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APPROVALS

Operational Policy 2016-7

UNDER REVISION DUE TO LEGISLATIVE CHANGE

Agricultural Operation Practices Act

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1. Introduction

The Natural Resources Conservation Board (NRCB) is responsible for regulating confined feeding operations in Alberta under the *Agricultural Operation Practices Act* (AOPA).

One of the NRCB's regulatory functions is deciding whether to issue and amend permits for confined feeding operations. (As used here, the term "permit" refers to all three types of permits established by AOPA: approvals, registrations, and authorizations, as well as amendments of each type of permit.) Permitting decisions are made by approval officers under AOPA, who are appointed as decision makers (AOPA section 10).

The Act and its regulations prescribe many aspects of the NRCB's permitting processes, but also afford discretion to NRCB approval officers. Operational Policy 2016-7: Approvals guides approval officers when exercising this discretion, and clarifies the NRCB's interpretation of AOPA and the regulations where those laws are unclear. All of the policies are meant to promote consistent and efficient permitting decisions. The directions provided by this policy are to be generally applied, but remain subordinate to the Act and regulations.

This document also does not attempt to list all of the procedural or substantive policies that are expressed in AOPA itself or the regulations adopted under the Act. For an overall guide to the permitting procedures and substantive requirements of the Act and regulations, please refer to *The Permitting Process for Confined Feeding Operations in Alberta* Fact Sheet, available on the NRCB website.

This document uses the term *confined feeding operation*, or CFO, to refer to a confined feeding operation as defined in the Act. Definitions in the legislation are generally found at the beginning of the Act and each regulation. For purposes of this document, and unless otherwise noted:

1. *CFO* includes associated manure collection areas and manure storage facilities
2. *Permit* means an NRCB-issued or deemed approval, registration, or authorization
3. *Manure* includes composting materials, compost, and catch basin contents where the context requires it.

1.1 Policy updates

Changes to the approvals policy will be recorded for future reference.

Date updated	Notes
August 2017	Updates to s: 1; 2; 4.2 (new); 4.6 (new); 4.7 (new); 6.1; 6.3; 6.6; 7.1; 7.2 (new); 7.6; 7.7; 7.8; 7.10.5 (new); 8.2.5; 8.2.6 (new); 8.3; 8.6.3 (new); 8.7.1; 10.2; 11; 11.1 (new)
January 10, 2018	Updates to s: 1.4, 4.1, 6, 6.3, 7.1, 7.1.1 (new), 7.2, 7.6 (new; all subsequent subsections re-numbered), 7.10.5, 7.11.5, 8.6.3 (new), 9.2, Appendix A (MDS for Country Residential Developments (new); appendix listing revised
November 3, 2023	The policy was updated, substantially reorganized, and renumbered to reflect suggestions from stakeholders and to reflect current requirements and practices. The new parts are: 3.1, 3.2, 3.7, 5.4, 5.5, 7.1, 8.7.1.1, 8.7.4, 8.16, 9.2.5, 9.2.9, 9.2.10, 9.6, 9.7, 9.8, 9.9.9, 9.9.10, 9.9.11, 9.10.1, 9.10.3, 9.10.4, 9.10.5, 9.10.7, 9.11, 9.18, 10.5, 11.3

2. Overarching principle and purpose of AOPA

The overarching principle of this policy is that a permit for a proposed development will be issued if the application meets the requirements of AOPA.

This overarching principle is reflected in a 2022 mandate and roles document, where the NRCB and the ministers of Alberta Agriculture and Irrigation and Environment and Protected Areas state that the Act's purpose is to:

> "ensure that the province's livestock industry can grow to meet the opportunities presented by local and world markets in an environmentally sustainable manner"

3. Guiding principles for approval officers

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.

The NRCB Board appoints approval officers under section 10 of AOPA. In addition, the NRCB Board delegates additional powers and duties to approval officers under section 12 of AOPA.

3.1 Independence of decisions by approval officers

Approval officers are independent statutory decision makers under AOPA. As such, approval officers have the powers and responsibilities assigned to them under AOPA and its regulations.

This policy does not fetter approval officers in the exercise of their decision making. As with all operational policies, approval officers have discretion to deviate from this policy when its strict application is clearly unfair, or in other necessary and appropriate circumstances. Approval officers may wish to seek guidance from management before deviating from this policy. Approval officers provide written reasons to support their approach.

3.2 Support from other staff at the NRCB

Though approval officers are independent, they are supported by a team of NRCB staff who provide valuable support and advice. NRCB staff available for support and consultation include inspectors, environmental specialists, the monitoring review team, managers, legal counsel, and a communications specialist.

Notwithstanding these consultations, approval officers are responsible for the final content of their decision documents.

3.3 Impartiality

The NRCB's code of conduct and professional standards of conduct govern approval officers. 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.

3.4 Transparency

The NRCB considers all applications and any supporting documentation to be public records, including waivers, and public and agency responses to application notices.

The NRCB is a public body under the *Freedom of Information and Protection of Privacy Act* (FOIP). Part 1 and Part 2 applications and the notice are publicly accessible on the NRCB website. Decision documents, including the decision summary, technical document, and permit (if granted) are also publicly available on the NRCB website.

NRCB practice is to disclose applicant phone numbers and email addresses only to municipalities and referral agencies, and to disclose respondents' personal information only as required. Requests for other records from a permit file are governed by AOPA and FOIP.

Written reasons included in permitting decisions are another reflection of the NRCB's commitment to transparency. These reasons are reflected in the decision summary and the technical document.

3.4.1 Confidentiality requests

A party submitting a record may request that all or part of the record be treated as confidential. These confidentiality requests must be submitted to the approval officer prior to, or at the time of, the documents being submitted. The onus is on the requesting party to justify an exception to transparency. The NRCB's chief executive officer (CEO) decides whether the request will be granted, applying the principles in section 25 of the AOPA Administrative Procedures Regulation, as well as in FOIP. The CEO's decision-making role is consistent with the NRCB's general practice, under FOIP, of designating the CEO as the NRCB's "head" for requests to release records possessed by the operations divisions.

3.5 Professional judgement, experience, and expertise

Approval officers use their professional judgement, experience, and expertise to evaluate permit applications and responses to those applications. As mentioned in section 3.2 above, where necessary and appropriate, approval officers may consult with other NRCB staff or other experts.

Where applicants or other parties rely on engineers or other experts, approval officers assess the parties' expert reports. Approval officers may seek further clarity about the reports and their underlying information, including additional data and information. Approval officers generally do not independently conduct their own data gathering or testing to verify data collected and tested by applicants' experts.

3.6 Consistent decision making

In exercising their discretion, approval officers strive for consistent delivery of AOPA throughout the province. The NRCB Board has recognized that approval officers' permitting decisions provide some level of guidance for others involved in the application process, which helps achieve consistency in decision making. (See Board Decision 2021-03 Muilwijk at p. 4).

Prior similar permitting decisions are valuable to consistent decision making. Approval officers regularly discuss files amongst themselves and other NRCB staff including inspectors, environmental specialists, the monitoring review team, and management. Where departing from similar situations in past permitting decisions, approval officers must explain the basis for the departure.

As the decision makers on permit applications, approval officers consult with management on new policy issues when they first arise—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.)

The policies in this document that promote consistency are naturally subject to regional and site-specific factors (Specific wording of municipal development plans, soil characteristics, climatic constraints, distance to 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.

3.7 NRCB's CFO database

The NRCB maintains a CFO database that is the primary means that NRCB field staff use to record their involvement with CFOs, complainants, and other agricultural operations subject to AOPA. Details of day-to-day activities with operations and complainants are documented for records purposes. Database users upload any documents or photos related to specific files into the database. Access is restricted within the NRCB so that only field services staff can make entries. The NRCB CFO database has been developed for internal NRCB use.

The CFO database is not a perfect or comprehensive collection of records or interactions on every file or every CFO. As the database has evolved (e.g. the addition of the ability to upload documents), older interactions and operations have not necessarily been updated. Some records remain solely in paper form. However, the internal CFO database remains an integral tool for NRCB field services business.

3.8 Guidance to operators, municipalities, and the public

The NRCB strives to provide a reasonable, practical, and balanced level of guidance and information to operators, municipalities, and the public for them to understand the AOPA requirements.

However, applicants are responsible for ensuring that their applications contain sufficient information to show how their application can meet AOPA requirements.

Approval officers do not complete or fill out applications, and are not responsible for the content in applications. Approval officers are also not responsible for assisting municipalities or the public in completing their responses to an application.

The NRCB also does not endorse or recommend service providers to applicants or the public.

3.9 Risk-based approach to 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. The NRCB Board has recognized that "zero" risk is not realistic, but that within its legislative and regulatory framework, the NRCB has developed tools to "direct and facilitate" risk mitigation for CFOs in Alberta (Board Decision RFR 2021-01 Lone Pine at p. 5).

AOPA sets out the standards that detail acceptable risks. In the contexts allowed under the Act, the risk-based approach may involve:

1. using risk screening tools to assist in determining potential risks associated with water resources (see sections 9.17 & 9.18 in this policy)
2. deciding whether and what requirements are needed on the basis of the magnitude and type of risk to groundwater and surface water quality, if any, posed by a manure collection area or manure storage facility

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

4. Variance applications

Variances are an exercise of discretion by an approval officer under section 17 of AOPA, to vary a requirement set out in an AOPA regulation (usually the Standards and Administration Regulation). Variances may only vary requirements in regulations. They cannot be used to vary requirements in the statute (i.e. AOPA itself).

Most variances can only be granted if the approval officer holds the opinion that the variance provides the "same or greater" degree of protection and safety as what the regulation requires. However, variances related to altering an existing facility can only be granted if the approval officer holds the opinion that the variance would provide a "greater" degree of protection and safety than currently exists at the CFO or manure storage facility.

An applicant may apply in writing to an approval officer for a variance (section 17(1) or (1.1) of AOPA). The request must identify why the requirement in the regulation should be varied. Approval officers may prompt an applicant to apply for a variance if it is clear the application will not otherwise comply with the requirements in the regulations.

If an approval officer believes that a permit applicant has met their burden of demonstrating that a variance is warranted, the approval officer will make the variance decision as part of their decision on whether to issue the requested permit.

Since variances actually vary a requirement of the legislation, approval officers must not grant variances lightly or in the absence of substantive evidence they will produce equivalent, or greater, levels of protection. To determine whether a variance is appropriate, an approval officer may use similar or the same tools to assess protection and safety in other circumstances, as well as seek input from other NRCB staff. For example, the water well exemption screening tool may be useful to assess degree of protection in considering whether to vary a 100 metre water well setback for an existing facility that was constructed without a permit (see section 9.10.2).

5. Activities that do or don't require permits

Under section 13 of AOPA, approvals or registrations are required to construct or expand CFOs that are above the permit thresholds in the Part 2 Matters Regulation. Under section 14 of the Act, authorizations are required to construct, expand, or modify certain manure storage facilities (MSFs) or manure collection areas (MCAs), as specified in section 4 of the Part 2 Matters Regulation.

Section 13 of AOPA prohibits the construction (or expansion) of "confined feeding operations" without a permit (when a permit is required under the Part 2 Matters Regulation). Section 14 of the Act prohibits the construction of an MSF or an MCA without a permit (where a permit is required under the Part 2 Matters Regulation). The CFO and MSF/MCA categories substantially overlap because all CFOs have MSFs or MCAs or both.

Some MSFs are used solely to store manure; that is, they are not also used to confine and feed livestock (e.g. earthen lagoons or above-ground tanks that store liquid manure). However, some facilities that are used to confine and feed livestock are also considered manure collection or storage facilities (e.g. feedlot pens).

For liquid manure, the NRCB interprets 1 m^3 to be equivalent to 1 tonne of manure for the purposes of the Part 2 Matters Regulation. This is consistent with the interpretation in the *2013 Manure*

Characteristics and Land Base Code, Agdex 096-8.

Below are several interpretations of sections 13 and 14 of the Act, and the accompanying provisions of the Part 2 Matters Regulation, with respect to the scope of activities that require a permit.

5.1 Types of activities that are "construction"

AOPA does not define the term "construction." Section 1(1)(c) of the Part 2 Matters Regulation states that construction does not include "general maintenance" of a confined feeding operation, manure storage facility or manure collection area, or the "clearing and leveling of land." However, neither the regulation, nor AOPA itself, state what construction does include.

The NRCB's views as to what actions constitute construction are explained in Operational Policy 2012-1: *Unauthorized Construction*, the *Unauthorized Construction under the Agricultural Operation Practices Act* Fact Sheet and the *Livestock Pen Floor Repair and Maintenance* Fact Sheet.

5.2 CFO facilities that are not used to collect or store manure

AOPA requires permits for entire CFOs, not just for the MSF or MCA components of CFOs. However, not all components of all livestock confinement facilities are needed to store livestock manure (e.g., feed troughs, barn walls and roofs, pen fences). Therefore, the NRCB views AOPA's permit requirements as precluding construction without a permit of any part of a CFO facility where manure accumulates, is collected, or is stored, or results in increased storage capacity. To ensure compliance with the legislation, an operator should consult with the NRCB when considering construction (including modifications and renovations) at a CFO facility.

An ancillary structure (section 1(1)(a.1) of the Part 2 Matters Regulation) does not require a permit under AOPA (section 4.1 of the Part 2 Matters Regulation). CFO operators are required to notify the NRCB in writing prior to constructing an ancillary structure. An ancillary structure is considered to be a part of a CFO.

5.3 Manure storage facilities at below registration threshold CFOs

The threshold for a CFO requiring a permit under AOPA is found at Schedule 2 of the Part 2 Matters Regulation. CFOs under the registration threshold that have a manure storage facility with a capacity of more than 500 tonnes of manure, for seven months or more in a calendar year, will require an authorization (section 4(1) of the Part 2 Matters Regulation). The NRCB interprets this requirement to also apply to liquid manure storage facilities with a capacity of 500 m^3 or greater (see section 5.4.1).

5.4 Stand-alone manure storage facilities

If a manure storage facility is not part of a CFO, and has a capacity for more than 500 tonnes of manure, for seven months or more in a calendar year, it requires an authorization (Part 2 Matters Regulation section 4(1)).

Because stand-alone manure storage facilities do not have livestock attached to their permits, the equivalent number of livestock that produce that amount of manure in nine months is calculated using the capacity of the manure storage facility. The type and number of livestock then determine the minimum distance separation (MDS) requirement.

If the type of livestock where the manure comes from is known, then the permit will include a condition restricting the source manure to that type of livestock. If no specific type of

manure is identified for the stand-alone manure storage facility (e.g. digestate from a biodigester facility), then the MDS numbers for swine are to be used (see section 9.9.9 of this policy). Using the largest MDS allows the owner of the stand-alone manure storage facility the most flexibility regarding what type of manure can be stored in the facility, and at the same time ensures that the MDS to neighbours can accommodate the different types of manure.

5.4.1 Stand-alone manure storage facilities for predominantly liquid manure

Section 14(1) of AOPA requires an authorization for a manure storage facility that holds manure that is predominantly in a liquid state, or manure to which water has been added (e.g. wash water). This section suggests that all stand-alone liquid manure storage facilities require permits whether they are below or above the 500 tonne threshold.

The NRCB interprets the predominantly liquid portion of section 14(1) as being triggered with a minimum threshold of 500 m^3 liquid (based on 500 tonne solid) threshold for stand-alone liquid manure storage facilities (Part 2 Matters Regulation section 4(1)).

For practical purposes, the NRCB considers one cubic metre of liquid manure to approximately equal one tonne of solid manure

For liquid manure storage facilities, the NRCB considers storage capacity relevant but not storage time. A liquid manure storage facility is generally a permanent structure. Manure or manure remnants are present in the facility for periods year-round.

5.5 Biodigester facilities

A memorandum of understanding (MOU) regarding the storage of digestate in permitted manure storage facilities and the application of digestate on agricultural land has been developed among Alberta Environment and Protected Areas (EPA), Agriculture and Irrigation (AGI), and the NRCB. Typically, the biodigester facilities themselves are permitted through EPA. The MOU and the associated Directive for digestate containing at least 50 per cent manure (as a feedstock) to be applied to arable land or stored in a manure storage facility permitted under AOPA regulations.

Typically permit conditions are for the land application of digestate and use of “off-site” manure storage facilities permitted under AOPA. As with other stand-alone (off-site) manure storage facilities, unless otherwise specified for a specific type of manure, these are treated as hog manure for MDS purposes. See section 5.4 of this policy if a specified type of manure is to be used.

The MOU has been developed to assist biodigester operators who would like to use this approach. Biodigester operators can also choose to permit their operations through EPA only.

5.6 Expansion

Under sections 13 and 14 of AOPA and sections 2 through 4 of the Part 2 Matters Regulation, a permit is required to expand a CFO that is above the permit threshold, or to expand a manure storage facility or manure collection area that requires a permit under the Act. Under section 1(1)(d) of the Part 2 Matters Regulation, an “expansion” of a CFO is the “construction of additional facilities to accommodate more livestock....” This section also defines an expansion of a manure storage facility or manure collection area as the “construction of additional facilities to store more manure, composting materials or

compost."

This "expansion" definition is focused on *construction* intended to accommodate more livestock and/or more manure (or compost). The definition does not expressly refer to an actual increase in livestock (and accompanying increase in manure production). This increase in livestock (and manure) can occur without new construction, if the existing facilities can accommodate the increased livestock numbers. The actual increase in livestock numbers and manure may pose more of an environmental or nuisance risk than the facilities needed to accommodate the increases in livestock and manure production.

For these reasons, the NRCB interprets the term "expansion" to include an increase in permitted animal numbers or an increase in manure production or level of odour production, whether or not there is accompanying construction of new facilities.

This interpretation is supported by sections 2(2) and 3(2) of the Part 2 Matters Regulation, which state that, when an operator is changing the type of livestock within a livestock category and thus changing animal numbers, a new permit (or permit amendment) is not required, "unless" the change will increase the annual amount of manure produced or the level of odour production. The logical implication of these provisions is that a new permit (or a permit amendment) *is* required under sections 2(1) and 3(1), when a change in livestock type will result in an increase in annual manure production or in level of odour production. If sections 2(1) and 3(1) require a permit, then this increase must be an "expansion" under those sections.

Approval officers will only permit an increase in livestock numbers if the permitted CFO facilities are able to accommodate the increase in livestock numbers and the AOPA manure storage requirements are met.

5.7 Seasonal feeding and bedding sites

AOPA requires permits to construct and operate CFOs (above permit thresholds in the regulations) but exempts "seasonal feeding and bedding sites" from the CFO definition. These sites therefore do not need to be permitted under the Act.

Operational Policy 2015-2: *Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations*) provides guidance for determining whether a proposed facility is a seasonal feeding and bedding site rather than a CFO. Guides for sheep and meat goats are also available to assist in determining what is and is not considered a CFO / CFO facility (Operational Guideline 2019-1: *Sheep Confined Feeding Operation Determinations*, Operational Guideline: 2016-9: *Meat Goat CFO Determinations*).

5.8 Changes in livestock category, types, and numbers

Under sections 2 and 3 of the Part 2 Matters Regulation, construction of a new confined feeding operation requires an approval or registration, if the operation is above the applicable permit thresholds listed in Schedule 2 of the regulation. These thresholds are written as minimum numbers of livestock, for each type within the different livestock categories.

A change in livestock type within a category (e.g. for feedlot animals, feeders to finishers, or finishers to feeders) does not require an amendment application as long as the CFO's annual manure production and odour production do not increase. Operators who plan to change livestock type within a category are encouraged to contact an NRCB approval

officer to confirm whether their existing permit can accommodate their proposed changes.

Schedule 2 does not address how the thresholds should be applied when an operation proposes to have two or more different livestock types.

The NRCB considers the *total* amount of manure produced by all livestock types for permitting purposes, rather than just the individual amounts produced by each livestock type, which is consistent with AOPA's purpose statement.

If the proposed CFO has two or more livestock types, the NRCB uses a "common denominator" approach for applying the livestock type-specific thresholds in Schedule 2. Approval officers convert the CFO's proposed numbers of each livestock type and the permit thresholds in Schedule 2 to animal units, using the conversion table in Schedule 1 of the Part 2 Matters Regulation. The CFO requires an AOPA permit if the total animal units convert back to any above threshold number for any of the proposed livestock types.

5.9 Not-for-profit confined feeding, or research facilities, associated with post-secondary educational institutions

From a policy standpoint, not-for-profit CFOs, or research facilities, associated with post-secondary educational institutions should generally be encouraged, given their public benefits—including their benefits to the livestock industry. However, these CFOs generally pose the same nuisance and environmental risks as other CFOs, whether they are operated on a non-profit or for-profit basis.

When deciding whether to issue a permit for an expansion for these types of CFOs, an approval officer has discretion to reduce (but not waive) the required minimum distance separation from nearby residences. Section 3(7) of the Standards and Administration Regulation and section 9.9.8 in this policy, have been used in past decisions.

5.10 Facilities used solely for confining or feeding livestock for personal consumption

Some agricultural operations have facilities that are used to raise livestock for personal consumption by the operation's owner or employees.

If a CFO requires a permit under AOPA, any livestock that are raised for personal consumption must be included in its permitted livestock numbers. This is the same approach used for multi-species CFOs (see section 9.9.7 of this policy).

6. Who holds permits

A permit holder is legally entitled, at least for AOPA purposes, to carry out the activities allowed in the permit. Under sections 13(2) and 14(2) of AOPA, permit holders are also responsible for fulfilling the permit's terms and conditions.

AOPA permits are issued for livestock operations (or manure storage facilities) at specific land locations. Though not registered on the land title, AOPA permits are considered by the NRCB to "run with the land."

The owner of the land where the CFO is located is a permit holder. If there is more than one owner (e.g. joint tenants), then all the owners listed on the Land Title become co-permit holders.

In addition, the owner of the CFO (individual or corporate body) is a permit holder. Sometimes the CFO owner is the same person as the landowner, but not always. A person who does not own the land, but owns the operation, may apply for and be issued an AOPA permit for a confined feeding

operation or manure storage facility on the land. In that case, the applicant needs the landowner's permission to submit the application. If a permit is issued, the NRCB lists the landowner as a co-permit holder with the CFO owner.

A person who buys land containing CFO facilities permitted under AOPA (or with a deemed permit) automatically becomes a permit holder. A change of permit holder does not create any new rights under AOPA (section 10(2) AOPA Administrative Procedures Regulation).

Under AOPA the new permit holder must notify the NRCB of the change of ownership (section 28 of AOPA, and section 10 of the AOPA Administrative Procedures Regulation).

7. Affected party and directly affected party determinations

7.1 Affected party determinations

Sections 19 and 21 of the Act, and section 5 of the Part 2 Matters Regulation, provide different criteria for different types of parties to qualify as affected persons. These categories include persons who "reside on or own land" that is within a specified distance from the proposed development. Under section 5 of the regulations, this distance—commonly referred to as the "notification distance"—varies depending on the livestock capacity of the proposed or existing confined feeding operation. Notification distance is not based on manure spreading lands. Parties who are on land bordering the notification distance are not considered to be within the notification distance.

On occasion, an applicant changes number, or type of livestock mid-stream in an application resulting in a reduced notification distance. Sometimes notice has already been provided and the written response deadline has already passed. In that case, if the approval officer has received a response from a person located within the original notification distance but outside the reduced notification distance, then the approval officer will

> send written notice to all parties who have submitted responses, advising them of the change in notification distance and that it may impact their status in the application.

Under sections 19 and 21 of AOPA, notification regarding permit applications is provided for "affected persons". See section 8.7 of this policy for more information on notice. Under the *Interpretation Act* a "person" includes a corporation.

7.2 Directly affected party determinations

Any person may provide a written response to a permit application. However, only responses from parties who are determined to be directly affected will be considered when the application is being processed. Only directly affected parties have standing to request that the NRCB's Board review permit decisions issued by approval officers.

If a person applies for status as a directly affected party, the approval officer may require further information relevant to the status application. Under sections 19(5) or 21(4) of AOPA, the person must provide that information.

7.2.1 For approval applications

Section 19 of AOPA allows an affected person, any other person or organization who is notified and any member of the public to apply to be a directly affected party. The applicant and municipalities that are affected persons are automatically directly affected persons.

The NRCB presumes that persons who reside on or own land within the notification distance also qualify for directly affected party status, if they provide written response to the notice within the posted response deadline.

The NRCB also presumes as directly affected, any affected party that signs a "minimum distance separation" waiver when that waiver is required to meet the minimum distance separation requirement.

Parties who live outside of the notification distance and wish to have their submission considered have the burden to show why they should be considered to be directly affected for the application. In order to do this they need to demonstrate all of the following:

1. a plausible chain of causality exists between the proposed project and the effect asserted,
2. the effect would probably occur,
3. the effect could reasonably be expected to impact the party,
4. the effect would not be trivial, and
5. the effect falls within the NRCB's regulatory mandate under AOPA.[1]

Parties outside of the notification distance who wish to be considered directly affected usually address these points in their written responses. If they are addressed in a separate document, that document must be submitted to the approval officer by the response deadline provided in the notice.

7.2.2 For registration applications

Section 21 of AOPA specifies that the applicant and the municipality are automatically directly affected persons.

Persons who own or occupy land within the greater of the MDS or a half mile of the parcel of land on which the CFO is located (notification distance) are considered to be affected persons. These affected persons may apply for directly affected party status.

The NRCB presumes that persons who reside on or own land within the greater of the MDS or a half mile from the parcel of land on which the CFO is, or is to be, located qualify for directly affected party status, if they provide written response to the notice prior to the posted response deadline.

The NRCB also presumes as directly affected, any affected party that signs a "minimum distance separation" waiver when that waiver is required to meet the minimum distance separation requirement.

Any person who lives, or owns or occupies land outside of the notification distance is not an affected party and therefore is not directly affected.

7.2.3 For authorization applications

For authorization applications, section 21 of AOPA specifies that the only directly affected parties are municipalities and the applicant.

1. This test is from NRCB Board Decision RFR 2011-05 / RA11001 (Klaas Ijtsma). May 19, 2011, p. 4.

A person who signs an MDS waiver, when required, in relation to an authorization application will not be a directly affected party as a result of the waiver. See also section 8.14 of this policy.

7.3 Processing requests for directly affected party status

Sections 19 and 21 of AOPA provide a two-step process for parties who want to participate in a permit application process for approval and registration applications. (See also section 8 of the AOPA Administrative Procedures Regulation.) Under the first step, parties must submit a written application to be considered directly affected. Under the second step, all parties deemed to be directly affected may submit a written response to an application.

For efficiency, approval officers have combined these two steps into a single step, by allowing parties to submit, by the date stated in the application notice, a single written response that provides the party's:

1. request for directly affected status, and accompanying reasons why the party should be considered directly affected; and,
2. for **approval** applications, concerns with, or other comments on, the merits of the permit application; or
3. for **registration** applications, comments on whether the application meets the requirements of the regulations.

Under this single step approach, if an approval officer determines that a party is *not* directly affected, the approval officer will not consider the party's comments on the permit application. Note: sometimes the issues or concerns the party identifies are echoed or cross-referenced in a submission by another party who is directly affected, so may be considered or addressed anyway.

7.4 Municipalities as directly affected parties

Under AOPA, the municipality where a proposed development is located is automatically both an affected person and a directly affected party with respect to the application for that development.

In many cases another neighbouring municipality has a border that is within the notification distance from a proposed development. In these cases, the neighbouring municipality is an affected party under section 5(c) of the Part 2 Matters Regulation. This affected neighbouring municipality is also a directly affected party.

The NRCB does not treat this neighbouring municipality's municipal development plan (MDP) as part of the "MDP consistency" requirement in sections 20(1), 22(1), and 22(2) of AOPA. Those sections prohibit an approval officer from issuing a permit under the Act unless the application is consistent with the land use provisions of the municipal development plan. The NRCB interprets this requirement as referring to the MDP, or sometimes intermunicipal development plan (IDP), of the "local municipality"—that is, the municipality in which the proposed development is actually located.

However, if the CFO is located within an IDP area, the neighbouring municipality that is party to the IDP is notified. In this case, the neighbouring municipality is not automatically considered to be an affected party (and therefore not directly affected).

1. For **approval** applications, if the boundary of the neighbouring municipality does not fall within the notification distance, the approval officer will presume that the

neighbouring municipality is a directly affected party and meets the five-part test (see section 7.2.1 of this policy).

2. For **registration and authorization** applications, in order for a neighbouring municipality to be considered an affected party (or directly affected party) the boundary of the municipality must fall within the notification distance. However, approval officers may consider responses from the municipality to assist them with their IDP consistency determination.

7.5 Easement holders and other interests in land

Other parties may have an interest in the land where the CFO is, or is proposed to be, located and the interest may be registered on the land title. These include holders of leases, conservation easements, environmental reserves, right-of-way orders for surface rights, and utility rights-of way. For brevity, these are called “easement holders” in this policy.

While easement holders registered on the land title have an interest in the land, they are not generally considered an owner or occupant of the land.[2] The NRCB requires applicants to indicate easements and rights of way on the site plan submitted as part of their application, and to include their contact information when known.

Because easement holders are not considered owners or occupants, they do not automatically qualify as affected parties even when the area of land covered by the easement is within the notification distance.

An easement holder may still qualify as a directly affected party for an approval application, if they can show that their easement will be directly affected by a proposed development (see section 7.2.1 of this policy).

As with other interested parties, easement holders should respond to a permit application notice by the response deadline. They must explain in their response why they believe they are directly affected by the application.

Operators are responsible for following agreements, setbacks, and any other requirements of the easements or other interests in the land. The NRCB is not responsible for enforcing those requirements.

7.6 Petitions

Neither AOPA nor the regulations distinguish between individual written submissions and submissions—including those styled as “petitions”—that are provided on behalf of two or more people, or two or more parcels of land.

Each petitioner must sign their name and must also provide the addresses or legal land locations of their residence or owned land, and their contact information (telephone and email address), as set out in section 8(3) of the AOPA Administrative Procedures Regulation. This information allows the approval officer to determine whether each petitioner is a directly affected party, based on their residence or land location, and for any needed follow up communications.

Petitions are considered the same as any other written submissions. Approval officers will first determine whether individual petition signers qualify as “affected parties” according to

2. See, for example, *Husky Oil Operations Ltd. V. Shelf Holdings Ltd.*, 1989 ABCA 30.

the same legislative test that applies to writers of individual submissions. Petition signers who do not qualify as affected parties will not automatically qualify as directly affected parties. Petition signers have the burden of demonstrating that they are directly affected by an application. If their petition will not address the effects on each signer, the signers should consider submitting individual letters, provided they do so within the time frame and manner specified in the application notice. Approval officers will consider whether petition signers are directly affected parties, based on the guidance provided in section 7.2 of this policy.

If one or more, but not all, signers of a petition qualify as directly affected parties, an approval officer will generally consider the concerns listed in the overall petition response to the application notice as coming from the directly affected parties. In addition an approval officer will consider the issues raised in a petition if a submission from a directly affected party includes a copy of the petition.

7.7 Organizations (approvals only)

Section 19(4) of AOPA states that an individual "person" or "organization" that is notified of an approval application may request, by the deadline, to be considered a directly affected party with respect to that application (see. section 7.2.1 of this policy for guidance).

8. Permitting procedures

AOPA and its regulations prescribe several procedures for approval officers to follow when they review permit applications. This part of the approval policy sets out several additional procedural policies that the NRCB has adopted, consistent with AOPA's purpose and the principles listed in sections 2 and 3.

Approval officers will only approve livestock numbers if the proposed CFO facilities will be able to accommodate the livestock categories, type, and numbers and the AOPA manure storage requirements are met. See also Operational Policy 2015-1: *Construction Deadlines*.

8.1 Two-part application process

AOPA refers to filing an "application" for a given permit. However, the AOPA Administrative Procedures Regulation (section 2) requires applications for approvals and registrations to be submitted in two parts, and allows applicants to submit Part 2 of the application within six months after submitting Part 1. This can be extended for up to an additional six months under AOPA Administrative Procedures Regulation section 2(5), see section 8.3 of this policy.

Section 3 of the regulation gives approval officers discretion to decide the format and required content of an authorization application. For consistency, the application format for authorizations is the same as for approvals and registrations. The NRCB interprets the six-month deadline in section 2(3) of the regulation to also apply to authorization applications.

Sections 2(2) and 2(3) of the regulation set out the information required in Part 1 and Part 2 applications respectively for approval and registration applications. Section 3 of the regulation sets out the information required for authorization applications. Section 4 of the regulation allows an approval officer to require additional information from an applicant.

8.2 Establishing minimum distance separation (MDS)

Applicants must meet the MDS to those neighbouring residences that exist or have a development permit as of the date the NRCB receives the Part 1 application.

Using a two-part application allows the date for applying the MDS requirements in section 3 of the Standards and Administration Regulation to be set as soon as the applicant submits their Part 1 application. Changing the number, category, or type of livestock in the application may impact the date to set MDS:

1. If the applicant wishes to make changes that will **increase** the MDS, a new Part 1 application will be required. The application's ability to meet the MDS requirement will be determined on the date the new Part 1 application is received (section 3(2) of the Standards and Administration Regulation).
2. If the applicant wishes to **decrease** the permitted number of livestock (not category) after submitting a Part 1 application, the date the Part 1 was originally received remains the date on which the application's ability to meet the MDS requirement is determined (section 3(2) of the Standards and Administration Regulation).

This overall approach is a reasonable balance of the interests of CFO applicants and neighbours. On the one hand, it gives applicants certainty with respect to whether they can meet the MDS requirement, before they commit the time and resources needed to complete a Part 2 application (including, but not limited to, engineering work) and obtain the other technical information that is needed to complete their entire application. On the other hand, the six-month deadline for submitting the Part 2 application ensures that an applicant cannot, simply by filing a Part 1 application, try to discourage neighbouring landowners from developing residences on their own properties.

For calculating the MDS for stand-alone manure storage facilities see section 5.4 of this policy.

8.3 Part 2 application extension requests

If an applicant cannot meet the six-month deadline for filing the Part 2 application, they may submit a written request to the approval officer to extend the deadline for up to six more months—i.e., for a maximum of one year after the Part 1 was filed. (See section 2(5) of the AOPA Administrative Procedures Regulation, for approval and registration applications.) The onus is on the applicant to explain why they were unable to meet the six-month deadline. From a practical perspective an extension request should be submitted as early as possible, prior to the six-month deadline.

8.3.1 Requests by applicant to delay processing a completed permit application

Approval officers have broad discretion for scheduling their decision process.

Approval officers generally try to make their decisions as soon as practicable, in part, to facilitate the applicant's business planning, and also given that the initial Part 1 application locks in the date on which the MDS requirement is calculated.

Approval officers consider delay requests on a case-by-case basis, by assessing whether the applicant has provided a reasonable justification for the requested delay and whether the requested delay would be fair to the applicant and all other parties. Generally, requests to delay the processing of an application by up to six months may be considered.

If an approval officer grants an applicant's request to delay the processing of an application, the approval officer may provide notice of the delay to the municipality and to all parties that submitted responses.

8.4 Amending an existing permit or issuing a new permit

AOPA and the Part 2 Matters Regulation provide for permit amendments, and for the issuance of new permits, for various proposed changes to existing CFOs. However, the Act and the regulation are not clear as to which of these two approaches—amending a permit or issuing a new one—should be used in various circumstances. The NRCB has adopted the following general rules:

For approvals and registrations:

1. If an operator wishes to change a condition in an existing approval or registration or modify a permitted CFO facility, **with no increase in livestock numbers,** the operator must apply for an amendment to the approval or registration (Part 2 Matters Regulation sections 2 and 3).
2. If an operator wishes to change a condition or modify a facility, **and includes an increase in the permitted number of livestock**, the operator must apply for a new approval or a registration (Part 2 Matters Regulation sections 2 and 3).

For authorizations:

3. If an operator wishes to change a condition in an existing authorization or modify a permitted CFO facility authorized in an authorization, the operator must apply for an amendment to the authorization (Matters Regulation section 4).

When issuing a new or amended approval or registration permit, for convenience the existing permit(s) are consolidated with the new or amended permit. See section 11.5 of this policy.

These principles also apply to amending grandfathered permits.

8.5 Resolving disputed application information requirements

Under section 2(2)(d) and 4(1) of the Administrative Procedures Regulation, an approval officer may require the applicant to provide any additional information the approval officer considers necessary to assess whether the requirements in AOPA will be met. This may occur anytime before a decision on the application is made. The approval officer will identify the additional required information, and establish a deadline to submit it within six months of the date it was requested (sections 4(1) and 4(3) of the AOPA Administrative Procedures Regulation). Failure to provide additional information may result in a denial of an application under section 4(2) of the AOPA Administrative Procedures Regulation and section 18(3) of AOPA.

Operational Policy 2016-4: *Resolving Disputed Permit Information Requirements between the Applicant and Approval Officer* provides a process for resolving such disputes between an applicant and approval officer.

8.6 Applicants' responses to submissions

Approval officers provide to permit applicants written responses to an application (with unnecessary personal information redacted) including comments from referral agencies.

An approval officer may also determine that an applicant's response to a submission is needed for the approval officer to adequately address the issue. In this case, the approval officer will request that the applicant respond. An applicant's failure to provide a response, when requested to do so, may result in a delay or denial of the application, or in conditions being attached to a permit, if approved.

8.7 Notice of permit applications

Sections 19 and 21 of AOPA, as well as section 5 of the AOPA Administrative Procedures Regulation, establish the requirements for notice for the public and municipalities. NRCB policy establishes the procedures for achieving the requirements of the Act. As used below, the term “local municipality” refers to the municipality where a proposed development is located.

8.7.1 Notice—approval and registration applications

Notice for approval and registration applications is generally provided through the following methods:

1. publishing in local newspapers that serve the area within which the development is proposed; sometimes it is appropriate to publish in more than one local paper in order to cover the area; typically notice is placed in the same local paper used by the municipality for their notices
2. posting on the NRCB website, and
3. sending notification letters to landowners and residents who live within the notification distance specified in the regulations, provided that the municipality provides names and addresses for those persons.

Alternative forms of notice may be provided, as determined by the approval officer. Section 31 of the AOPA Administrative Procedures Regulation provides other notice options.

As required under section 7 of the AOPA Administrative Procedures Regulation, approval officers will provide a copy of the application to parties when requested.

8.7.1.1 Winter holiday closure – approval and registration applications

The notice period will not include any portion of the Government of Alberta winter holiday closure between Christmas Eve and New Year’s Day. Notice will be delayed so that it does not fall over the winter holiday closure. This is to ensure that anyone receiving notice is able to contact an approval officer during the notice period. This means that the latest date for notice to be issued will be 20 working days prior to the winter holiday closure date.

8.7.1.2 Notification letters—approval and registration applications

Where practicable, approval officers send notification letters to “affected persons” who live or own property within the notification distance, based on the names and addresses provided by the local municipality. (The notification distance is set out in section 5 of the Part 2 Matters Regulation.) Names and addresses provided by the municipality are not always complete or up to date. Notification letters are one of the types of notice provided for the application.

Approval officers may not send notification letters to affected persons if the municipality declines to provide this contact information. Some municipalities may choose to send the notification letters on the approval officer’s behalf.

8.7.2 Minor alteration to a building or structure

Sections 19(1) and 21(1) of AOPA require notice to affected persons of permit applications. However, sections 19(1.1) and 21(1.1) allow approval officers to forego

this notice procedure for an application to amend a permit, if the proposed amendment is for a "minor alteration" to a building or structure "that will result in a minimal change to its risk, if any, to the environment and a minimal change to a disturbance, if any…."

For approvals under section 19(1) of AOPA, foregoing notice is limited to minor alterations to "existing" buildings or structures. The NRCB broadly interprets the term "existing" in reference to "buildings or structures" to mean those that have been permitted (not unauthorized). Presumably if the building or structure has previously been permitted (either under a deemed permit or an NRCB-issued permit), the objectives of AOPA have already been addressed for the existing portion. It also includes buildings or structures that have been permitted but not yet constructed. From the standpoint of AOPA's purpose, there is no practical reason to interpret "existing" as covering only constructed facilities.

The NRCB views "minor alterations" somewhat narrowly. In the NRCB's view, minor alterations exclude changes that will create additional livestock capacity, move the CFO footprint materially closer to the neighbouring residence(s), or encroach on another setback required by AOPA. All of these can have significant effects and therefore should be subject to the notice process that otherwise applies.

Approval officers have discretion as to what amendment applications can be decided without notice. However, because of the lack of notice, approval officers will provide rationale for applying section 19(1.1) or 21(1.1), of AOPA, in their written reasons for the decision.

If an approval officer foregoes notice for an application amendment, those parties who were determined to be directly affected parties in the application being amended will receive a copy of the decision documents after they are issued.

8.7.3 Notice to municipalities—all applications

Approval officers will provide the local municipality with a copy of:

1. the Part 1 application, including the applicant's contact information, when the application is received by the NRCB, and
2. the Part 2 application, when it is deemed complete by the approval officer.

Other municipalities that are affected persons will be provided with a copy of the Part 2 application, and an opportunity to respond to the application (see section 8.10 of this policy).

This includes municipalities that are party to an IDP where the CFO site falls within the IDP boundary (see Board Decision 2022-02 Double H Feeders Ltd. at p. 7). This notification will provide reference to the Part 2 application. As set out in section 7.4 of this policy, this notice does not automatically make the other municipality a directly affected party.

8.7.4 Notice to Indigenous groups

The NRCB recognizes that, under section 35(1) of the *Constitution Act, 1982*, the existing Aboriginal and treaty rights of First Nation, Inuit, and Métis peoples are affirmed. The NRCB shares responsibility for taking action to practise genuine reconciliation as an ongoing process of establishing and maintaining respectful relationships.

The Crown's duty to consult may arise in the course of an application under AOPA, and the NRCB may need to identify and act under that duty. The NRCB process may play a role in consultation or engagement. If the boundary of a First Nation reserve, or a Métis settlement, falls within the notification distance for an approval or registration application the approval officer will send a notification letter. The purpose of the letter is to invite identification of adverse effects on the community's Aboriginal or treaty rights, if any. The approval officer may follow up with email or phone calls, and may involve the applicant in discussions.

The Aboriginal Consultation Office has confirmed that they have no formal role in NRCB processes.

8.7.5 Notice to referral agencies

The NRCB generally notifies other regulatory or government bodies of applications. The purpose is to provide notification, but not necessarily to invite comment on the application itself. Other bodies that administer other provincial legislation (e.g. *Water Act*, *Dairy Industry Act*) may be affected by the application.

For approval applications, approval officers provide the groups listed below, as relevant for the application, with a copy of the completed Part 2 application, including contact information (section 19(1) AOPA):

1. Alberta Environment and Protected Areas (e.g. regarding potential *Water Act* licensing and wetland requirements)
2. Alberta Agriculture and Irrigation (for dairy applications); AGI requires its own inspection of dairy facilities; AGI is also notified when concerns are raised by directly affected parties regarding the disposal of dead animals, regulation of which is enforced by Regulatory Services' inspection and investigation section
3. Alberta Transportation and Economic Corridors (when a provincial road access agreement is required, or when a CFO facility falls within a highway development control zone)
4. Alberta Health Services (AHS)
5. Irrigation districts (when the proposed development is located within an irrigation district, near irrigation infrastructure, or when the applicant states that their water supply will be supplied by an irrigation district)

For approval applications, an approval officer may become aware of a parallel proceeding under the *Water Ac*t, or under the *Environmental Protection and Enhancement Act*, relating to the CFO site. In that case, the approval officer will inquire with Alberta Environment and Protected Areas as to who else to notify (sections 20(1)(b)(vii) and (viii) of AOPA).

In the case of registration applications, as a courtesy, approval officers provide the groups listed above, as relevant, with information related to the application.

For any type of application, approval officers may also send relevant sections of written responses to referral agencies in order to assist the approval officer in making an informed decision (e.g. to AHS if a health-related concern is evident or raised by a directly affected party).

8.8 Notice of approval officer amendments under section 23 of AOPA

Section 23 of AOPA allows approval officers to amend permits "on their own motion"—in other words, without first receiving an application from the permit holder. Section 9 of the AOPA Administrative Procedures Regulation and Operational Policy 2016-2: *Approval Officer Amendments under Section 23 of AOPA* explain the notice and related procedures that guide approval officers under this section of the Act.

8.9 Notice for grandfathering determinations

Approval officers will occasionally need to determine whether a confined feeding operation is grandfathered under section 18.1 of AOPA. When making this grandfathering determination, approval officers will apply the notice and related procedures in section 11 of the AOPA Administrative Procedures Regulation, as well as in Operational Policy 2023-1: *Grandfathering (Deemed Permit)*.

8.10 Municipal responses

The local municipality is always a directly affected party and is provided with an opportunity to provide a written response to the application.

Adjacent municipalities that are affected parties (e.g. within the notification distance) are also provided with an opportunity to provide a written response to the application.

8.11 Notice of permit decisions

Approval officers will provide a copy of the permit decision to all directly affected parties and to all parties who submitted responses.

- From the date of receiving the decision, directly affected parties have 10 working days to request a review by the NRCB Board of the approval officer's decision on the application.
- From the date of receiving the decision, persons whom the approval officer did not find directly affected have 10 working days to request a review by the NRCB Board of the approval officer's determination that they were not directly affected.

Information on Board reviews is available in the *Requests for Board Review* Fact Sheet available on the NRCB website.

The request for review filing period will not include any portion of the Government of Alberta winter holiday closure between Christmas Eve and New Year's Day. The 10-day working period will be delayed so that it does not fall over the winter holiday closure. This is to ensure that anyone receiving a decision is able to review the decision and contact the manager of board reviews during this period.

8.12 Notice of permit cancellations

Under section 29 of AOPA, approval officers may cancel permits under several circumstances listed in that section, as discussed further in section 12, below. Section 12 of the AOPA Administrative Procedures Regulation and Operational Policy 2016-3: *Permit Cancellations Under AOPA Section 29* explain the notice and related procedures for permit cancellation decisions.

8.13 Deadlines for responses to applications

Under section 19 and 21 of AOPA, response deadlines are based on when an application is deemed complete, when a person receives notice of an application, or when they view an application. However, it is challenging for the NRCB to know on what date a person has received notice, or viewed an application. In general the NRCB has taken the position that:

For registration and approval applications

The date the notice is posted on the NRCB website is the official date the application is deemed to be complete. If notice is inserted in one or more newspapers, the last date of publication should guide approval officers regarding the date the application is posted on the website. The approval officer may advise the applicant before the official date that the application will be deemed complete. The approval officer may also send out notification letters before the official date.

For authorization applications

The deemed complete date is the date that the completed application is sent to the municipality.

The legislation provides for a variety of response deadlines. For example, an affected person and any party that has received notice of an approval application has 10 working days from the receipt of notice to apply for directly affected party status, and any member of the public who has viewed the application has 20 working days after the application is deemed complete to apply for directly affected party status. For a registration application, a notified landowner or occupant may make written submissions respecting whether the application meets the requirements of the regulations within 10 working days of being notified.

To be consistent with past practice and to allow for a more uniform system, the NRCB accepts responses for up to 20 working days after the application has been deemed complete.

Therefore for approval, registration, and authorization applications, the deadline for a response to be received by the NRCB is the deemed complete date plus 20 working days.

Under section 32 of the Administrative Procedures Regulation, a submission is deemed filed at the NRCB at the time it is received at the local NRCB office. This applies regardless of how the submission was sent, or by what method. If a submission is received by email on the deadline day, but after the NRCB's normal business hours (4:30 p.m.), that email is deemed to have been received on the next day that the NRCB offices are open.

8.13.1 Extensions to provide a response – municipalities

Sections 19 and 21 of AOPA do not provide extensions for municipalities to provide input. However, the NRCB has chosen to allow municipalities to request up to an additional 20 working days to provide their response to an application (for a total of

up to 40 working days). The NRCB recognizes that the procedures in place at municipalities may not allow a response within the 20 working-day period.

The request must indicate the reason for the extension and confirm that their response will be provided within the extension period.

The request for extension from a municipality must be received in writing within the initial 20 working-day response period.

Approval officers provide a written response to all extension requests.

8.13.2 Extensions to provide a response – directly affected parties

The NRCB interprets the Act as giving approval officers implied discretion to extend the deadline for a directly affected party to provide a response. In exercising this discretion, approval officers should consider granting extension requests only in exceptional circumstances.

8.14 MDS waivers

Section 3(1) of the Standards and Administration Regulation prohibits an approval officer from issuing a permit under AOPA unless the proposed development meets the "minimum distance separation" (MDS) to the nearest residences. However, section 3(6) of the regulation states that the MDS does not apply to a given residence if the owner of the residence waives the MDS requirement in writing. This includes a waiver for the minimum MDS of 150 metres.

For the purpose of an MDS waiver, the NRCB interprets the owner of a residence as the owner of the land on which the residence is located.

The NRCB also interprets this section as requiring every owner of the land on which the residence is located to sign the waiver (or otherwise authorize signature on their behalf). The NRCB will not provide land ownership information to the applicant.

Waivers are valid only for the application for which they are provided (not for future or additional applications).

When waivers are required, they should be submitted with the Part 2 application. If an applicant disagrees with an approval officer's judgement that a waiver is needed, section 4 of the AOPA Administrative Procedures Regulation and Operational Policy 2016-4: *Resolving Disputed Permit Information Requirements between the Applicant and Approval Officer* guide the approval officer.

Neighbours who sign waivers may revoke their waivers by notifying the NRCB in writing. Applicants often seek waivers early in the application process when complete information about the proposed development may not be available or finalized. By allowing neighbours to revoke their waivers, the NRCB recognizes that neighbours may want to change their minds after receiving more complete information about a proposed development.

In the case of **approval or registration** applications, neighbours may revoke their waivers only until the deadline for directly affected parties to submit a written response. After an approval officer provides notice of a completed application, all neighbours, including those who signed waivers, have a chance to review the completed application during the required notice period. The time period for providing a written response provides a reasonable

chance for a neighbour who signed a waiver at the outset to become fully informed about an application and to decide whether they want to revoke their waiver.

In the case of an **authorization** application, neighbours may revoke their waivers until the approval officer has issued the decision on the application.

Permit applicants may enter into an agreement with a neighbour to include a "no-revoke" clause in the waiver. The NRCB will not reject a waiver if it has a no-revoke clause. However, the NRCB will not enforce any such clause. In the NRCB's view, these clauses would be problematic for the NRCB to try to enforce because they would essentially require the NRCB to become the arbiter of private contracts. Therefore, the NRCB will allow a neighbour to revoke their waiver, even if the waiver has a no-revoke clause written in. If the neighbour revokes the waiver before the response deadline, the permit applicant may choose to pursue private remedies with respect to the no-revoke clause. Similarly, if there are other parts that constitute an agreement outside of the MDS waiver, the NRCB is not responsible for the validity of those parts or for enforcing the agreement.

As noted in section 7.2 of this policy, in the case of **approval and registration** applications, a person who signs an MDS waiver (when it is required) with respect to an AOPA permit application is considered a directly affected party for that application. A person who signs an MDS waiver in relation to an **authorization** application will not be a directly affected party.

8.14.1 Waiver form and fact sheet

The NRCB has developed an MDS waiver form and accompanying fact sheet (*Minimum Distance Separation (MDS)* Fact Sheet). These documents require the applicant to provide full disclosure, to ensure that neighbours fully understand the MDS requirement and the significance of the waiver.

Applicants and neighbours are not required to use the NRCB's waiver form and can add text to it or otherwise modify it. However, approval officers will not accept signed waivers that do not include the same declarations and information provided on the NRCB's form. (Personal phone numbers and email addresses for persons signing a waiver are collected for contact and record-keeping purposes and are **not** publicly released.)

8.14.2 Waivers with conditions

Waivers occasionally include conditions related to the application. If the conditions in a signed waiver are reasonably enforceable by the NRCB, the approval officer will treat the conditions as commitments by the applicant (see section 10.4 of this policy).

Approval officers have discretion to determine which conditions, if any, are enforceable.

8.15 Linking AOPA permits with water licences

CFOs and other manure storage facilities or manure collection areas requiring a permit under AOPA may also require one or more permits from other provincial agencies. The NRCB and Alberta Environment and Protected Areas (EPA) have adapted their procedures to allow for a one-window approach for linking AOPA permit applications with applications to EPA for a water licence under the *Water Act*. The choice to link applications, or not, is the applicant's.

If an applicant for an AOPA permit wants to link their AOPA application to a *Water Act* licence application:

1. The approval officer will require information for both the AOPA application and *Water Act* licence application prior to being able to deem the joint application complete.
2. The approval officer will issue a joint notice for both the AOPA permit and the *Water Act* licence application.
3. The notice will direct that all public responses must be sent to the NRCB within the required notice period. The approval officer will forward all responses relating to the water licence portion of the application to EPA. The deadline for responses is the longer of AOPA's 20 working days or the *Water Act*'s 30 calendar days.
4. The approval officer will not make a final AOPA permit decision until EPA issues the *Water Act* licence or states that there are no obstacles to its issuing the licence in the future.
5. If EPA denies the water licence, the NRCB approval officer will not issue the AOPA permit unless:
    a. the applicant demonstrates that an alternative water supply is available or that an additional licensed water supply is no longer needed, and
    b. the application otherwise meets AOPA requirements.

An applicant who chooses to link their AOPA permit and *Water Act* licence applications may withdraw their request to link the applications at any time until EPA makes a final water licence decision, or provides a statement indicating whether there are obstacles to issuing the water licence in the future.

If the applicant wants to delink the application process, they must advise the approval officer in writing. The approval officer will forward a copy of this request to EPA, while continuing to process the AOPA application.

Because the linkage process is voluntary, applicants for an AOPA permit, who do not link their applications, should be mindful of the risks of constructing a permitted facility under AOPA if they have not secured the water they need for their operation. The applicant must sign one of the four declarations in the application form before it can be determined to be complete. To that end, AOPA application forms include a declaration where the applicant states that they:

1. wish to apply through the NRCB for both the AOPA permit and a *Water Act* licence, or
2. wish to apply separately for the AOPA permit and the *Water Act* licence, or
3. do not require an additional water licence, or
4. are uncertain about the need for a *Water Act* licence.

The NRCB will not verify the accuracy of an applicant choosing the third alternative.

In the second and fourth alternatives, the declaration also acknowledges that:

1. if the NRCB issues an AOPA permit, neither that permit, nor any construction or addition of livestock under that permit, will enhance or be relevant to the applicant's eligibility for a water licence, and
2. any construction or livestock populating under an AOPA permit will be at the operator's own risk if a water licence is denied or if the operation is otherwise deemed to be in violation of the *Water Act*.

8.16 Withdrawal of applications

Voluntary withdrawal: An applicant may choose to withdraw an application at any time before the approval officer issues a decision on the application. To do this, the applicant needs to notify the approval officer of their wish to withdraw the application, in writing. Then the approval officer notifies all directly affected parties, as well as all parties who submitted a response to the application (AOPA Administrative Procedures Regulation section 6).

Involuntary withdrawal: An application may be deemed withdrawn if, for example, the applicant fails to file a Part 2 application within six months of filing the Part 1 application (or within a longer time, if granted an extension). In that case, the approval officer notifies directly affected parties identified to that point, typically municipalities.

9. Permitting criteria and choosing or amending permit conditions

AOPA sets out technical requirements and other permitting criteria. Sections 9.1 to 9.18 of this policy, address approval officer discretion in applying the legislative criteria, and clarify ambiguities in the criteria. Approval officers conduct and document a technical review of applications to determine whether the application meets the requirements of AOPA and its regulations.

9.1 Burdens and standard of proof

Applicants for AOPA permits have the burden or onus of demonstrating that the application meets the requirements of AOPA for the permit for which they have applied. Permit applicants who request a variance under section 17(1) of AOPA, or claim a deemed (grandfathered) permit under section 18.1 of AOPA, have the added burden of demonstrating why a variance should be granted, or why a specified deemed capacity should be recognized.

Parties that oppose a permit application (or that request additional conditions be attached to a permit) have the burden of proving all assertions that they make to support their position or concerns.

To meet the burden, the standard of proof is on a balance of probabilities (“more likely than not”).

9.2 Determining consistency with land use provisions

Sections 20(1), 22(1), and 22(2) of AOPA require an approval officer to assess whether an application for an approval, registration, or authorization is consistent with the “land use provisions” of the local municipal development plan and to deny any application that is inconsistent with those provisions. See section 9.2.7 for explanation of a “land use provision”.

Consistency with land use provisions is a threshold issue: if an application is inconsistent with the local land use provisions, the approval officer must deny the application under AOPA section 20(1)(a), 22(1)(a), or 22(2)(a) and need not consider other matters. Typically, when an application is denied for land use provision inconsistency, the application is still assessed as to whether the application can meet the other AOPA requirements. This may also include providing suggested conditions or requirements should the decision be overturned following a review by the Board.

9.2.1 Land use provisions in other statutory plans

The text of AOPA states that an approval officer will assess consistency of an application with land use provisions of the MDP. However, sometimes an approval

officer will also need to assess consistency with land use provisions of an intermunicipal development plan (IDP). This is due to the evolution of statutory plan hierarchy within the *Municipal Government Act*.

When Part 2 of AOPA came into force in 2002, municipal development plans (MDPs) were the highest level of statutory plans for municipalities under the *Municipal Government Act* (MGA). As defined in the MGA, "statutory plans" are MDPs, intermunicipal development plans (IDPs), area structure plans (ASPs), and area redevelopment plans (ARPs) adopted by the municipality.

In 2018, amendments to the MGA re-arranged the levels of statutory plans. In part, IDPs were elevated to prevail over all other statutory plans. In essence, the MGA now sets out a hierarchy of statutory plans in the event of a conflict:

IDP
↓
MDP
↓
ASPs and ARPs

However, AOPA was not consequentially amended and sections 20(1), 22(1), and 22(2) do not reflect the change to the MGA. At the time of this policy, AOPA continues to state that applications must be consistent with MDP land use provisions.

Nonetheless, the NRCB adopts a purposive approach to interpreting sections 20(1), 22(1), and 22(2) of AOPA to best meet the objects of the legislation. In Board Decision 2022-02 *Double H Feeders Ltd*. at pages 6-7, the NRCB Board directed approval officers to determine an application's consistency with both the MDP and an applicable IDP:

> The Board asserts that following the strict interpretation of AOPA and considering only the land use provisions found in municipal development plans (and not in intermunicipal development plans), has the potential to lead to an absurd outcome in the case where a conflict exists between and MDP and an IDP. Presumably it could also be the case where the MDP and IDP are generally consistent but the IDP provides more (or less) restrictive land use planning provisions related to the siting of CFOs.
>
> …. It is the Board's view that AOPA intended approval officers to use what at the time was the highest order municipal planning document, the MDP. Recent changes to the MGA has changed the hierarchy of planning documents, and deference to land use provisions within the hierarchy of the municipal planning framework makes sense and is consistent with a purposive approach to interpreting AOPA.

Accordingly, for all three types of application, where both an MDP and an IDP applies to the land in question, the approval officer will consider if the application is consistent with the land use provisions of both the MDP and the IDP.

In the event of a conflict between the MDP and the IDP, the approval officer will

1. identify the nature of the conflict between the statutory plans, and
2. to the extent of the conflict, disregard the MDP and form an opinion on whether the application is consistent with the land use provisions of the IDP.

In this way, despite the wording in AOPA, it is possible for an application to be inconsistent with the land use provisions of the MDP and still be granted.

On the same rationale, if there is a lower-ranked statutory plan (ASP, ARP) that conflicts with either the IDP or the MDP, the higher ranked statutory plan (IDP, MDP) will prevail.

For the purposes of this policy, if an IDP applies and if it conflicts with the local MDP, reference to the MDP also implicitly means the IDP.

9.2.2 Independent consistency determinations of land use provisions

The NRCB values and has regard for input from the municipality and other parties. An approval officer will request the local municipality's input regarding the application's consistency with land use planning provisions of the municipality's statutory plans.

Under AOPA, approval officers ultimately are tasked with making the consistency determinations. While approval officers will have close regard for municipal input, they are not bound to follow a municipality's views regarding the meaning and application of the land use provisions of its statutory plan.

9.2.3 New and amended municipal statutory plans

The MDP (or IDP) in effect on the date the permitting decision applies, even if it is not the same version that was in effect when the Part 1 application was received.

9.2.4 Relevance of land use bylaws in land use provision consistency

A land use bylaw is not a "statutory plan" under the MGA.

Land use bylaws may be relevant in a land use provision consistency analysis only when the land use provisions in the MDP (or IDP, as applicable) cannot be interpreted without referring to the land use bylaws.

9.2.5 Special Areas

The Special Areas Board is constituted under the *Special Areas Act*.

For Special Areas 2, 3, and 4, the Special Areas Board adopted a Land Use Order to regulate and control the use and development of lands and buildings within those Special Areas, and to facilitate orderly and economic development in those areas. Under these circumstances, if a Special Area does not have an MDP (or IDP), the NRCB interprets the land use order as equivalent to an MDP for the purposes of AOPA's consistency requirements. An approval officer may still find it useful to consider the land use order in addition to the MDP.

9.2.6 Interpreting municipal statutory plan terminology

Some municipal statutory plans set out land use restrictions that the municipality "requests" or "encourages" the NRCB to apply when considering AOPA permit

requests. Other municipal development plans state the development circumstances that the municipality will or will not "support," when providing input to the NRCB on an AOPA permit application. Unless the plan clearly states that the provision is intended to be discretionary, these types of provisions are interpreted as mandatory land use restrictions.

Unless specifically noted, terms such as "expansion" in municipal development plans will be interpreted to be consistent with the meaning under AOPA.

9.2.7 Scope of "land use provisions"

As noted above, the MDP consistency determination relates only to "land use provisions." AOPA does not define this term. Nor is it defined in the *Municipal Government Act*. The restriction to consider only "land use provisions" was added to AOPA by the Legislature in 2004.

In general, "land use provisions" in a statutory plan cover policies that provide generic directions about the acceptability of various land uses in specific areas. Land use provisions do not call for discretionary judgements relating to the acceptability of a given confined feeding operation development.

The NRCB considers procedural requirements not to be "land use provisions."

The NRCB also interprets "land use provisions" as referring to land use rules that do not require substantial discretionary, or subjective, evaluations of the merits of individual proposed developments.

Generally, approval officers have not considered setbacks that directly modify MDS to be land use provisions.

Some MDP (or IDP) provisions have both non-discretionary and discretionary components. For example, an MDP might preclude CFOs within a specified distance of a village, but state that this preclusion is inapplicable (or the setback area is reduced in size), for:

1. CFOs that use state-of-the art odour or runoff management technologies, or
2. CFOs that will not have unacceptable effects.

Other MDPs might have a blanket setback in the CFO part of the MDP, and have a generic waiver provision in the MDP's introduction that applies to all its policies.

All of these waiver-type clauses call for site-specific, discretionary judgements, which the approval officer will disregard as they are tests or conditions (see section 9.2.8 of this policy)

9.2.8 Tests or Conditions

Sections 20(1.1) and 22(2.1) of AOPA state that, when making their MDP consistency determinations, approval officers cannot consider land use provisions that are "tests or conditions related to the construction of or the site for" a CFO, or respecting the "application of manure, composting materials or compost." (The NRCB commonly refers to these types of provisions as "tests or conditions.")

The NRCB interprets the Act's references to "tests or conditions" as including provisions that require environmental assessments, as well as provisions that relate

to (or address) the same matters addressed in AOPA's *technical* requirements (e.g. specifications for manure storage facility liners, or requirements for run-on and runoff control). Exclusion zones around urban areas are generally not considered "tests or conditions."

9.2.9 Exclusion zones

In general, exclusion zones are considered to be land use provisions. In order to assist approval officers in determining the extent of exclusion zones, municipalities should clearly identify the zones on a map or plan and preferably include reasons or rationale for establishing them.

Unless specified, the exclusion zone will be measured to the closest part of a manure collection or storage area at a CFO.

9.2.10 Permit amendment applications and authorization applications

AOPA sections 20(1), 22(1), and 22(2) require approval officers to consider the land use provisions set out in a municipal development plan. From a practical purpose for amendment applications (all permits) and authorization applications, only those land use provisions that are directly applicable to the application are considered.

The Board has said: "When making a permit decision on a new application, approval officers do not have the jurisdiction to revisit previously issued permits" (Board Decision RFR 2020-09 Hutterian Brethren of Murray Lake at p. 3).

9.3 Consideration of land use bylaws

Land use bylaws are often used to determine the land zoning category for the purpose of MDS calculation and to assess whether the application is an appropriate use of land (see section 9.10.9 of this policy).

If an application for an **approval** is consistent with the land use provisions of the local MDP (or IDP, if applicable), the approval officer may still wish to refer to the local land use bylaw when considering:

1. matters that would normally be considered if a development permit were being issued (section 20(1)(b)(i)) in AOPA,
2. effects of the application on the economy and community, and the appropriate use of land (section 20(1)(b)(ix)) in AOPA, and
3. terms and conditions for the approval (section 20(3)(b) in AOPA).

For **registration** and **authorization** applications, the approval officer may wish to refer to the land use bylaw when considering terms and conditions of the permit under sections 22(1)(b) and 22(2)(b) in AOPA such as property line and road setbacks.

Land use bylaws are used in the siting of CFO facilities as they typically contain setback requirements from property lines and roads which are planning considerations included in development permits (see section 9.4 of this policy).

9.4 Municipal permitting matters (approvals only)

Under section 20(1)(b)(i) of AOPA, when reviewing approval applications, approval officers must consider "matters that would *normally* be considered if a development permit were being issued" (emphasis added).

The NRCB interprets the word “normally” in section 20(1)(b)(i) to limit the scope of municipal permitting matters to those that a municipality could address under the *Municipal Government Act*, the municipality’s own land use bylaw, and other permitting rules adopted by the municipal council.

Because consistency with the municipal land use provisions is directly addressed by AOPA, this section of the Act allows approval officers to consider other conditions that the municipality could reasonably require. Approval officers will consider the municipality`s response to the application. Approval officers have discretion to decide which conditions to include, but must justify their decision in the written reasons issued with their permit decision.

Approval officers will limit consideration of municipal planning matters to the actual footprint on which the CFO is located. Requirements that are normally considered include municipal setback requirements to property lines and roads. However, in NRCB Board Decision 2022-07 John Schooten & Sons Custom Feedyard Ltd. the Board recognized that the approval officer has authority to require a traffic impact assessment. Approval officers do not typically include matters such as road use agreements, shelterbelts, clean-up of yard site, dust control, etc. in their decisions.

9.5 Municipal permitting matters (registrations and authorizations)

Sections 22(1)(b) and (2)(b) of AOPA allow approval officers to include terms and conditions for registrations and authorizations “that a municipality could impose if the municipality were issuing a development permit” for the proposed development.

Approval officers may consider the municipality’s response to the application. Approval officers have discretion to decide which conditions they will include, but must justify their decision in the written reasons issued with their permit decision.

Approval officers will not consider municipal planning matters that do not apply to the actual footprint on which the CFO is located. Requirements that are normally considered include municipal setback requirements to property lines and roads. They do not include matters such as road use agreements, shelterbelts, clean-up of yard site, dust control, etc. in their decisions.

9.6 Effects on natural resources administered by ministries (approvals only)

Under section 20(1)(b)(vi) of AOPA, for approvals only, an approval officer must consider the effects the application may have on natural resources “administered by ministries.” Because AOPA defines “ministry” in reference to Alberta provincial departments, agencies, and Crown-controlled organizations, approval officers need not consider natural resources administered by federal ministries under this provision.

The NRCB interprets “natural resources” to mean subsurface or land surface natural features that are amenable to economic use. Examples of such natural resources in Alberta include water (e.g. lakes, rivers, irrigation systems), forestry and timber, gravel and mineral deposits, oil and gas, public lands subject to grazing leases or permits, soils, fisheries (under the *Fisheries (Alberta) Act*), and wildlife for hunting and trapping. In practice, these natural resources will only rarely be a factor in a given application under AOPA.

In these cases for an approval application, an approval officer notifies relevant referral agencies and other “ministries” of the application. In addition, an approval officer may consider information supplied by the applicant, a municipality, or neighbours that relate to natural resources.

9.7 Evidence and decisions from Environment and Protected Areas, Environmental Appeal Board (approvals only)

For approval applications only, section 20(1)(b)(vii) of AOPA requires that an approval officer consider:

1. any applicable statement of concern under the *Environmental Protection and Enhancement Act* (EPEA) (section 73 of EPEA);
2. any applicable statement of concern under the *Water Act* (section 109 of *Water Act*);
3. any written decision of the Environmental Appeals Board; and
4. any written decision of the Director under the *Water Act,*

"in respect of the subject-matter of the approval."

Section 20(1)(b)(viii) of AOPA also allows an approval officer to consider any evidence that was before the Environmental Appeals Board or *Water Act* Director in relation to their written decision.

For the purposes of this provision, the NRCB considers "the subject matter" of the potential approval to be the confined feeding operation, or the section (or half or quarter section) of land, to which the application relates.

Because the majority of applications under AOPA are not linked to *Water Act* applications or EPEA applications, in practice these statements of concern and written decisions do not generally coincide with AOPA applications.

Nonetheless, approval officers do generally send notification of an approval application to EPA, which administers both EPEA and the *Water Act*. At that time, approval officers may inquire whether EPA is aware of any statements of concern or written decisions that may fall under section 20(1)(b)(vii). In addition, the website of the Environmental Appeals Board (http://www.eab.gov.ab.ca/status.htm) provides information on past decisions and current hearing schedules.

9.8 Consistency with ALSA regional plan (approvals and registrations)

Sections 20(10) and 22(9) of AOPA require, for approval and registration applications (or amendments), that an approval officer act in accordance with any applicable *Alberta Land Stewardship Act (*ALSA*)* regional plan, and ensure that the application is compliant with the ALSA regional plan. For authorization applications, there is no such obligation.

In Alberta's Land Use Framework, there are currently two regional plans enacted under the ALSA: the Lower Athabasca Regional Plan and the South Saskatchewan Regional Plan. The regulatory details section of these regional plans are binding and mandate actions that land-use decision makers and users must comply with in order for the vision and outcomes to be achieved for the region. The strategic plan and implementation plan sections of regional plans are more in the nature of recommendations.

9.9 Minimum distance separation (MDS) determinations

Under section 3 of the Standards and Administration Regulation, an approval officer may not issue or amend a permit (approval, registration, or authorization), unless the proposed development meets the minimum distance separation (MDS) requirements in that section and in Schedule 1 of the regulation. MDS is set as of the date the applicant submits their Part 1 application (see section 8.2 of this policy).

Many of these MDS provisions are straightforward, but some require interpretation or policy development, as noted below.

If the MDS requirement cannot be met, AOPA allows the owners of the residences within the MDS to provide a waiver to this requirement (see section 8.14 of this policy)

9.9.1 Preliminary MDS calculations

Under section 3(4) of the Standards and Administration Regulation, approval officers will provide preliminary MDS calculations for AOPA permit applicants, when requested. These calculations help applicants with planning. They are not *final* minimum distance separation determinations.

Approval officers may also provide hypothetical MDS calculations for confined feeding operations when requested by a municipality. These calculations are not binding in actual permit proceedings. The NRCB also has an MDS calculator tool available on its website (www.nrcb.ca) for anyone to use.

9.9.2 Scope of "residences"

Under section 2 of Schedule 1 of the regulations, the MDS is measured from the closest proposed or existing MCA or MSF to the "outside walls of neighbouring residences (not property line)".

In the NRCB's view, it is reasonable and fair to interpret "residences" as constructed residential buildings, as well as residences that have not been constructed but that hold a valid municipal development permit at the time the AOPA Part 1 application is filed with the NRCB.

By the same token, an existing structure does not need to have received a municipal development permit to be considered a residence for MDS purposes, provided the structure otherwise qualifies as a residence (Board Decision 2015-02 William and Audrey Trenchuk).

AOPA does not define the word residence. (Nor is it defined in the *Municipal Government Act*.) Typically, there is no or little question as to when a building is a residence. However, when the character of a structure is not obvious, approval officers should determine whether the structure is a residence by considering all relevant factors. Noting that the purpose of MDS is to mitigate nuisance effects, the relevant factors generally include:

1. how the structure is classified by the municipality
2. whether the structure has, or should have, obtained a municipal development permit for residential use
3. the nature of the structure's construction
4. the types of uses that the structure could support, and
5. how the structure is currently being used and has been used in the past.

Schools, churches, and community halls are not considered residences for the purpose of determining MDS. For approvals, these buildings are normally given consideration when dealing with community impacts.

9.9.3 Large scale country residential

AOPA does not define the term large scale country residential or how it differs from other country residential developments for the purpose of determining MDS. The NRCB has determined that the threshold for large scale country residential is ten or more adjacent lots, each zoned as "country residential." (See Operational Policy 2018-1: *Large Scale Country Residential Developments*.)

9.9.4 Reducing minimum distance separation

The minimum distance separation reduces when an application to change the category or type of livestock at the confined feeding operation will result in a smaller MDS.

The MDS is also reduced when the permitted number of livestock at a CFO is reduced.

9.9.5 Expansion factor

As required by the Standards and Administration Regulation, Schedule 1, sections 6(2) and (3), approval officers must apply the expansion factor of 0.77 on expansion applications, if:

1. the minimum distance separation (MDS) cannot otherwise be met using the default expansion factor of 1.0, and
2. at least three years have elapsed since the most recent permitted construction was completed.

Permitted construction is the construction of facilities requiring a permit under AOPA.

The construction completion date is the date the NRCB provides written confirmation that all of the permitted construction has been completed.

There may be cases where not all of the permitted construction has been completed and the permit holder wishes to apply to increase livestock numbers or add other CFO facilities and needs to use the expansion factor. Use of the expansion factor can only be considered if the permit holder provides written confirmation that they wish to give up the portion of their permit that has not yet been constructed. In this case construction completion is interpreted as the date the NRCB provided written confirmation that the latest permitted construction has been completed. The permit authorizing the construction of the unconstructed facilities will also be amended to reflect the changes (facilities and livestock).

Under NRCB policy, approval officers must not reduce the minimum distance separation of an expanded operation to less than it would be if the 0.77 expansion factor were applied to the original MDS.

A separate situation is when a small CFO expansion triggers use of the 0.77 expansion factor and the result will be a smaller MDS than the distance to the residence that triggered the need for the expansion factor. This would result in a "zone" of land outside the expansion factor MDS and closer than the "triggering" residence. A new residence could potentially be sited in this zone, and would provide another barrier to future CFO expansion, in addition to the "triggering" residence. In this case, the approval officer may use their authority in section 3(7) of the Standards and Administration Regulation to reduce the MDS for the expanded operation to the

distance to the triggering residence. In this way, the expansion factor will be between 1.0 and 0.77 (See section 9.9.8 of this policy for an example of this exception).

9.9.6 Changing the category of livestock

An operator who wishes to change the livestock category for their operation (for example, poultry to swine) must submit an application for a new permit or a permit amendment. MDS will be calculated in accordance with the normal requirements for a permit.

9.9.7 Multi-species confined feeding operations

Schedule 1 of the Standards and Administration Regulation provides the formula for calculating MDS. Several of the variables in this formula are based on the category and type of livestock that the proposed CFO will contain and how that livestock's manure will be managed (dairy/swine as liquid/solid). The schedule provides limited guidance for calculating MDS for multi-species CFOs.

The total livestock siting units for a multi-species CFO are used to calculate the MDS.

The total livestock siting units are also used to determine the type of permit for the multi species CFO. This is done by converting total livestock siting units to each of the types of livestock at the CFO to determine an equivalent number of animals for each type. The permitting thresholds for these types of livestock are then used to determine if an approval or registration is required. The species with the lowest permitting threshold applies.

9.9.8 Modifying minimum distance separation

Section 3(1) of the Standards and Administration Regulation generally precludes approval officers from granting a permit for a proposed development that is within the prescribed MDS. However, section 3 provides two exceptions to this general rule:

1. Section 3(5) allows an approval officer to issue a permit, "despite" the general MDS rule in section 3(1), under several circumstances stated in that section.
2. Section 3(7) allows approval officers to reduce the MDS that would normally apply *for a proposed expansion* of a CFO or manure storage facility, if there is a residence within the MDS.

Section 3(5) provides broad language to exempt the MDS requirement from authorization applications. In general these exceptions apply when the application improves the CFO overall by reducing environmental or nuisance risks. For example, when:

- a new above ground manure storage tank increases the manure storage capacity and reduces the number of times in a year that manure must be spread, or eliminates the need to spread manure on frozen or snow-covered land, or
- a new manure storage facility constructed to current standards replaces an existing manure storage that poses a risk to surface or groundwater.

However, MDS will be applied on authorization applications when the facility being proposed is being located closer to a residence than existing CFO facilities, or

outside of the footprint (site) of the existing CFO facilities.

Approval officer discretion in using section 3(7) of the regulation is limited to unusual circumstances, e.g. not-for-profit confined feeding or research facilities associated with post-secondary educational institutions (see section 5.9 of this policy); or when an expansion factor between 1.0 and 0.77 is considered (see section 9.9.5 of this policy), and only when an applicant cannot meet the MDS using all other available tools provided in section 3 and Schedule 1 of the Standards and Administration Regulation. Approval officers must provide their reasoning for doing this if they choose to use this discretion, given that reductions defeat the important nuisance mitigation functions of MDS.

9.9.9 MDS for stand-alone manure storage facilities

The volume of the stand-alone manure storage facility determines the livestock siting units required to calculate the MDS. If the applicant specifies the type of manure to be stored at the stand-alone manure storage facility, that type of manure determines the MDS. In this case the permit will include a condition limiting the use of the manure storage facility to that type of manure. If a type of manure is not specified, the livestock type with the most restrictive MDS scenario determines the MDS (e.g. for a stand-alone liquid manure facility hog manure will be used for the type of manure to be stored). This will essentially allow the manure storage to be used for all types of manure storage with no restriction in the permit (see also section 5.4 of this policy).

9.9.10 Technology and dispersion factors

Applicants are responsible for providing evidence-based justification if they choose to apply for a different technology or dispersion factor used to calculate the MDS (Board Decision RFR 2011-05 Klaas Ijtsma at p. 5).

Similarly if a respondent requests a different factor they bear the burden to provide information to support their request.

9.9.11 Whether a CFO is one or more operations

Under section 3(11) of the Standards and Administration Regulation, if a person owns or controls manure storage facilities or manure collection areas on adjacent land parcels, the approval officer “must determine, for the purposes of calculating the minimum distance separation, whether that confined operation is one or more operations”.

Because the MDS is a function of the livestock and manure capacity of the CFO, determining whether facilities on adjacent parcels are one or more CFOs affects the MDS for the proposed development.

To help determine if the adjacent CFO facilities, under the control of a single owner, are one or more CFOs, approval officers take into consideration whether or not they share common components such as common access, weigh scales, offices, feed storages, feed mills, water storages, utility connections, and equipment; and whether they could potentially be sold separately without affecting the other adjacent CFO.

9.10 Technical requirements in AOPA and the Standards and Administration Regulation

9.10.1 Short-term manure storage

Short term manure storage allows for the temporary storage of manure prior to land application. It is not to be used for the housing and raising of livestock.

Short-term manure storage can only be used for solid manure. It can only be used for an accumulated total of seven months over a three-year period. It does not require a permit under AOPA but must meet specified requirements (see Standards and Administration Regulation section 5).

The CFO operator is responsible for ensuring that the requirements for short-term manure storage set out in section 5 of the Standards and Administration Regulation are met (see also the *Short-Term Solid Manure Storage Requirements* Fact Sheet and also section 5 of the regulation).

9.10.2 Setbacks from water wells

Section 7(1)(b) of the Standards and Administration Regulation prohibits the construction of new manure storage facilities or manure collection areas within 100 metres of water wells.

1. If the application is for a new MSF or new MCA and the facility has not already been built, the 100 metre setback to the water well applies. The approval officer has the discretion to exempt the applicant from the setback under either section 7(2)(a) or (b) of the regulation, as described below.

   Under section 7(2)(a) of the regulation, approval officers may grant an exemption from the 100 metre water well setback prior to construction of a MSF or MCA. The applicant bears the burden to "demonstrate" to the approval officer that the "aquifer … into which the water well is drilled is not likely to be contaminated by the facility."

   When considering whether to grant an exemption from the water well setback, approval officers:

   a. presume that the MSF or MCA poses a low risk of directly contaminating the aquifer, if the MSF or MCA meets AOPA groundwater and surface water protection requirements, and
   b. consider whether the nearby water well could act as a conduit for aquifer contamination from the MSF or MCA, if manure contaminants actually leak or run off from the MSF or MCA.

   When considering (a) above, site specific information may rebut this presumption and require further site specific investigation or considerations.

   When considering (b) above, water wells are assessed using the factors in the ERST and water well exemption tool. Sub-surface flows are presumed to follow the surface gradients unless evidence is provided to the contrary (local topographic information may be useful and help determine this).

   If the applicant commits to decommission the water well, or something else (such as changing the construction of the water well, or other protection), the approval officer will include that commitment as a condition in the permit.

2. If the application is for a new MSF or new MCA, or an expansion or modification of an existing MSF or MCA, and the construction has already started or the facility has already been built (unauthorized construction), the 100 metre setback to the water well applies. The approval officer cannot apply the exemption because of the construction. However, the approval

officer may consider an application for a variance of the regulation under section 17 of AOPA.

For a variance of the 100 metre setback regulation, under section 17 of AOPA, see section 4 of this policy. Tools such as the environmental risk screening tool (ERST) and the water well exemption screening tool, as well as input from other NRCB staff (e.g., the Science and Technology (SciTech) division, the Monitoring Review team (MRT), etc.), are available to assess risk to the environment and degree of protection and safety.

3. When there is an existing MSF or MCA that has a permit under AOPA (whether grandfathered or issued under AOPA), the 100 metre setback to the water well does not apply to the existing facility. Instead section 9.17 of this policy applies when assessing environmental risk of existing buildings and structures.

For a proposed addition to (or enlargement of) an existing MSF or MCA, the distance from the closest part of the facility (existing or proposed) to a water well is measured.

Under section 7(2)(b) of the regulation, an approval officer may require the owner of an MSF or MCA to monitor groundwater. Typically this will be in the form of testing raw water from the water well when the risk is considered to be low as a condition for granting an exemption from the 100 metre water well setback. Risk-based factors determine whether groundwater monitoring wells are required, and if so, the type of monitoring required (e.g., frequency, chemical parameters to be monitored).

9.10.3 Setbacks from springs

Section 7(1)(a) of the Standards and Administration Regulation prohibits the construction of new manure storage facilities or manure collection areas within 100 metres of springs.

Exemptions to this requirement are set out in section 7(2) of the Standards and Administration Regulation.

9.10.4 Setbacks from common bodies of water

Section 7(1)(c) of the Standards and Administration Regulation prohibits the construction of new manure storage facilities or manure collection areas within 30 metres of a common body of water.

Exemptions to this requirement are set out in section 7(3) of the Standards and Administration Regulation.

9.10.5 Flooded areas

The 1:25 year maximum flood level is available through Alberta Environment and Protected Areas for some water courses in Alberta. In areas where the 1:25 year flood level is unknown, the highest known flood level is to be used. This is typically determined though flood level markings on structures such as bridges or through discussion with persons having local knowledge.

9.10.6 Hydraulic conductivity for liners and naturally occurring protective layers

Sections 9(5) and (6) of the Standards and Administration Regulation set out the hydraulic conductivity requirements for liners and naturally occurring protective layers of proposed manure storage facilities and manure collection areas. Applicants are able to meet these hydraulic conductivity requirements in different ways. Technical guidelines that explain options are available on the NRCB website.

The naturally occurring protective layer or liner must be between the facility or area and the uppermost groundwater resource, but the protective layer or liner is not required to be in direct contact with the manure.

Field determined (i.e., in situ) hydraulic conductivity measurements are preferred and encouraged, particularly for naturally occurring protective layers. Sometimes applicants arrange for laboratory measurements of the materials that they intend to use for liners or protective layers. However, lab measurements of a sample of material taken from the field are not considered an accurate representation of the actual hydraulic conductivity values experienced in the field. This is because of the potential variability of soils, differences in compaction methods, and variances in compaction.

To account for these discrepancies, the lab determined hydraulic conductivity value is increased by one order of magnitude (a factor of 10). This increased value is used to estimate the actual (in field) hydraulic conductivity of the proposed liner or naturally occurring protective layer.

Hydraulic conductivity that is measured in situ is considered representative of the field conditions.

Applicants also have the option of using biological methods, monitoring, or performance standards to meet the AOPA requirements (see Standards and Administration Regulation section 9(7)). This is not commonly seen and usually involves ongoing monitoring and reporting requirements. The onus is on the applicant to provide sufficient supporting information to support an application using these protection systems. These are evaluated on a case-by-case basis.

Approval officers are able to access in-house expertise from the SciTech division and the MRT to assist with evaluating proposals.

9.10.7 Manure storage

Solid manure facilities such as feedlot pens are assumed to have nine months of manure storage since the manure can be accumulated within the pen. If solid manure livestock facilities have management systems that require the manure be removed on a regular basis, such as poultry broiler livestock systems, the applicant will need to demonstrate that they have sufficient manure storage facilities to accommodate nine months' worth of manure production. This can be achieved by using a permitted manure storage facility with sufficient capacity, or through the use of short-term manure storage sites, or a combination of both (regulated under the Standards and Administration Regulation at section 5 and see section 5 of this policy).

CFOs with liquid manure do not have the option to use short-term manure storage, and therefore must demonstrate that they have sufficient manure storage capacity to

accommodate nine months of liquid manure production at the CFO, as required in the Standards and Administration Regulation at section 10.

Alternatively the nine-month storage requirement can be reduced if the approval officer approves a manure handling plan submitted by the applicant.

9.10.8 Surface water runoff control

Runoff from uncovered MCAs and MSFs needs to be controlled (Standards and Administration Regulation section 6). Typically runoff control catch basins are used under section 19 of the regulation, however, other options for controlling runoff exist. Where alternatives to catch basins are proposed, the applicant is responsible for providing information to show how the AOPA requirements can be met.

Where a catch basin is constructed, it needs to be designed and constructed to ensure its physical integrity (inside and outside walls, bottom, liner and naturally occurring protective layer) are protected from erosion and damage. (see section 15 of the Standards and Administration regulation)

9.10.9 Presumptions for considering effects on the environment, community, and economy, and the appropriate use of land (approvals only)

For approval applications only, AOPA section 20(1)(b)(ix) requires approval officers to assess the effects of the proposed development on the environment, community, and economy, and whether the development is an "appropriate use of land." These are all broadly worded, open-ended factors whose consideration could require long investigations and subjective judgement calls.

To facilitate approval officers' consistent and efficient consideration of these factors, the NRCB has clarified the circumstances in which approval officers may *presume* that the effects of a proposed development will be acceptable and the proposed development will be presumed as an appropriate use of land.

The presumptions are decision-making guides and are not meant to be definitive or unchangeable.

1. **Acceptable environmental effects**

   If an application meets all of AOPA's technical requirements, the approval officer may presume that the environmental effects of the proposed development will be acceptable.

2. **Acceptable community effects and appropriate use of land**

   If an application is consistent with the land use provisions of the MDP (or IDP, if applicable), the proposed development is presumed to pose acceptable effects on the community and to be an appropriate use of land. An approval officer may also look to the land use bylaw for additional information (see also section 9.11 of this policy on cumulative effects).

3. **Acceptable effects on the economy**

   If an application is consistent with the land use provisions of the MDP (or IDP, if applicable), the proposed development is presumed to have an acceptable effect on the economy.

In order to apply these presumptions, approval officers will not limit their consideration of a municipality's relevant statutory plans (IDP, MDP, ASPs, etc.) to the "land use provisions" in those documents. For example, an approval officer may look at the land use bylaw for additional information.

The presumptions can be overcome or rebutted by contrary evidence obtained by an approval officer, or provided by a municipality, or other directly affected parties.

9.11 Cumulative effects

AOPA does not use the term "cumulative effects." The NRCB does not consider cumulative effects to be within an approval officer's regulatory mandate under AOPA. The NRCB's Board members have supported this approach in their reviews of approval officers' decisions. As the Board stated in Board Decision RFR 2018-11 500016 AB Ltd. at p. 2, "AOPA provides a province wide regulatory framework to manage CFO effects within agricultural communities. It does so by establishing regulatory siting, construction and operating standards that apply in relation to each application and operation".

Approval officers generally don't consider cumulative effects, even when this factor is included in an MDP provision, or when the issue is raised in a directly affected party's response.

9.12 Considering specific nuisance or health effects (approvals only)

Section 20(1)(b)(ix) of AOPA requires approval officers to consider the effects of a proposed approval on the "environment, the economy and the community and the appropriate use of land." In the NRCB's view, this mandate implies that approval officers have authority to consider nuisance and health effects when they review approval applications. Consideration of these effects is not required for registration or authorization applications.

It is difficult for approval officers to consider the effects that may stem from air emissions (e.g., odour, dust particles), for several reasons. The strength of the consideration will vary depending on the strength of the evidence, pertinent to the particular application put before the approval officer.

In addition, MDS is a requirement of AOPA to mitigate nuisance effects from CFOs. It is assumed that if a CFO meets the MDS requirement, the general nuisance impacts (e.g., odour, dust, noise, etc.) from the CFO are acceptable.

In the absence of specific information to show otherwise, approval officers generally do not consider the health and odour effects of CFO air emissions on their own initiative when reviewing approval applications.

If specific health-related impacts are identified by directly affected parties, approval officers will forward the concern to Alberta Health Services for its input and response.

9.12.1 Odour from a manure storage facility or manure collection area

Approval officers will presume that if a proposal for a new or expanded manure storage facility or manure collection area meets AOPA's MDS requirements, the odour effect on nearby residences will be acceptable. This also applies when the expansion factor is used.

Approval officers will presume that if a party has signed an MDS waiver, the party has considered the potential nuisance effects, and is giving up their right for the required minimum distance separation and its nuisance protection.

As with any presumption, approval officers should consider whether there is sufficient evidence from directly affected parties to rebut the presumption.

9.12.2 Fly and dust control

Section 20(2) of the Standards and Administration Regulation authorizes approval officers and inspectors to require a CFO to use a "specific dust or fly control program."

Well-managed CFOs are generally able to keep flies and dust at the CFO to acceptable levels. Given this practice, approval officers will not require a fly or dust control program as a matter of course when issuing permits under the Act. Approval officers may consider doing so if sufficient concerns are raised by the municipality or other directly affected parties or when an applicant proposes such a program.

If there is a history of fly or dust-related compliance issues at a CFO, an approval officer may also consider including a fly or dust control condition in the permit.

9.13 Concerns about municipal road use

Approval officers will not include conditions requiring operators to enter into a road use agreement with the municipality. Roads are a municipal responsibility and are not located on the CFO site. This is consistent with the Board observations that "NRCB field staff do not have the requisite expertise to develop, mediate or enforce road use agreements/conditions. Municipalities own the roads within their jurisdictions, have the knowledge and expertise to determine what is required in road use agreements and have the jurisdiction to implement and enforce road use agreements." (Board Decision RFR 2020-09 Hutterian Brethren of Murray Lake at p. 4)

In NRCB Board Decision 2022-07 John Schooten and Sons the Board recognized that the approval officer has authority to require a traffic impact assessment (see section 9.4 of this policy).

Section 11.1 of this policy provides guidance to considering whether to amend municipal permit conditions relating to road use agreements.

9.14 Concerns about water supply or quantity

Alberta Environment and Protected Areas (EPA) regulates the withdrawal of surface water or groundwater by livestock operations. Approval officers will not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations discussed in section 8.15 of this policy. In general, applications for an AOPA permit are referred to EPA for information. In the case of linked applications (a joint AOPA and *Water Act* application), water supply or quantity responses are provided to EPA.

9.15 Concerns about dead animal disposal

The Disposal of Dead Animals Regulation under the *Animal Health Act* regulates the disposal of dead livestock and is administered by Agriculture and Irrigation (Inspection and Investigation Section). AOPA does not address dead animal disposal.

Approval officers will not include new conditions relating to dead animal disposal in permits under AOPA. Specific commitments by the operator in their application relating to dead animal disposal will be included as conditions.

Some deemed permits contain conditions relating to dead animal disposal, often inherited from a municipal development permit. Section 11.1 of this policy, and Operational Policy 2016-1**:** ***Amending Municipal Permit Conditions,*** set out NRCB policy regarding whether approval officers can delete or amend these conditions.

9.16 Other concerns

9.16.1 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:

1. for approval and registration applications approval officers must act in accordance with, and ensure that the application complies with, any applicable ALSA regional plan (see section 9.8 of this policy), or
2. when implementation of the legislation or regulations has been delegated to the NRCB. (e.g., section 2(n) of Schedule 1 of the Water (Ministerial) Regulation).

Applicants are reminded that they are responsible for complying with other legislation that applies to their development, such as building codes, water licences under the *Water Act*, nuisance and general sanitation regulation, the *Dairy Industry Act* (for dairies), etc.

9.16.2 Past 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 permit conditions.

9.17 Environmental risk assessments – existing buildings and structures

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

The NRCB's assessment of environmental risks primarily addresses risks to surface water and groundwater. The environmental risk screening tool (ERST), the expertise of the NRCB's SciTech division, as well as the MRT can be used to assess these risks. The ERST provides low, moderate, or high potential risk ratings for surface water and groundwater for each facility screened. The ERST is a tool and may not be the only factor relevant to environmental risk. Professional judgement and common sense should be used when

determining if any action is necessary.

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

1. any of the information used to generate the prior risk assessment is outdated or materially incorrect,
2. the risk assessment methodology has materially changed since the prior assessment, or
3. the approval officer deems it appropriate to reconsider 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 relative risk, but are determined by the ERST scoring system to be low risk, approval officers may forego using the ERST for the other existing facilities. This is documented in the technical document that supports the decision.

9.18 Environmental risk assessments – greenfield sites and new buildings and structures

The environmental risk scores calculated using the ERST may not provide significant value when applied to greenfield sites and new buildings or structures that clearly meet all of the AOPA requirements for groundwater and surface water protection. However, approval officers may choose to apply the ERST to proposed facilities as a process to affirm their evaluation of risks to the environment or identification of site-specific factors that need to be considered in an approval.

There may be circumstances where, because of proximity to shallow aquifers, porous subsurface materials or surface water systems, an approval officer may require construction supervision, secondary containment, further protection and/or monitoring which may not be informed by the calculated ERST risk score or through AOPA requirements. The ERST can be useful for providing a framework to identify site-specific risks that should be factored in when permitting proposed facilities.

10. Permit terms and conditions

10.1 Mitigating environmental risks of existing facilities

When issuing a permit for an expansion or modification to an existing permitted and grandfathered CFO, and risks have been identified for any of the existing CFO facilities, conditions that require the permit holder to mitigate the risks will be included in the permit.

10.2 Construction deadlines

When issuing permits to construct new facilities or modify existing facilities, conditions setting construction completion deadlines are included, following Operational Policy 2015-1: *Construction Deadlines*.

10.3 Post-construction completion and inspection

Post-construction completion conditions are included 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, or manure impacted runoff in the facility (or the new or modified part of an existing facility, as appropriate).

Following the post construction 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.

10.4 Applicant commitments that are more stringent than AOPA

Permit applicants occasionally commit, in writing, 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.

Provided that these commitments deal with manure management, environmental protection, nuisance mitigation, or other subjects under AOPA, the approval officer will include them as permit conditions if:

1. the conditions are enforceable, and
2. the applicant remains committed to these more stringent standards or measures.

10.4.1 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 than comparable AOPA requirements. 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 the applicant has had in meeting the commitments; whether the commitments have been reasonably enforceable; and, whether directly affected parties object to removing the commitments. An applicant should try to address as many of these factors as possible in their application.

Operational Policy 2016-1: *Amending Municipal Permit Conditions* provides guidance when considering whether to delete or amend a condition that is more stringent than AOPA.

10.5 Qualified third party

Some permit conditions might call for a qualified third party to verify that permit requirements are met. When this is used, a qualified third party means a person who is qualified and has experience in the required field of expertise, is not directly associated with the CFO, and can verify defined requirements (e.g., might be required to verify the strength and type of a concrete mix and concrete reinforcements/sealants, or verify that the liner manufacturer's installation requirements are met for a synthetic liner). A qualified third party may include, but is not limited to, people with professional designations.

An approval officer has the discretion to specify whether a person with a professional designation is required to verify any permit requirements.

11. Amending and consolidating AOPA permits

11.1 Amending municipal permit conditions

CFO owners may apply to amend their AOPA permits under the amendment provisions of AOPA and the regulations. These amendment provisions relate not only to permits issued by the NRCB after AOPA came into effect in 2002, but to municipal permits that are deemed (i.e., grandfathered) permits under section 18.1 of the Act.

Operational Policy 2016-1: *Amending Municipal Permit Conditions* provides guidance when considering whether to amend deemed municipal permits, and who to provide notice to.

11.2 Approval officer amendments

Section 23 of AOPA allows approval officers to amend permits on their "own motion" i.e., without an amendment request from the permit holder. Section 9 of the AOPA Administrative Procedures Regulation and Operational Policy 2016-2: Approval Officer Amendments under Section 23 of AOPA provide guidance on these kind of amendments.

11.3 Decommissioning facilities

For the purposes of permit validity, decommissioning also includes the concepts of closure, abandonment, and reclamation in relation to manure collection areas and manure storage facilities. When a facility is decommissioned, it is no longer presumed to hold an AOPA permit. Decommissioning a facility shows intent to abandon a facility permanently. In these cases, the permit authorizing the facility is amended under section 23(1) of AOPA to remove facilities that have been decommissioned and adjust permitted livestock numbers accordingly (See Operational Policies 2016-2: *Approval Officer Amendments under Section 23 of AOPA*, and 2016-3: *Permit Cancellations Under AOPA Section 29*).

11.4 Amending Board-ordered permit conditions

Following their review of a permit decision, the NRCB's Board may require an approval officer to adopt additional permit conditions or to change existing conditions.

Over time, permit holders may find that a Board-required condition warrants amendment due to facility changes, changes in technology, or if the condition has become impractical or unfair. In these circumstances an applicant may apply to an approval officer for the condition to be amended or deleted. Approval officers may consider applications to amend Board-ordered conditions through the normal permit amendment process, without first consulting with the Board.

The permit holder has the burden of demonstrating that the proposed change is consistent with the spirit or purpose of the Board's decision to require the condition.

11.5 Consolidating permits

A CFO's previously issued permits (including deemed permits and authorizations) are consolidated when a new approval or registration, or an amendment of an approval or registration, is issued. Permit consolidation helps the permit holder, municipality, neighbours, and other parties keep track of a CFO's requirements, by providing a single document that lists all of the CFO's operating and construction requirements.

Approval officers will not consolidate previously issued permits when they issue an authorization (or an amendment to an authorization). Authorizations are not meant to be comprehensive statements of a CFO's permitted capacity, facilities, and operating

parameters.

Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, which then supersedes all existing permits, including all deemed permits.

Previously permitted and constructed facilities appear in the consolidated permit, typically in an appendix, together with the permit that authorized them.

When a new permit consolidates previous permits, the new permit then supersedes the previous permits. In the event the new permit is found invalid for some reason, the previous permits are then revived.

Permit holders are still bound by relevant previous permit application documents (e.g., plans, drawings, and specifications) when they receive a permit which consolidates other permits.

When consolidating permits into new registrations or approvals, approval officers only need to consolidate prior permits which have not previously been consolidated (e.g., if permit C (a registration or approval) consolidated permits A (a registration or approval) and B (an authorization), then permit E only needs to consolidate permit C (the previous registration or approval) and D (an authorization)).

11.5.1 Modifying or deleting existing terms and conditions as part of a consolidation

When consolidating permits, approval officers may need to change the wording of existing permit terms or conditions, or delete a term or condition entirely. In the context of permit consolidations, approval officers make these changes and deletions on their own motion, under section 23 of AOPA.

An explanation of the existing conditions that are not being carried forward or that are being changed is included in the decision summary.

The reasons for making these changes or deletions include:

1. to avoid duplication or to otherwise integrate all terms and conditions into one coherent permit document
2. to clarify an ambiguous provision
3. to update conditions to current NRCB practice (e.g., making a water well monitoring condition flexible)
4. to drop terms or conditions that are no longer needed.

As explained in Operational Policy 2016-1: *Amending Municipal Permit Conditions*, special considerations are required for modifying or deleting terms or conditions in deemed municipal permits.

12. Cancelling AOPA permits

AOPA section 29(1) allows approval officers (as delegated by the Board) to cancel existing AOPA permits in the following circumstances:

1. when the permit holder “requests or consents” (section 29(1)(a))
2. when a permitted CFO has been sold, assigned, or otherwise disposed of (section 29(1)(a.1))
3. when a permitted CFO or manure storage facility has been “abandoned” (section 29(1)(b))

Under section 29(2) of AOPA, a permit cancellation can include “terms and conditions”. This authority allows approval officers to include conditions to ensure that the CFO no longer poses a potential risk as part of their cancellation decision.

Approval officers should be aware of the following guidance when cancelling permits under section 29 of AOPA:

1. section 12 of the AOPA Administrative Procedures Regulation, which sets out the notice requirements for a permit cancellation (e.g., notice to affected parties is only required if the cancellation is because of abandonment and the permit holder objects).
2. Operational Policy 2016-3: *Permit Cancellations Under AOPA Section 29*, which provides guidance on determining when a CFO or MSF is abandoned
3. Operational Policy 2015-1: *Construction Deadlines*, which may apply when a construction deadline is missed.

12.1 Cancelling permits that include grandfathering determinations

On occasion, an approval officer may cancel an NRCB-issued permit, where a grandfathering determination was made as part of the permit application process and explained in the decision summary. In those cases, the CFO’s grandfathering determination (including the deemed capacity) is still in effect (see Operational Policy 2023-1: *Grandfathering (Deemed Permit) Policy*).

APPENDIX A: Other useful operational policies and guidelines

The following documents are publicly available on the NRCB website (www.nrcb.ca):

1. Operational Policy 2012-1: *Unauthorized Construction*
2. Operational Policy 2015-1: *Construction Deadlines*
3. MDS Waivers (*form* and *fact sheet*)
4. Operational Policy 2016-1: *Amending Municipal Permit Conditions*
5. Operational Policy 2016-2: *Approval Officer Amendments under Section 23 of AOPA*
6. Operational Policy 2016-3: *Permit Cancellations under AOPA Section 29*
7. Operational Policy 2016-4: *Resolving Disputed Permit Information Requirements between the Applicant and Approval Officer*
8. Operational Policy 2015-2: *Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations)*
9. Operational Guideline 2016-9: *Meat Goat CFO Determinations*
10. Operational Policy 2018-1: *Large Scale Country Residential Developments (for Determining Minimum Distance Separation)*
11. Operational Policy 2023-1: *Grandfathering (Deemed Permit) Policy*

Contact the Natural Resources Conservation Board at the following offices. Dial 310-0000 to be connected toll free.

Edmonton Office
4th Floor, Sterling Place
9940 - 106 Street
Edmonton AB T5K 2N2
T 780-422-1977

Airdrie Office
Airdrie Agricultural Regional Centre
97 East Lake Ramp NE
Airdrie AB T4A 0C3
T 403-340-5241

Lethbridge Office
Agriculture Centre
100, 5401 - 1 Avenue S
Lethbridge AB T1J 4V6
T 403-381-5166

Morinville Office
Provincial Building
201, 10008 - 107 Street
Morinville AB T8R 1L3
T 780-939-1212

Red Deer Office
Provincial Building
303, 4920 - 51 Street
Red Deer AB T4N 6K8
T 403-340-5241

NRCB Reporting Line: 1-866-383-6722
Email: info@nrcb.ca
Web address: www.nrcb.ca

Copies of the *Agricultural Operation Practices Act* can be obtained from the King's Printer at www.alberta.ca/alberta-kings-printer.aspx or through the NRCB website at www.nrcb.ca .