

MANITOBA CLEAN ENVIRONMENT COMMISSION

PROCESS GUIDELINES

RESPECTING PUBLIC HEARINGS

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 who have been so designated and are granted specific rights and privileges for participation by the Commission.
- (g) "party" or "parties" means a person or group of persons, involved in the proceedings including the Panel, the Proponent, Participants and any others who appear before the Commission., ,
- (h) "Proponent" or "Proponents" means the corporation, organization or agency which has made application under the *Act* for an environmental licence to proceed with a proposed project.
- (i) "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;
- (j) "Public Registry" means a file of information as established under *The Environment Act* and accessible to the public;
- (k) "submission" means a written, visual, or oral presentation by a Proponent or Proponents and/or any other party or parties who have registered with the Commission Secretary in accordance with the provisions established in these process guidelines;
- (l) "telecommunications link" includes a connection via electronic means 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, one or more Pre-Hearing Meetings with the Proponent and such other parties 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;

- (c) the mutual exchange by the parties of documents and exhibits proposed to be submitted at the public hearing;
- (d) identification of Participants;
- (e) determination of the necessity or desirability of amending a submission or reply for the purpose of clarification, amplification or limitation;
- (f) identification, and/or definition and/or simplification of issues; and
- (g) such other matters as may aid in the presentation of the evidence and the progress of the proceedings;

Hearing Times and Locations

- 4 (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

- 5 (1) All public hearings of the Commission, while structured in nature, shall be as informal as possible.
- (2) Parties making submissions to the Commission shall appear in person or through a designated representative. Written submissions will be accepted under conditions prescribed by the Commission.
- (3) Parties making a submission to the Commission shall have fifteen minutes to make their presentation.
- (4) Any party needing more than fifteen minutes for the presentation of a submission is required 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) 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 parties 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.

- (6) Unless the Commission directs otherwise, the order of appearance at a public hearing shall be as follows:
 - (a) the Provincial Department of Conservation
 - (b) the Proponent;
 - (c) other parties (including government departments and/or agencies);

- (7) Subject to prior approval, the Chairperson may permit evidence to be given by a number of parties 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.

- (8) The Commission may, where it deems advisable to do so, direct that a written brief be submitted by the parties to a hearing in addition to or in lieu of oral presentation and, in such cases, the brief shall be served on other parties as the Commission may direct.

- (9)
 - (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 *Guidelines* to suit that situation and such variation shall be in substantial compliance with these Guidelines.

- (10) 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.

Commission Secretary

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

Submissions

- 7 (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

- 8 Within seven days after Participants are served with a copy of a submission, the Proponent may file with the Commission a reply thereto and shall serve a copy of the reply upon all Participants to the hearing and upon such other persons as the Commission may designate.

Production and Inspection of Documents

- 9 (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 may formulate written questions of the Proponent in advance of the hearing and submit them to the Commission. The Commission will vet the questions to minimize repetition and to ensure that questions posed remain within the scope of the hearing. Where such questions are forwarded to the Proponent, written responses are required. These questions and responses will become part of the record of the hearing.

Motions

- 10 The Commission will accept motions respecting procedural matters from any 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

- 11 (1) Any document may be served upon a Participant by personal delivery, registered mail, by facsimile transmission or by e-mail.

- (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 e-mail 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 electronically, it shall be deemed to have been filed once confirmation of receipt has been received.

Proprietary Information

- 12 (1) At the request of a party, 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

- 13 (1) The Proponent or a Participant 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, 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

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

Legal Counsel

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

Suspension of Proceedings

- 16 The Commission may require a party 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

- 17 (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. 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

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

Adjournment

- 19 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

- 20 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*.

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