



Inuvialuit Water Board Rules of Procedure

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INTRODUCTION AND PURPOSE

The members of the Inuvialuit Water Board (IWB) have approved these Rules of Procedure (the “Rules”) pursuant to the *Waters Act (WA)* and the Waters Regulations (WR). The Rules are intended to ensure that all aspects of the IWB licensing process meet the requirements of transparency, fairness, efficiency, and effectiveness. These Rules may be amended by the Board from time to time as required.

DEFINITIONS

In these Rules,

“applicant” means a participant who has filed an application with the IWB.

“application” means a written request for a licence, or the amendment, assignment, renewal or cancellation of a licence, submitted in accordance with the *WA* and the *WR*.

“Board” means the members of the IWB appointed by the Minister under sections 13(4) and (5) of the *WA*. For clarity, Board does not include Board administrative staff and advisors provided through section 21 of the *WA*.

“Chairperson” means the Chairperson of the Board and chief executive officer of the IWB.

“communication” means any recorded verbal or written exchange during a proceeding, the approval or rejection of an application, the issuance of a licence, and subsequent to the issuance of a licence (including video, audio or in-person).

“day” means calendar day.

“document” means any communication in printed form, including facsimiles and any record in electronic form capable of being replicated in printed format; and includes recorded verbal in-person, video or audio recordings.

“elder” means any person recognized as such in accordance with traditional and local culture and/ or customs.

“evidence” means the documents collected during a proceeding and used by the Board in making a decision on an application.

“Executive Director” means the Executive Director of the IWB.

“hearing” means a public hearing held as a component of a proceeding.

“intervener” means a participant who has filed the information required to intervene at a hearing and who has been granted intervener status by the Board.

“Inuvialuit” means those people and bodies as defined pursuant to the *Inuvialuit Final Agreement*, (as amended).

“IWB” means the Inuvialuit Water Board as described by section 13(1) of the *WA*.

“licence” means a type A or type B water licence permitting the use of waters or the deposit of waste, or both, issued pursuant to section 26(1) of the *WA*.

“licensee” means the holder of a licence under the *WA*.

“Minister” means the responsible Minister, normally the Minister of Environment and Natural Resources of the Government of the Northwest Territories.

“motion” means a motion made by a member of the Board during a proceeding or a written request to the Board by a participant for a ruling or an order during a proceeding.

“participant” means, in addition to an applicant, a person, an organization, a department of government, an agency, a licence holder, an affected land owner or a community, including those referenced in Sections 26(5)(b) and 27(2)(a) of the *WA*, and 72 a of these Rules, who has made written submission to the IWB regarding an application within the time frames set by the Board.

“proceeding” means the process by which the Board makes its decision regarding an application. For further clarity, a proceeding commences when an application is determined by the Board to be complete and ends when the Board has made a decision on the application. A proceeding may be initiated by the Board.

“public notice” means an announcement placed through newspaper(s), radio, community poster or circulated to the public in some other way and made according to such reasonable terms as are set out by the Board.

“public register” means the record, maintained by the IWB pursuant to section 53 of the *WA* and section 13 of the *WR*.

“Rules” means the IWB's Rules of Procedure.

"Reasons for Decision" means a written document, produced by the Board, in which the Board's decision on an application, and the reasons for making that decision, are described.

“record of a proceeding” means all documents related to a proceeding. For greater clarity, the record of a proceeding forms part of the public register.

"submissions" means communications made to the IWB during a proceeding. Submissions include, but are not limited to, comments and/or observations from proceeding participants, challenges to information provided, requests for additional information, responses to information requests, requests for or responses to a motion, application modification(s), modifications of submissions by participants, or indications of the desire for further involvement in a proceeding.

“traditional knowledge” means a shared, collective body of knowledge incorporating environmental, cultural and social elements. Traditional knowledge is a combination of traditional environmental knowledge, traditional land use and traditional practices. It is a

continuous body of knowledge passed on from generation to generation and continues to grow and evolve over time.

“WA” means the *Waters Act S.N.W.T. 2014 c.18*

“WR” means the *Waters Regulations R-019-2014*

PART ONE: GENERAL PROVISIONS

Authority

1. The Board makes these Rules pursuant to s 45 of the *WA*.
2. In case of a conflict between these Rules and the *WA*, the *WR*, a provision of the *Inuvialuit Final Agreement* (as amended), or any other legislation, the appropriate legislation shall be binding to the extent of the conflict.

Citation

3. These Rules may be cited as the “Rules of Procedure” for the Board.

Application of the Rules

4. These Rules apply to all proceedings.
5. Where any matter of procedure is not provided for by these Rules, the Board may, at any time, issue a directive to deal with the matter.
6. Where there is a conflict between these Rules and a specific directive issued by the Board, the Board's directive on the matter prevails over these Rules.

Interpretation of the Rules

7. The Board shall interpret these Rules in a manner that results in fair and efficient processes during a proceeding.

Dispensing with or Varying Rules

8. At any time in a proceeding, where considerations of public interest and fairness so require, the Board may:
 - a. dispense with, vary or supplement these Rules or any part thereof; or
 - b. shorten or extend the time fixed by these Rules and may do so of its own volition or in response to a motion by any participant whether or not the motion is made after the time so fixed has expired.

Non-Compliance with these Rules

9. Where a participant to a proceeding has not complied with these Rules or a direction on procedure or an order issued by the Board, the Board may:
 - a. adjourn a proceeding until it is satisfied that the requirement has been complied with; or
 - b. take such other steps as it considers just and reasonable.

Forms

10. The Board may specify that a particular form be utilized in a submission. Such forms may, from time to time, be appended to the Rules or issued by the Board. All forms may be amended by the Board as required.

Technical Objections

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

Communication

12. Except during a hearing, all documents to the IWB related to a proceeding shall be addressed to the Executive Director of the IWB, or to the person designated by the Executive Director.
13. Except where exempted by the Board, all documents submitted during a proceeding must include at least one original printed version.

Evidence

14. The Board is not bound by the technical rules of evidence. In conducting its proceedings, the Board may accept information that would not normally be admissible under the strict rules of evidence. The Board will make its decisions based solely on the evidence and submissions provided to it during a proceeding.
15. The Board has, in respect of any public hearing under section 41 of the *WA*, all the powers of a board appointed under the *Public Inquiries Act*¹.
16. Any person providing specialized expert, technical or opinion communications to the Board during a proceeding may be required to provide a summary of his/her background, including qualifications and/or experience. When this occurs, the submitted statement of qualifications shall be placed on the record of a proceeding before his/her evidence is considered.

¹ The relevant sections of the *Public Inquiries Act* are as follows:

4. (2) Every Board may, subject to reasonable notice:
 - a) summon any person as a witness;
 - b) require any person to give evidence on oath or affirmation; and
 - c) require any person to produce the documents and things that the Board considers necessary for a full and proper inquiry.
5. Every Board has the same power as is vested in a court of record in civil cases;
 - a) to administer oaths and affirmations;
 - b) to enforce the attendance of any person as a witness;
 - c) to compel any person to give evidence; and
 - d) to compel any person to produce any document or thing.

Questions of Law

17. Where, in the opinion of the Board, a question or issue of law, of jurisdiction or of practice or procedure should be decided at any time in a proceeding, the Board may direct that the question or issue be raised so that a determination can be made by the Board.

Motions and Decisions

18. The Board may make any decisions required during a proceeding.
19. Any issue raised in the course of a proceeding by a participant, Board member or IWB staff that requires a decision or ruling by the Board shall be brought to the Board's attention by way of a written motion. The motion shall include a clear, concise statement of the relevant facts, an indication of the decision or ruling being sought, and the reasons why the decision or ruling should be granted.
20. When a motion is brought to the Board's attention during a proceeding that does not include a hearing, the IWB shall ensure that a copy of the motion is placed on the record of a proceeding no later than seven (7) days before the Board plans to consider the motion. Any participant wishing to respond to a motion shall deliver a written response and supporting documents to the IWB no later than four (4) days before the motion will be heard. The IWB shall ensure that any responses are placed on the record of a proceeding at least two (2) days before the Board considers the motion.
21. When a motion is brought to the Board's attention during the course of a hearing, the Board may deal with it in any way that is consistent with the requirements of fairness.
22. The Board may, in its discretion, vary any time period prescribed for the filing and hearing of a motion or decision.
23. A motion may be heard via teleconference.

Provision of Documents

24. A participant intending to rely on a document in a proceeding shall file the document within the time specified by the Board.
25. Failure to disclose a document in accordance with these Rules may result in the Board ruling that it is inadmissible in a proceeding.

Public Register

26. The IWB shall place all documents related to a proceeding, the approval or rejection of an application, the issuance of a licence, and those subsequent to licence issuance, on the public register in a timely manner. The public register is maintained at the IWB office in Inuvik. Copies of the public register are maintained

at the IWB office in Yellowknife and on the IWB Web Site. All participants are encouraged to check the public register on a regular basis during a proceeding.

27. The public register will be available for viewing by the public during normal working hours.

Other Forms of Testimony

28. During a proceeding, the Board may accept and enter into the public register the testimony of a person made orally in person, by a sworn written statement, an affidavit, statutory declaration or verified audio or video recording. A person whose testimony is presented orally in-person, by a sworn written statement, an affidavit, statutory declaration or verified audio or video recording shall be available for questioning at the discretion of the Board.

29. Testimony in proceedings may be made by teleconference.

Traditional Knowledge

30. The Board may make appropriate arrangements to secure information from or to hear the testimony of elders or the holders of local or traditional knowledge at any time during a proceeding.

PART TWO: PROVISIONS THAT APPLY TO PROCEEDINGS

Commencement and Notification of Proceedings

31. A proceeding commences when the Board deems that an application is complete and ends when the Board has made a decision on the application.

32. The IWB shall issue a public notice of the receipt of a completed application in accordance with s 43 (1) of the *WA*. The public notice and any subsequent notices may include a date by which interested individuals, organizations or agencies must make written submissions to the IWB related to an application and, where a proceeding involves a hearing, a date by which intentions to intervene in a proceeding must be received by the IWB. The public notice and subsequent notices shall be in writing and published in local newspapers and may also be provided by any other means the Board deems appropriate. Notices may include the Board's estimated timeline for a proceeding.

33. The IWB shall give written notice of an application to the Inuvialuit and may give written notice of a proceeding to any person, organization or department of government it deems appropriate.

34. The Board may request additional information from an applicant before or after the Board deems an application is complete and may issue an information request to any participant at any time during a proceeding.

Record of a Proceeding

35. The record of a proceeding is opened when the Board deems that an application is complete. For greater clarity, the record of a proceeding forms part of the public register.
36. The record of a proceeding is closed when the Board makes a decision on an application.
37. No submission shall be accepted for consideration in a proceeding after the record of a proceeding has closed.
38. The Board may seek clarification of any evidence on the record from any participant at any time during a proceeding.

Technical Review of Application

39. The Board may request federal and territorial departments and agencies and/or other technical experts undertake a technical review of an application or a portion of an application.
40. Any reviewer who consents to make a submission in accordance with Rule 39 shall, within the time period specified by the Board and in accordance with Rule 16:
 - a. file a submission that comments on an application or the subject-matter of a proceeding; and
 - b. make available any relevant information that the reviewer considers will explain or support a submission; and
 - c. be available to respond to any questions about the submission that the Board may have.
41. Any reviewer requested to undertake a technical review of an application that wishes to participate further in a proceeding must provide written notification to the IWB of their intention to do so within the time frame set by the Board.

Submissions by Participants

42. Participants may make written submission on an application to the IWB within the timeframe outlined by the IWB in the public notice advising of an application. Participants (including the applicant) may make subsequent submissions to the IWB during a proceeding within the timeframe and process as determined by the Board.
43. If a submission includes a request for additional information on, or a challenge to, information contained on the record of a proceeding, the request and/or challenge will be considered by the Board, and if accepted by the Board will be sent by the Board to the appropriate participant(s) for response. Where the Board refuses to forward a request or challenge, it will advise the originator of the submission of the reasons for refusal.

44. A participant who receives an information request from the Board shall respond within the time and process specified by the Board.
45. A participant who receives a request for information from the Board may apply to the Board to have the request rejected and in doing so must provide detailed supporting justification.
46. The Board shall decide any disputes over the appropriateness of an information request.
47. A participant may, of their own accord and subject to Rule 82, provide to the Board a written submission regarding other participants' submissions to the Board.

Modification of an Application

48. An applicant may modify an application with leave of or under direction from the Board. Any request to modify an application shall be made in writing.
49. Where no hearing has been scheduled and the applicant makes a minor modification to an application, the modification shall be submitted to the IWB by a date set by the Board. Any submissions from other participants regarding the modified application must be received by the IWB by a date set by the Board.
50. Where a hearing has been scheduled and the applicant makes a minor modification to an application, the modification shall be submitted to the IWB at least thirty five (35) days before the hearing date. Any submissions from other participants regarding the modified application must be received by the IWB no later than twenty five (25) days before the hearing. Where such submissions include a request for additional information on, or a challenge to, information provided in the modified application, the Board will, if it agrees to do so, forward the request to the applicant no later than sixteen (16) days before the hearing. The applicant shall submit a response on the Board no later than eleven (11) days before the hearing.
51. The Board may determine that a proposed modification represents a significant change to an application such that, in the opinion of the Board, it fundamentally alters the nature and potential effects of the project and, in such instances, the Board may reject the application.
52. Where an applicant is allowed to modify its application, the Board may also allow other participants to modify all or part of their submissions related to the initial application on such terms and conditions as determined by the Board.

Modification of, or additions to, Submissions

53. During a proceeding, in addition to the provisions outlined in Rules 49, 50, and 52, a participant, other than the applicant, may:
 - a. make minor modifications to any submission it has made; and
 - b. with leave of the Board, make substantive modifications to any submission it has made.

54. During a proceeding an applicant may make additional submission(s) that provide clarity or are supplementary to an application but do not constitute a modification of an application. Upon each occasion, the Board will determine whether or not a submission constitutes a modification of an application.
55. During a proceeding, where the Board finds that a document or any part thereof may prejudice, embarrass or delay the fair conduct of a proceeding, the Board may notify participants and order that, unless the document or part thereof is amended within the time frame set out in the notification, the document or part thereof be struck out.

Privacy Matters

56. Unless a motion to protect the confidentiality of certain evidence is submitted to and granted by the Board, all evidence received during a proceeding shall be placed on the public register.
57. Such motions will be considered and determined by the Board in a manner consistent with the Rules and procedural fairness.

Site Visits

58. The Board may schedule a site visit to any location related to an application at any time during a proceeding. Notice of any planned visit shall, in advance of the visit, be placed on the record of a proceeding.

PART THREE: CONDUCT OF PROCEEDINGS INVOLVING HEARINGS

Pre-hearing Conferences

59. In any proceeding involving a hearing, the IWB may invite the participants to one or more pre-hearing conference to:
 - a. review the procedures to be followed at the hearing;
 - b. clarify, and where possible, narrow issues;
 - c. explore possible admissions of facts, the proof of facts or the use of any public documents; and
 - d. identify the need for additional information, and to propose responsibilities for the production of this information for the Board's consideration.
60. After a pre-hearing conference, the IWB shall ensure that an accurate summary of the pre-hearing discussion and findings is placed on the record of proceedings in a timely manner and may provide any additional direction necessary to achieve a fair and efficient hearing.

Conduct of a Hearing

61. The Chairperson of the Board shall direct and control the conduct of every hearing.
62. All communication during a hearing shall be directed through the Chairperson.
63. To the extent consistent with its duty of procedural fairness, the Board shall emphasize flexibility in its proceedings.

Public Notice of a Hearing

64. Public notice of a hearing shall be given in an approved manner in accordance with Section 43(2) of the *WA*.
65. Public notice of a hearing shall be given at least thirty-five (35) days before the hearing date.
66. As outlined in the *WA*, the Board may use additional methods to notify the public of a hearing, having regard to the nature of an application under consideration, the affected communities and the rights holders.

Intervention in a Hearing

67. A person, organization, department, agency, affected land owner or community wanting to make representations at a hearing shall file a notice of intention to intervene in the hearing, in the appropriate form, on or before the date specified by the Board in a public notice.
68. The Board may grant intervener status, request additional information or clarification from any person, organization, department, agency, affected land owner or community seeking intervener status and may direct those with similar interests to present a joint intervention.
69. The Board shall make a decision on an application for intervener status in a timely manner.

Formulation of Issues

70. The Board may decide which issues it will consider at a hearing and notify the participants of such a decision.

Locations of Hearing

71. The Board shall determine the time and place at which hearings will be held.

Participation in a Hearing by the Public

72. Any person or body who does not wish to intervene in a hearing but wishes to make comment to the Board may:

- a. provide written submissions to the Board at least ten (10) days before the scheduled hearing date; or
- b. make an oral presentation during that portion of the hearing that has been set aside to hear the views of the public.

Order of Events at a Hearing

73. The order of events at a hearing, unless the Chairperson directs otherwise, shall be as follows:
- a. Opening prayer
 - b. Opening remarks by the Chairperson
 - c. Introduction of the Board members and IWB staff
 - d. Preliminary and procedural matters (if any)
 - e. Introduction of persons representing the applicant
 - f. Introduction of persons representing the interveners
 - g. Acknowledgment of written submissions
 - h. Applicant's presentation
 - i. Questions of the applicant by interveners, IWB staff and Board members
 - j. Presentations by each registered intervener. Order determined by Chairperson
 - k. Questions of each registered intervener by the applicant, other interveners, IWB staff and Board members
 - l. Presentations or comments from the public pursuant to Rule 72
 - m. Questions of the public by the applicant, interveners, IWB staff and Board members
 - n. Closing statements and arguments
 - (i) Registered interveners. Order to be determined by Chairperson
 - (ii) The applicant (last)
 - o. Closing remarks by the Chairperson
 - p. Adjournment of hearing

Time Limits and Questioning

74. The Board may set time limits for presentations and questions during a hearing.
75. All interveners and all others making presentations at a hearing pursuant to Rule 72 are subject to questioning by the applicant, other interveners, Board members and IWB staff.

Hearing Language and Interpretation

76. Every hearing shall be conducted in English.
77. The Board may arrange for interpretation services in any language(s) that it deems necessary. Determination of any interpretation services to be provided for the hearing process will be made at least fourteen (14) days prior to the date of the hearing. Such determination will be posted on the record of a proceeding.

Transcripts

78. English language transcripts of a hearing shall be produced by the IWB.

79. The Board may consider producing a summary of the hearing transcript in another language if requested to do so by a participant. If the Board approves the preparation of a summary in another language it shall determine a date by which the summary is to be produced. The date by which any transcript summary is prepared may be after the closing of a proceeding.

Adjournments

80. A participant may apply for an adjournment of a hearing. Such an application shall be made by way of motion and if made in advance of the hearing, it shall be filed and served in accordance with these Rules.

81. The Board may adjourn a proceeding where:

- a. it requests further evidence, particulars or documents, and these cannot be obtained in time for a meeting, or for a hearing;
- b. an application is modified and the Board determines that the modification would likely cause a significant change to an intervention; or
- c. for any reason the Board deems it necessary.

PART FOUR: CLOSING THE RECEIPT OF EVIDENCE AND A PROCEEDING

Closing the receipt of evidence in a proceeding

82. Subject to Rule 83, when the Board determines that it has received all the evidence it requires to make a decision on an application, the Board will close the collection of evidence and no additional evidence will be accepted.

83. Notwithstanding Rule 82 and for greater certainty, the Board may re-convene a hearing or re-open the collection of evidence if it deems it necessary to do so.

Closing a proceeding

84. The Chairperson will close a proceeding when the Board has made a decision on the application under consideration.

85. The Board will produce written Reasons for Decision related to a proceeding in accordance with s 54 of the *WA*.

PART FIVE: LICENSING PROCEDURES FOLLOWING THE CLOSING OF A PROCEEDING

86. Following a decision by the Board on an application, the Board shall submit its decision and its Reasons for Decision to the appropriate authority in accordance with the *WA*.

87. When the appropriate authority approves or rejects the Board's decision, the Board shall:

- a. Issue, renew, amend or cancel the licence; or
- b. Advise the applicant that their application has been rejected.

88. All documents resulting from the actions described in clauses 86 and 87 shall be placed on the public register.

PART SIX: BOARD CONTACT

Executive Director
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