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APPROVALS

Operational Policy 2016-7

Agricultural Operation Practices Act
January 26, 2016

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Approval officers are responsible for updating the NRCB's database in accordance with the database policy, noting in the NRCB's internal CFO database all correspondence and other communications with parties with respect to an application. Approval officers will make every effort to record in the database all other material events related to a permit application (e.g., site visits, publication of notices).

1.4 Assistance to operators, municipalities and the public

The NRCB recognizes that operators have access to different levels of resources depending on the scale and type of their operation. Likewise, municipalities and the public may also require assistance and information to understand the requirements of AOPA. The NRCB is committed to providing a reasonable, practical and balanced level of assistance and information to operators, municipalities and the public.

1.5 Impartiality

Approval officers are required to uphold the NRCB's code of conduct and the standards of conduct of their professions. Consistent with the code of conduct, approval officers are expected to be impartial in their review of applications and all related documents, and to abide by the NRCB's core values of integrity, fairness, respect, excellence and service.

2. Use of discretion—guiding principles

AOPA and its regulations prescribe many mandatory aspects of the permitting process, but also provide the NRCB with discretion for establishing permitting procedures and for making decisions on permit applications. Approval officers' use of discretion is guided by the general principles set out below.

Under AOPA, approval officers are the decision-makers on permit applications. When carrying out this function, approval officers should consult with management on *new* policy issues—i.e., policy issues that are not squarely addressed by the act and its regulations or by existing operational policies. (As used here, the term "policy issues" means issues that need to be resolved on the basis of a decision-making principle that could apply to—or have implications for—more than one permit file.)

Approval officers will initiate consultation on new policy issues, or on any other significant permitting issues (including requests for variances under section 17 of AOPA) as early as possible in a permit application process.

Approval officers will circulate draft permit decisions to the director of applications, another approval officer, and legal counsel or communications for review and comment. Notwithstanding these consultations, **approval officers are responsible for the final content of their decision documents.**

2.1 Protecting groundwater and surface water

In accordance with AOPA's purpose, the NRCB has adopted a risk-based approach for exercising its regulatory functions under AOPA.

In the contexts allowed under the act, the risk-based approach involves:

- deciding whether and what requirements are needed on the basis of the magnitude and type of risk to groundwater and surface water, if any, posed by a facility

- where practicable, prioritizing regulatory actions on the basis of the relative risks posed by different operations

Consistent with this risk-based approach, the NRCB has adopted the environmental risk screening tool for assessing risks to surface water and groundwater from CFO facilities. That tool is explained in the guide *Environmental Risk Screening Tool for Manure Facilities at Confined Feeding Operations*.

Approval officers base their decisions, including which conditions will be attached to a permit, on AOPA standards and requirements, and the results of their assessment of potential risks to groundwater and surface water identified for the site.

2.2 Professional judgement and experience

Approval officers use their professional judgement and expertise to evaluate permit applications and public and agency responses to those applications. Where necessary and appropriate, approval officers also consult with other NRCB staff or other experts.

Where applicants or other parties rely on engineers or other experts, approval officers must review and independently assess the technical and professional validity of the parties' expert reports. However, approval officers generally do not independently conduct their own data gathering or testing to verify data collected and tested by applicants' experts, if sampling data provided by the experts appears to be adequate. In addition, approval officers generally accept applicants' stamped and signed engineering designs if they meet AOPA requirements, rather than develop and impose their own engineering approaches.

If the data is not considered to be adequate, approval officers can advise the applicant and request that they provide the deficient information.

2.3 Consistency

In exercising their discretion, approval officers are expected to promote consistent delivery of AOPA throughout the province. The internal review discussed in the introduction to part 2, above, and the policies in this document are meant to help promote consistency. However, consistent use of policies cannot ensure consistent *outcomes* among all permit applications, because of the regional and site-specific factors that must be considered by approval officers. These factors include the specific wording of municipal development plans (MDPs), site-specific soil characteristics, climatic constraints, distance to and number of neighbours, regional hydrology and hydrogeology, land use patterns, and water supplies and sources. Additionally, operators often propose specific or unique solutions to address their specific site conditions.

2.4 Public, agency and municipal participation

AOPA sets out the requirements for notice and for public and municipal input. Where the act or its regulations are unclear regarding the scope of public participation, NRCB approval officers will take an inclusive approach that is consistent with the policies expressed in this document.

3. Variance applications

Section 17 of AOPA allows an approval officer to grant a variance from a requirement in the regulations, under several circumstances and according to the tests set out in section 17.

8.12 Miscellaneous concerns

8.12.1 Compliance with other legislation

Approval officers will not consider whether a proposed development complies with legislation or regulations other than AOPA and its regulations, except:

- to the extent that the compliance is a reasonable benchmark for compliance with a requirement under AOPA, or
- when implementation of the legislation or regulations has been delegated to the NRCB.

8.12.2 Applicant compliance with AOPA

When applications and their supporting materials meet AOPA requirements, approval officers presume that applicants generally have the intent and resources to meet the requirements of the act and of their permits, and that NRCB compliance staff can adequately resolve any compliance issues that might arise.

Given these presumptions, approval officers will generally not address an applicant's past compliance record as part of their decision to issue a permit.

However, these presumptions may not be appropriate if there is evidence of intentional and persistent past non-compliance. Approval officers have discretion to consider whether the compliance issues can be adequately addressed through the use of special or non-routine permit conditions. In addition, special conditions may be needed when compliance may be difficult to determine through the standard conditions.

8.13 Environmental risk assessments—existing buildings and structures

Sections 20(1.2)(a) and 22(2.2)(a) of AOPA require approval officers to determine the risk to the environment posed by existing buildings and structures when considering an application to expand or modify an existing confined feeding operation.

The NRCB's assessment of environmental risks addresses risks to surface water and groundwater. Approval officers use the environmental risk screening tool (ERST) to assess these risks.

If an existing facility has previously been assessed using the ERST, an approval officer will not re-assess the risk to surface water and groundwater, unless:

- any of the information used to generate the prior risk assessment is out-dated or materially incorrect,
- the risk assessment methodology has materially changed since the prior assessment, or
- the approval officer deems it appropriate to re-consider the risk for other reasons.

When assessing the risks posed by an existing confined feeding operation, approval officers will start by considering, based on their professional judgement and discretion, whether any facility or facilities clearly pose a higher risk to groundwater or surface water than the other facilities.

If one or more facilities at an operation are identified as posing the highest risk, but are determined by the ERST scoring system to be low risk, approval officers may forego a detailed risk assessment of the other existing facilities. If this approach has been taken, the approval officer will note it in the technical document that support their decision.

Approval officers must include the environmental risk screening results in their decision documents, in accordance with the NRCB's water data management process.

9. Permit terms and conditions

9.1 Environmental risks of existing facilities

When issuing a permit for an expansion or modification to an existing CFO, approval officers will include conditions that require the permit holder to mitigate the risks, if the risks are determined to be moderate or high under the ERST scoring system.

9.2 Post-construction completion

Approval officers will include a "post-construction completion" condition in permits that allow the construction of new facilities, or the expansion or other modification of existing facilities. The post-construction condition prohibits the permit holder from populating the permitted facility with livestock or placing manure in the facility (or the new or modified part of an existing facility, as appropriate), until it has been inspected by NRCB personnel and determined by them, in writing, to have been constructed in accordance with the permit. The condition will require the permit holder to give the NRCB at least 10 working days' notice of a desired inspection date.

9.3 Post-construction inspections

Post-construction inspections will be conducted jointly by the approval officer who issued the permit and an NRCB inspector, unless a joint inspection is impractical under the circumstances.

Following the facility inspection and provided that the approval officer has determined that the facility was constructed in accordance with the permit, the approval officer will advise the operator (in writing) that they may place livestock or manure in the constructed facility.

9.4 Applicant commitments that are more stringent than AOPA

Permit applicants occasionally commit to design, construction or operational standards, or to take certain actions, that are more stringent than comparable AOPA requirements or that are not required at all under AOPA. When an approval officer identifies these commitments, the approval officer will discuss them with the applicant to ensure that the applicant understands how they are more stringent than AOPA requirements. If, after this discussion, the applicant remains committed to these more stringent standards or measures, the approval officer will include them as permit conditions, if a permit is issued and if the conditions are relevant to AOPA and are able to be enforced.

9.4.1 Amending permit conditions from an applicant's previous commitments

An applicant may apply to amend an existing permit, to delete a condition that resulted from their previous commitment to a more stringent standard. Approval officers will review these amendment applications by considering all relevant factors, including: the context in which the commitments were originally made; whether the reasons for those commitments still apply; any practical challenges