

YUKON WATER BOARD RULES OF PROCEDURE

1. AUTHORITY

These Rules are made under the authority of Section 22 of the *Waters Act*.

2. INTERPRETATION

In these Rules,

“Act” means the *Waters Act* and includes the *Waters Regulation* enacted under the *Act* on March 25, 2003;

“Application” means any written request to the Board that requires the Board to make a decision about any matter other than a claim for compensation;

“Applicant” means any person who makes an application to the Board other than a claimant or an intervener;

“Board” means the Yukon Water Board;

“Chairperson” means the Chairperson of the Board or, in the absence of the Chairperson, the Vice- chairperson;

“Claim” means a written claim for compensation made by a claimant;

“Claimant” means a person seeking compensation under section 12 of the Act or under Chapter 14 of the Umbrella Final Agreement;

“Current register” means a file or docket containing all documents the Board considers as evidence in reaching a decision on a licence proceeding, as described in Rule 15, including, as available, those items described in section 13(1) of the Regulation, as well as any other documents that the Board determines to be relevant.

“Deadline” means the date by which an intervention, or a request for a public hearing, in response to notice of application that is published pursuant to section 21(1) (a) of the Act, must be filed with the Board. Deadlines will be established for applications for type B water use licences; for amendment and renewal of type B water use licences; for amendments to Type A water use licences pursuant to which the use, flow or quality of waters would not be altered and for renewals of Type A water use licences where the renewal does not exceed sixty days.

“Document” includes a sound recording, video tape, film, photograph, chart, graph, map, plan survey, model, book of account, report, and information recorded or stored by means of any device;

“Information Sheet” means the forms published by the Board requesting information about a proposed water use operation, including but not limited to undertakings such as Placer Mining, Miscellaneous & Recreational, Agricultural, Power, Quartz Mining, and Municipal.

“Intent date” means the date by which an intervention must be filed with the Board, in response to notice of public hearing;

“Intervener” means a person who has filed a written statement under Section 8 of these Rules.

“Licensee” means a person who has been issued a current water use licence under the Act.

“Licence proceedings” means the process by which the Board determines the disposition of an application for licence, for authorization to assign a licence, and for amendment, renewal or cancellation of a licence, and includes proceedings initiated by the Board for the amendment, renewal or cancellation of a licence, but does not include the process for the disposition of an application for emergency amendment of a licence;

“Party” means a person who is an applicant, a claimant, an intervener or a licensee;

“Person” includes an individual, association, partnership, society, Board, committee, council, organization, corporation, municipality, and a First Nation, or other government, or agency of a government;

“Public document” means a book in general circulation or government publication or other document to which the general public has ready access;

“Secretary” means the secretariat of the Board;

“Umbrella Final Agreement” means the agreement between the Council for Yukon First Nations, Canada and Yukon dated May 29, 1993.

3. GENERAL

3.1 Subject to the Act, these Rules apply to every licence proceeding and every public hearing.

3.2 These Rules will be interpreted liberally to achieve the most fair and efficient determination of every matter before the Board.

3.3 To ensure fairness and natural justice the Board may shorten or extend the time fixed by

these Rules for an action.

4. TECHNICAL OBJECTIONS

No Board proceeding is invalid because of an objection based only on a technical irregularity or a defect in form.

5. COMMUNICATION

- 5.1 Except at a public hearing, all communication to the Board must be addressed to the Secretary.
- 5.2 Any correspondence with the Board, including the filing of material, may be sent by fax, unless the Secretary determines the fax is not legible or cannot be photocopied.
- 5.3 Electronic mail to the Secretary or the Board will not be considered communication with the Board for purposes of a licence proceeding, unless these Rules specifically say so.

6. NOTICE

- 6.1 The Board will publish notice of every application for licence, and for amendment or renewal of a licence, in at least two Yukon newspapers and, where required to do so by subsection 21 (2) of the Act, in the Yukon Gazette. Notice will not be given under this Part, until the application complies with Rule 7.2
- 6.2 Where the Board, or the applicant for a water use licence, are required by Chapter 14 of the Umbrella Final Agreement, to provide notice to a First Nation, then the Board will provide such notice, in writing, on the applicant's behalf.
- 6.3 Where the Board is required by Subsection 19 (2) of the Act to hold a public hearing, or where the Board chooses under Subsection 19(1) of the Act to hold a public hearing, the Board will publish notice of the public hearing in at least two Yukon newspapers and in the Yukon Gazette.
- 6.4 Every notice of public hearing must contain the intent date for that hearing, which will be at least ten (10) calendar days before the hearing date. Parties wishing to submit an intervention must do so by no later than 12 noon on the intent date.
- 6.5 Every notice of an application for a type B licence and for amendment or renewal of a type B licence, or for amendment to a Type A licence pursuant to section 19 (3)(b) or 19 (3)(c) of the Act, will contain a deadline for the submission of a response, which will be no sooner than the tenth (10th) calendar day following publication in the newspapers.

7. LICENCE PROCEEDINGS

7.1 Licence proceedings are started by:

- a) the applicant filing with the Secretary a written application signed by the applicant or their agent; or
- b) the Board giving written notice to the Licensee of its intention to consider the amendment, renewal or cancellation of the Licensee's licence.

7.2 Every application for a licence, and for amendment or renewal of a licence, must contain sufficient information for other persons to determine if they will be making recommendations to the Board about that application. In particular, the application must include the application form (Schedule 4 to the Waters Regulation) and other information that may be required by these Rules, or as directed by the Board, including, where applicable:

- a) All information required by Section 5 of the Waters Regulation
- b) A completed Yukon Water Board Information Sheet, or application form, pertaining to that particular undertaking;
- c) A description of how the applicant intends to use waters and if this use will affect another licensee, or any person described in section 12 (4) of the Act, or, in the case of an amendment, any changes to this use;
- d) A description of the probable environmental impacts of the work and how the applicant proposes to mitigate any adverse environmental effects;
- e) The name of the First Nation(s) if the project is situated within First Nation Traditional Territory;
- f) A copy of any compensation agreement between the applicant and any other licensee or an other person who's application for a water use licence would take precedence, pursuant to section 27 of the Act;
- g) Proof of any compensation paid or to be paid by the applicant to persons described in section 12 (4) of the Act or 14.12 of the Umbrella Final Agreement;
- h) Confirmation that the applicant has adequate resources to be financially responsible for:
 - (i) carrying out the work under the licence, or any proposed changes to this work;
 - (ii) maintenance and restoration of the work site; and
 - (iii) the cost of decommissioning, including the cost of any temporary closures;

7.3 Every application for an assignment of a licence, must include the name and address of the

proposed assignee; the assignee's written agreement to assume responsibility for the licence; and copies of any information pertaining to the sale, transfer or lease of the project or any other agreement that is relevant to the sale, transfer or lease of the project.

- 7.4 Every application for cancellation of a licence, must include a description of rehabilitation that has been accomplished, details of any outstanding decommissioning activities that are required by the licence, and a proposal for how the outstanding decommissioning requirements will be met.
- 7.5 The Board may at any time after an application is filed, and before the Board makes a decision, require any applicant to provide further information, particulars or documents.
- 7.6 All information and documents described in Rules 7.2 and 7.5 will be included in the current register for that licence proceeding and will be available to all parties.
- 7.7 Every application must be in a form and of a quality that can be reproduced.
- 7.8 The Chairperson may require the applicant to provide additional copies of the application and/or a digital copy.

8. INTERVENTION

- 8.1 Anyone wanting to make representations to the Board on an application for licence, or for amendment, renewal or cancellation of a licence where a notice of public hearing has been published, can intervene by filing a written submission with the Secretary on or before twelve noon on the intent date specified in the notice of those licence proceedings. Such an intervention must include, where applicable:
 - a) a description of the intervener's concern,
 - b) clear statement of the intervener's position covering all issues that they intend to address;
 - c) an indication of whether the intervener intends to appear at the hearing and make representations, or rely on written submissions only;
 - d) the intervener's name, address including postal code, telephone and fax numbers (if applicable);
 - e) copies of all supporting documents, other than public documents;
 - f) a copy of any document authorizing another person to represent the intervener (if applicable)
 - g) an indication that a copy of the intervention has been provided to the applicant.

- 8.2 Anyone wanting to make representations to the Board on an application for licence, or for amendment or renewal of a licence where notice of receipt of application has been published, and where a public hearing is not automatically required by the *Act*, can intervene by filing a written submission with the Secretary on or before the deadline specified in the notice of those licence proceedings. Such an intervention must include, where applicable:
- a) a description of the intervener's concern;
 - b) a clear statement of the intervener's position covering all issues of concern to them;
 - c) An indication of whether the intervener wants a public hearing, and if so, a rationale for why a hearing would be useful and a confirmation that the intervener intends to appear at the hearing and make representations.
 - d) The intervener's name, address (including postal code) and telephone and fax numbers (if applicable);
 - e) Copies of all supporting documents, other than public documents;
 - f) A copy of any document authorizing another person to represent the intervener (if applicable);
 - g) An indication that a copy of the intervention has been provided to the applicant.
- 8.3 An intervener must provide a copy of any material filed with the Board to the applicant or licensee.
- 8.4 If material filed by an intervener exceeds fifty (50) pages, the Chairperson may require the intervener to provide the Board with up to thirty (30) copies of that material and/or an electronic copy.
- 8.5 If an intervener fails to comply with these Rules, the Board may hear an application without considering the intervener's material.
- 8.6 The Board may at any time after an intervention is filed, and before the Board makes a decision, request the intervener to provide further information, particulars or documents. Any information, particulars or documents that are submitted in response to this request will be included in the current register.

9. COMPENSATION

Any party making a claim for compensation from an applicant or a licensee, under the provisions of the *Act* or the Umbrella Final Agreement, must do so in accordance with the Board's Guidelines for the Award of Compensation.

10. LICENCE PROCEEDINGS WITHOUT AN APPLICATION FROM A LICENSEE

10.1 The Board may, of its own initiative, or at the written request of any person, start proceedings to cancel, renew or amend a licence. Where a person other than the licensee requests the Board to start such proceedings, the request must include

- a) The person's name, address (including postal code), and telephone number and fax numbers (if applicable);
- b) The reasons for the request;
- c) An indication that the person has sent a copy of the request to the licensee; and
- d) An indication whether the person intends to appear at any public hearing on the matter.

10.2 Where, the Board begins proceedings to cancel, renew or amend a licence, and such proceedings are not at the request of the Licensee, it will do so by giving notice to the Licensee and by publishing notice in accordance with Section 21 of the *Act*.

10.3 Where a Licensee or any other person wants to make representations to the Board on a licence proceeding started by the Board, they must file a response with the Board within the time period specified in the notice.

10.4 Every response in Rule 10.3 must include:

- a) The person's name, address (including postal code), and telephone numbers and fax numbers (if applicable);
- b) A clear statement of the person's position covering all issues that they intend to address;
- c) An indication whether the person intends to appear and make representations at the public hearing, if any, or rely on the written submission only;
- d) Copies of all supporting documents, other than public documents; and
- e) A copy of any document authorizing another person to represent the person responding (if applicable).

11. AMENDMENT OF SUBMISSION

11.1 The Board may at any time allow all or any part of an application, a claim or a submission filed with the Secretary to be amended on such terms and conditions as it deems appropriate, and the amended information will be included in the current register.

- 11.2 The Board may by order amend or strike any material that, in its opinion, may tend to prejudice a fair hearing of the matter.
- 11.3 Subject to Rule 13, where an application for licence, or for amendment or renewal of a licence is amended and the Board determines that, as a result, the proposed operation will be substantially changed, the Board may cancel any public hearing on that application and publish a new notice of the amended application under Section 21 of the *Act*.
- 11.4 Despite the prohibition against late filings in Rule 17, an applicant for a licence, or for the amendment or renewal of a licence may, at any time prior to a public hearing, and up to and including the time established in Rule 16.3 for the applicant to respond to interventions, submit to the Board a written response to any or all of the interventions. The response must be in unbound form, together with the number of copies that will be determined by the Secretary. A copy of the response will immediately be provided to each of the interveners by the applicant.
- 11.5 Where a hearing is not required by the *Act*, but where the Board decides to hold a public hearing, then any party who submitted an intervention in response to the original notice of application may also submit an additional intervention in response to notice of public hearing. In any case, the original intervention will be included in the current register. A person who did not file an intervention in response to the original notice of application may file an intervention in response to the notice of public hearing, in accordance with Rule 8.1.

12. CONFERENCE

- 12.1 In any licence proceeding the Chairperson may direct, orally or in writing, that all of the parties or their agents appear before a member of the Board secretariat, or the Board's lawyer, or any other person designated by the Board, in person or by telephone at a specified time and place, for a pre-hearing conference, or to make written submissions, for the following purposes:
- a) To clarify the issues;
 - b) To explore possible admissions of facts, the proof of facts by affidavit, or the use of any public documents;
 - c) To review the procedure to be followed at the hearing;
 - d) To discuss the need for an adjournment and rescheduling of the hearing; and
 - e) To identify the need for additional information, and to determine responsibilities for the production of this information.

12.2 After a pre-hearing conference, the Chairperson may make any direction necessary to achieve a fair and efficient hearing.

13. ADJOURNMENTS

The Board may adjourn a licence proceeding or a hearing:

- a) Where it requests further information, particulars or documents, under Rule 7.5, and these cannot be obtained in time for a Board meeting, or for a public hearing;
- b) Where an application is amended and an intervener determines that the amendment would likely cause a significant change to their intervention; or
- c) Where for any reason the Board deems it necessary.

14. REQUEST FOR AN INTERPRETER

14.1 Every public hearing will be conducted in one of the official languages of Canada.

14.2 Where the Board receives, at least ten (10) days before the date of a public hearing, a written request for an interpreter from a party whose mother tongue is one of the official languages of Canada, or one of the languages of the First Nations people of the Yukon Territory, or one of the languages of any First Nation where the Board has specific obligations, the Board will provide an interpreter for the hearing, or adjourn the hearing until an interpreter is available.

15. CURRENT REGISTER

15.1 A current register for each licence proceeding will be maintained in the Board office. The current register will include:

- a) Those documents required by the Regulations, providing those documents exist;
- b) All written submissions made by the parties, including the complete application;
- c) All correspondence between the Board and the parties, except correspondence of an administrative nature;
- d) The transcript of the public hearing, if any;
- e) The applicant's most recent licence, if any, and reasons for decision;
- f) A record of any decisions, agreements or arrangements that have been made at a pre-hearing conference; and

g) Any other material that the Board determines to be relevant.

- 15.2 The current register will contain only those documents that the Board will consider as evidence in its deliberations, and the Board will not consider any document that is not included in the current register. This does not prevent the Board from considering Board policies, guidelines and past practice, public documents cited by parties and any other generally known information.
- 15.3 The Board will, at least three (3) days before the date of a public hearing, forward a copy of the current register to each of the parties.
- 15.4 The Board may limit the number of copies given to each party.
- 15.5 The Board may direct a party to specify a single address and telephone number, including fax number, to be used by that party.

16. CONDUCT OF HEARING

- 16.1 Subject to the *Act* and these Rules, the Chairperson of the Board will direct and control the conduct of every public hearing and will endeavour to ensure that the rights and dignity of all parties are respected.
- 16.2 Any person who is not a party as defined in these rules may nevertheless make representations at a public hearing if they inform the secretary before or during the hearing that they wish to speak, and if the Board consents to hear the person. Where permitted, that person, or their agent, will make their representation immediately before the applicant's closing statement.
- 16.3 The order of appearance of participants at a public hearing, unless the Board directs otherwise, will be as follows:
1. The applicant's summary of the application;
 2. Questions to the applicant from all other parties and from the Board and Board staff;
 3. The interveners, appearing in the order determined by the Chairperson, with the presentation of each followed by questions from all other parties and the Board and Board staff;
 4. The applicant, in response to interventions;
 5. Questions to the applicant from all other parties and the Board and Board staff;
 6. Closing statements by the interveners;

7. Statements by other persons;
8. Closing statement by the applicant.

16.4 The Board may limit the number of questions asked by parties and the submissions made by parties if the questions or submissions are irrelevant or repetitive, do not assist the Board or are prejudicial to a fair hearing.

17. LATE FILINGS

17.1 All submissions on any licence proceeding must be received by the Secretary, with the appropriate number of copies, on or before twelve noon on the intent date (if a public hearing is to be held), or on or before the end of the business day on the deadline (if no public hearing is to be held). Where a submission is in response to a matter raised by another party or by the Board, or where the implementation of this Rule would otherwise be unfair to a party, the Board may grant specific exceptions to this Rule.

17.2 If all parties are polled, and if they do not agree to accept the late filing of material under Rule 17.1, the Board may review the material and decide whether to accept it.

17.3 Where the Board accepts that the proposed late filing is justified or that the material is necessary for a proper adjudication of the matter, the material will be included in the current register for that proceeding and all parties will be given an opportunity to respond to it.

17.4 Where the Board reviews the material and determines that the late filing is not justified, or that the material is not necessary for a proper adjudication of the matter, it will not consider the content of the material in its decision on the matter.

18. PUBLIC DOCUMENTS

18.1 Unless otherwise directed by the Board, a party may cite, refer to or quote from public documents without providing copies of those public documents to the Board or the other parties.

18.2 Any party who believes that a document of the type mentioned in Rule 18.1 is not a public document, or that the provision of such a document is necessary to the proper adjudication of an application, may make that argument to the Board.

18.3 Where the Board determines that a document under Rule 18.2 is not a public document, or that a copy of all or part of the document would assist in a proper adjudication of the matter, it may direct the party citing the document to submit one or more copies of the document, or a portion of the document. The Board may adjourn the hearing to allow time to review that document.

19. VISUAL AIDS

- 19.1 Any party may use a visual aid such as a map, model, slide or overhead, to assist in their oral presentation at a hearing, provided that the visual aid contains only information already in that party's written submission, or is in response to an intervention.
- 19.2 If it is practical to do so, a copy of a visual aid used under this Rule must be provided to the Board at the public hearing for inclusion in the current register, and to each of the other parties during the hearing, or as soon as possible after the hearing.
- 19.3 A visual aid filed with the Board under this Rule will not be deemed to be a late filing.
- 19.4 For the purposes of this Rule, video tapes will not be considered visual aids.

20. VIDEO TAPES

- 20.1 The Board may permit the filing and use of video-tape film recordings as evidence in support of an application or an intervention, whether or not a hearing is held, and where such permission is granted the Board may also require from the party producing the tape:
- a) Information as to when, where and under what circumstances the video-tape was taken; and
 - b) Confirmation that the video-tape accurately portrays the subject and represents the facts.
- 20.2 The Board may reject the use of the video tape if it finds the video tape is not relevant or its use would be unfair.
- 20.3 A party using a video tape must file a copy with the Board for inclusion in the current register, at least ten (10) days before the date of the hearing.
- 20.4 An intervener filing a video tape as part of an intervention must provide a copy of the video tape to the applicant or Licensee.

21. TRANSCRIPT

A transcript will be made by a certified court reporter of all hearings conducted by the Board and copies will be distributed to all parties and a copy will be included in the current register.

22. HEARINGS IN THE PUBLIC INTEREST

- 22.1 Where, the Board has discretion under the *Act* to hold a public hearing in the public interest, it may consider submissions from any person requesting such a hearing:

- 22.2 Anyone wanting a public hearing in the public interest must make a written request to the Secretary, including:
- a) That person's reason for requesting a public hearing;
 - b) That person's name, address (including postal code), telephone and fax number (where applicable);
 - c) Who that person believes will be affected by the public hearing, including the names, addresses, telephone and fax numbers (where applicable) of such persons;
 - d) Any other information that person feels would be relevant to the Board's decision whether to hold a public hearing in the public interest.
- 22.3 Where a person has requested that a public hearing be held under Rule 22.2, they must also provide a copy of this request to the applicant or licensee concerned (if any), who in turn will be permitted to respond setting out their position on whether a public hearing should be held.
- 22.4 Where the Board determines that a public hearing will be held, either on its own motion or upon request, the Board will publish a notice of this hearing, in accordance with the requirements of the *Act*.
- 22.5 When the Board determines whether to hold a public hearing it will notify the person requesting the hearing, and the licensee or applicant concerned, of its decision.

23. REASONS FOR DECISION

The Board will make reasons for decision available to all parties.

24. PROJECT CATEGORIES

The Board, in its sole discretion, may ascertain which category an application for licence will fit into with respect to undertakings, as defined in the *Act*.

These Rules were approved by the Yukon Territory Water Board on March 9, 2000,
Dale Eftoda, Chairperson

These Rules were amended by the Yukon Water Board on October 4, 2006,
Bruce Willis, Chairperson