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RESOLVING DISPUTED PERMIT INFORMATION REQUIREMENTS BETWEEN THE APPLICANT AND APPROVAL OFFICER

Operational Policy 2016-4

Agricultural Operation Practices Act
January 26, 2016

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1. Introduction

Under the *Agricultural Operation Practices Act* (AOPA), NRCB approval officers are responsible for deciding whether to issue permits for the construction and operation of confined feeding operations (CFOs). Approval officers generally make a final decision on whether to issue a permit only after they deem the application technically complete and have notified—and considered all responses from—directly affected parties and referral agencies.

Section 2(2) of the Board Administrative Procedures Regulation gives approval officers wide discretion to decide when an application is complete and, if it is not complete, what additional information is needed to complete the application. (The board adopted this regulation under the authority given to it by AOPA.)

Depending on the scope and complexity of an application, applicants often must commit substantial time or expense to obtain the information necessary to demonstrate to approval officers that their application meets AOPA's requirements. However, applicants may be reluctant to obtain the required information, if they believe the information is unnecessary.

If an applicant disagrees with an approval officer that more information is needed, there should be an efficient process for resolving the disagreement. If the disagreement cannot be resolved with the approval officer, the applicant should be entitled to ask the board to review the approval officer's decision that more information is needed. However, the board will only review a final permit decision.

Under the NRCB's approval policy, an applicant has six months to complete a Part 2 application from the date they submit the Part 1. Approval officers can deny the application after this six month period, but they are not required to do so. Therefore, an approval officer's decision that more information is needed may not lead promptly to a final permit decision. Accordingly, an applicant may not have an immediate chance to request a board review of an approval officer's decision that more information is needed.

This policy provides several processes to resolve disputes about whether the application information is sufficient. One of these processes allows permit applicants to request a board review of the approval officer's decision. Another process enables applicants and approval officers to resolve the dispute without the need for a board review. As with all permitting policies, approval officers have discretion to modify this policy when its strict application would be clearly unfair, or in other necessary and appropriate circumstances

2. Informal processes to resolve disputes about requested information

When an approval officer directs an applicant to provide further information and the applicant declines to do so, the approval officer will initiate an informal internal review. The approval officer will request other approval officers and the director of applications to provide early feedback on whether the missing information is really needed to determine whether the relevant technical requirements are met. When provided at an early stage, this feedback may help identify avenues for compromise regarding the type or amount of information needed.

Upon the applicant's written request and with the approval officer's agreement, the director of applications may also set up a more structured dispute resolution process, led by either an NRCB staff or an external consultant.

3. Public notice and courtesy and referral letters

Part 4 below sets out two options for completing the application process. Under both options, the content of the public (newspaper) notice, and courtesy letters, will be identical to the public notice and courtesy letter templates used for all permit applications where notice and courtesy letters are provided.

The letter to the municipality and referral agencies will follow the applicable template for all permit applications, except that the first sentence of the template will be deleted and replaced with the following statement:

The attached application forms have been completed. The approval officer has required the applicant to provide additional information. However, the applicant has requested the approval officer to continue processing the application based on the information provided by the applicant to date.

4. Completing the application process

If the internal review or dispute resolution process is unable to resolve the matter, the approval officer will then deem the application *forms* complete and continue processing the application, by conducting the normal public and agency notice and comment process that applies to the type of permit being considered. After completing this process, the approval officer may either:

- 1) Deny the permit application if the approval officer continues to believe that the applicant has not provided sufficient information to demonstrate that the applicant has met one or more technical requirements; or,
- 2) Issue the permit, with a condition requiring the missing information and prohibiting the permit holder from commencing construction until the information has been provided and approved by the approval officer in writing.

Procedural issues are addressed below.

4.1 Option 1: Denying an application

If the permit application is denied, the decision summary will identify the technical requirement in question, and explain what additional information was needed and why it was needed to determine whether the requirement was met. The decision summary will also state that, because the applicant has not provided the information in question, in the opinion of the approval officer, the applicant has failed to show that they've met the relevant technical requirement.

If the information provided in the application and accompanying materials is sufficient for other technical requirements, the decision summary will include findings as to whether these other requirements have been met.

4.2 Option 2: Granting an application with a condition to provide the missing information

As an alternative to denying the application, the approval officer may grant the application if it meets all other AOPA requirements and standards, but include a condition that requires the applicant to remedy the information deficiency. To ensure that the deficiency is sufficiently remedied, the condition will prohibit the permit holder from commencing construction until the information has been provided and the approval officer has determined and confirmed, in writing, that the information is sufficient to meet the applicable technical requirement.

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The condition will also include a deadline for providing the information. The condition will state that the permit will automatically expire if that deadline is missed, unless the deadline is extended by the NRCB, in writing. (If the information relates to only one of several permitted facilities, the automatic cancellation provision will be tied to the permission for that facility.)

After deeming a permit application form complete, approval officers must follow the directions in part 3 above with respect to public notice and courtesy/referral agency letters. These directions apply even if an approval officer is considering granting a permit with a condition that requires follow up information.

If an approval officer decides to issue a permit with this condition, the approval officer must justify the condition in the decision summary. This justification must address: what kind of additional information is needed, why it is needed, and why the gap can be adequately filled by issuing the permit with a condition requiring the permit holder to provide the necessary information.

This option should be used with caution because, under this approach, the public and referral agencies (where applicable) are unable to assess the relevant information before providing their written responses to the application.

This approach might also preclude directly affected parties from requesting the board to review an approval officer's decision that the information submitted under the condition adequately demonstrates that the AOPA requirement is met.

For these reasons, when using this option, the approval officer should consider whether any steps should be taken to ensure that directly affected parties have a chance to request a board review of the information provided under the condition.

Contact the Natural Resources Conservation Board at the following offices. Dial 310.0000 to be connected toll free.

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4th Floor, Sterling Place
9940 - 106 Street
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T (780) 422.1977 F (780) 427.0607

Calgary Office

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Calgary AB T2P 0R4
T (403) 297.8269 F (403) 662.3994

Lethbridge Office

Agriculture Centre
100, 5401 - 1 Avenue S
Lethbridge AB T1J 4V6
T (403) 381.5166 F (403) 381.5806

Morinville Office

Provincial Building
201, 10008 - 107 Street
Morinville AB T8R 1L3
T (780) 939.1212 F (780) 939.3194

Red Deer Office

Provincial Building
303, 4920 - 51 Street
Red Deer AB T4N 6K8
T (403) 340.5241 F (403) 340.5599

NRCB Response 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 Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.

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