretarial/coordination staff)	
<b>Total</b>	<b>\$</b>

Please include job description(s) and staffing information on a separate sheet and attach it to this application.

### Attachment "B"

#### Legal Fees

\$ \_\_\_\_\_ per hour for approximately \_\_\_\_\_ hours.

Sub-Total	\$ _____
Disbursements	\$ _____
<b>Total Legal Fees</b>	<b>\$ _____</b>

### Attachment "C"

#### Expert Witness(es)

Name: (Please attach resume.)

Purpose:

\$ \_\_\_\_\_ per hour for approximately \_\_\_\_\_ hours.

Sub-Total	\$ _____
Disbursements	\$ _____
<b>Total Fees</b>	<b>\$ _____</b>

## **Appendix D – Contact Information**

### **Manitoba Clean Environment Commission**

305-155 Carlton St.  
Winnipeg, Manitoba R3C 3H8  
Fax: 945-0090  
[www.cecmanitoba.ca](http://www.cecmanitoba.ca)

### **Administrative Assistant**

Joyce Mueller  
Phone: 945-0594  
800-597-3556 (Toll free in Manitoba)  
[jmueller@gov.mb.ca](mailto:jmueller@gov.mb.ca)

### **Commission Secretary**

Cathy Johnson  
Phone: 945-7091  
[cajohnson@gov.mb.ca](mailto:cjohnson@gov.mb.ca)

### **Manitoba Conservation Environmental Assessment and Licensing**

123 Main St., Suite 160  
Winnipeg, Manitoba R3C 1A5

Phone: 945-7100  
800-282-8069 (Toll free in Manitoba)  
Fax: 945-5229  
[www.gov.mb.ca/conservation/envapprovals](http://www.gov.mb.ca/conservation/envapprovals)