NRCB | Natural Resources Conservation Board

www.nrcb.ca

APPROVALS

Operational Policy 2016-7

Agricultural Operation Practices Act
January 26, 2016

Updated May 8, 2018

TABLE OF CONTENTS

1. Introduction

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

Chief among 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.)

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* provides policies to guide approval officers' exercise of this discretion, and to clarify the intent of AOPA and the regulations where those laws are unclear. Many of the policies below address the merits or substance of approval officers' permitting decisions, while other policies address the processes for making those decisions. All of the policies are meant to promote consistent and efficient permitting decisions.

AOPA's overall purpose provides an overarching guide for approval officers' exercise of discretion, and for interpreting the act. AOPA does not have a purpose statement. However, in a 2006 memorandum of understanding, the NRCB and the ministers of Alberta Agriculture and Forestry and Environment and Parks agreed 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.

Approval officers are to exercise their discretion, and apply this policy and the requirements in the act, in the spirit of this legislative purpose. The directions provided by this policy are to be generally applied, but remain subordinate to the act and regulations. In addition, approval officers have discretion to modify this policy when its strict application would be manifestly unfair, or in other necessary and appropriate circumstances.

Operational Policy 2016-7 updates the policies covered in the 2008 *Approvals Policy*. It also includes many policies that the NRCB has adopted on a stand-alone basis since 2008. For convenience, these stand-alone policies have been included in the appendices. (Future stand-alone policies will be added as additional appendices.)

Some NRCB policies relate to both permitting and compliance functions and therefore may not be included in this document. 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 *NRCB application process*, 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. For purposes of this document, and unless otherwise noted:

- *CFO* includes associated manure collection areas and storage facilities,
- *CFO owner* includes operators and permit holders as well as owners of confined feeding operations,
- *Permit* means an NRCB-issued or deemed approval, registration or authorization,

- *AOPA Administrative Procedures Regulation* is used instead of the Agricultural Operation Practices Act Administrative Procedures Regulation, and
- *Statement of concern*, or SOC, refers to an affected or directly affected party's response to an application notice, and includes responses that support the application.

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

1.2 Guiding principle

The act and its regulations provide the requirements by which all permit applications are measured. 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.

1.3 Public transparency

The government of Alberta is committed to public transparency. Consistent with this government-wide commitment, the NRCB applies the principles of transparency to its decision making processes.

The NRCB considers all applications and any supporting documentation to be public records, including waivers, and public and agency responses to application notices, unless the party submitting the record requests that all or part of the record be treated as confidential. These requests should be submitted to the approval officer and will be decided by the NRCB's chief executive officer (CEO), according to the disclosure exemptions in the *Freedom of Information and Protection of Privacy Act* (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.

Part 1 and Part 2 applications and the public notice are publicly accessible under Notice of Applications on the confined feeding operation page of the NRCB website. Since November 2014, NRCB practice is to disclose applicant phone numbers and email addresses only to municipalities and referral agencies. Requests for other records from a permit file will be considered according to AOPA and the *Freedom of Information and Protection of Privacy Act*.

As another reflection of the NRCB's commitment to transparency, approval officers will provide complete written reasons for their permitting decisions. These reasons will typically be reflected in either the decision summary or the technical review documents. In some instances they may be indicated in other parts of the approval officer's record.

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

1.4 Assistance to operators, municipalities and the public

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

1.5 Impartiality

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

2. Use of discretion—guiding principles

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

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

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

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

2.1 Protecting groundwater and surface water

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

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

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

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

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

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

2.2 Professional judgement and experience

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

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

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

2.3 Consistency

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

2.4 Public, agency and municipal participation

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

3. Variance applications

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

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 final variance decision as part of their final decision on whether to issue the requested permit. In other words, variance decisions are not final until the final permit decision is made, following the internal review process discussed in part 2 above.

4. Activities that 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 or manure collection areas, as specified in the Part 2 Matters Regulation. 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.

4.1 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 are construction are explained in Operational Policy 2012-1: *Unauthorized Construction*.

4.2 CFO facilities that are not used to store manure

Section 13 of AOPA prohibits the construction (or expansion) of "confined feeding operations" without a permit (when a permit is otherwise required under the Part 2 Matters Regulation). Section 14 of the act prohibits the construction of a manure storage facility (MSF) and a manure collection area without a permit. (This discussion refers to manure collection areas as MSFs.) The CFO and MSF categories substantially overlap because all CFOs have manure storage facilities.

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, most facilities that are used to confine and feed livestock are also manure storage facilities because livestock generally produce manure wherever they are, so all facilities that confine livestock also store livestock manure.

That said, not all components of all livestock confinement facilities are needed to store livestock manure (e.g., feed troughs). In addition, while most floors of livestock confinement facilities serve manure storage functions, AOPA does not provide direction as to whether other parts of those facilities (e.g. barn walls and roofs; pen fences) also provide manure storage. However, AOPA requires permits for entire CFOs, not just for the MSF components of CFOs. Therefore, the NRCB views the act's permit requirement as precluding construction without a permit of any part of a CFO facility that is used to confine or feed livestock. (This discussion is not relevant to "ancillary structures" under section 1(1)(a.1) of the Part 2 Matters Regulation.)

4.3 Manure storage facilities at below registration threshold CFOs

As noted in the introduction to part 4, above, AOPA requires an approval or registration for CFOs that are above the permit thresholds specified in the Part 2 Matters Regulation.

In the NRCB's view, a manure storage facility at a CFO that is below the AOPA permit threshold is part of the CFO. This is true even if the manure storage facility has a capacity for more than 500 tonnes of manure. Because the manure storage facility is part of the CFO, and the CFO is below the permit threshold, the manure storage facility does not require an AOPA permit.

4.4 Manure storage facilities for predominantly liquid manure

Section 4(1) of the Part 2 Matters Regulation requires an authorization for manure storage facilities that contain a total of 500 tonnes or more of solid manure for seven months or more in any calendar year.

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. This section suggests that all stand-alone liquid manure storage facilities require a permit whether they are below or above the 500 tonne threshold. However, this interpretation potentially contradicts other parts of AOPA, which require permits only for CFOs above a certain livestock capacity threshold.

The NRCB does not consider storage time to be relevant for liquid manure storage facilities, but storage capacity is considered relevant. A liquid manure storage facility is, by definition, permanent. Manure or manure remnants are present in the facility year-round. For practical purposes, the NRCB considers one cubic metre of liquid manure to approximately equal one tonne of solid manure.

NRCB policy:

- requires permits for all liquid manure storage facilities at above threshold CFOs.
- requires permits for stand-alone liquid manure storage facilities with a capacity of 500 cubic metres or more.
- does not require permits for liquid manure storage facilities at below-threshold CFOs, regardless of the manure storage facility size.

4.5 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.

In these circumstances, if a permit is required to construct a facility for more livestock, it makes sense that a permit should also be required to increase livestock numbers, even if construction isn't needed. For these reasons, the NRCB interprets the term "expansion" to include an increase in animal numbers and manure 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. 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. If sections 2(1) and 3(1) require a permit, then this increase must be an "expansion" under those sections.

If an increase in manure production from a change in livestock type is an expansion, an increase in manure production that is caused by an increase in the same type of livestock should also be considered an expansion.

4.6 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.

To determine whether a proposed facility is a seasonal feeding and bedding site rather than a CFO, approval officers will follow the *Guide for Distinguishing Between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations*).

4.7 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 permit thresholds listed in Schedule 2 of the regulation. These thresholds are written as minimum numbers of livestock, for each type of livestock within 10 different livestock categories. (The number of different livestock types per category range from one, for bison, to eight, for poultry.)

A change in livestock type within a category (for example, feeders to finishers or finishers to feeders) does not require an amendment application as long as the CFO's annual manure production does not increase. Operators who plan to change livestock type within a category should contact an NRCB approval officer to confirm whether they require an amendment application and to have their permit information updated.

Approval officers will refer to the threshold numbers in Schedule 2 either for proposed expansions of existing operations that involve an increase in livestock numbers within a given type, or for proposed changes to livestock types within a given category that will result in increased annual manure production. (See part 4.5, above, regarding livestock expansions that involve increases in animal numbers and/or annual manure production.)

The Schedule 2 livestock number thresholds are simple to use to determine whether a permit is needed and, if so, which type of permit is needed, when an operation has only one livestock type. However, the schedule does not address how the thresholds should be applied when an operation proposes to have two or more different livestock types.

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

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 number of animal units is more than the animal unit-based Schedule 2 threshold for any of the proposed livestock types.

See part 8.6.5 of this policy for temporary changes in the use of a confined feeding operation.

4.8 Confined feeding facilities at educational or research facilities

AOPA provides mixed signals as to whether CFOs owned and operated by non-profit educational or research organizations are subject to the act's permit requirements. On the one hand, the act defines "agricultural operations" as agricultural activities—including raising livestock—conducted "for gain or reward or in the hope or expectation of gain or reward…." On the other hand, the act's definition of CFOs does not distinguish between for profit and not for profit livestock operations.

From a policy standpoint, non-profit CFOs used for educational or research purposes should generally be encouraged, given their public benefits—including their benefits to the livestock industry. However, CFOs generally pose the same nuisance and environmental risks as other CFOs, whether they are operated on a non-profit or for-profit basis.

Given these conflicting legislative signals and competing policies, the NRCB believes that a middle ground is warranted for government-sponsored non-profit educational or research CFOs. Under this approach, the NRCB will apply the act's CFO permit requirement to government-sponsored non-profit educational or research CFOs (if the CFOs are above the permit threshold in the Part 2 Matters Regulation and are otherwise subject to the act's permit requirement). The NRCB will treat these CFOs as subject to the operational requirements of the Standards and Administration Regulation.

However, when deciding whether to issue a permit, an approval officer has discretion to reduce (but not waive) the required minimum distance separation from nearby residences. This discretion is in section 3(7) of the Standards and Administration Regulation. (This discretion is in addition to the approval officer's general variance authority in section 17 of the act, and their MDS waiver authority for the specific circumstances listed in section 3(5) of the Standards and Administration Regulation.)

4.9 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.

5. Who holds permits

AOPA permits are issued for livestock operations at specific land locations, and are considered by the NRCB to "run with the land."

This means that a person (or corporation) who buys land with CFO facilities that have been permitted under AOPA (or that have a deemed permit) automatically becomes the permit holder for the facilities. As the permit holder, the person is legally entitled, at least for AOPA purposes, to carry out the activities allowed in the permit. They are also legally responsible for fulfilling the permit's terms and conditions. If the existing CFO has a deemed permit under AOPA, the land owner can continue to operate the CFO unless it is creating a risk to the environment. In addition, the land owner needs to apply for a new permit under the act if they wish to expand the CFO.

There may be instances where people who do not own the land may apply for and be issued an AOPA permit for a confined feeding operation or manure storage facility on the land. The applicant must have the landowner's permission to submit the application. If a permit is issued, the NRCB will treat the landowner as a co-permit holder with the applicant. Any permits issued under these circumstances also "run with the land."

In addition, a person who "operates" but does not own the CFO may also be considered a co-permit holder with the CFO owner, even if the operator was not a named applicant on the CFO's permit application. An example of such a deemed permit holder is a person who leases CFO facilities from the facilities' owner, in order to operate the facilities as a CFO for the person's own benefit.

6. Affected party and directly affected party determinations

Under sections 19 and 21 of AOPA, "affected persons" are generally entitled to notice of permit applications; any affected persons, and others, who qualify as "directly affected" are entitled to provide written responses to a permit application, and to request that the NRCB's board members review approval officers' final permit decisions.

Sections 19 and 21 of the act give directly affected party status for approval and registration applications to municipalities, the operator, and parties who can demonstrate that they are directly affected by the application. For authorization applications, the only directly affected parties are municipalities and the operator.

Those sections of the act, and 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 "affected party radius"—varies depending on the livestock capacity of the proposed or existing confined feeding operation.

The following policies address how the NRCB interprets and implements the AOPA provisions and regulations that relate to affected persons and directly affected parties.

6.1 Processing requests for directly affected party status

Sections 19 and 21 of AOPA provide a two-step process for parties that 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 (commonly known as a "statement of concern") 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:

- request for directly affected status, and accompanying reasons why the parties should be considered directly affected; and,
- concerns with, or other comments on, the merits of the permit application.

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, unless the issues or concerns they identify are echoed or cross-referenced in a submission by another party that is directly affected.

6.2 Persons who are presumed to be directly affected

The NRCB's long-standing policy has been that people who reside on, or own, land within the affected party radius also qualify for directly affected party status, if they provide a timely statement of concern or statement of support in response to the public notice.

The NRCB also considers 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.

AOPA and the Part 2 Matters Regulation prescribe other categories of parties that are automatically deemed to be directly affected by an application.

6.3 Directly affected status for parties that are not affected persons

Sections 19 and 21 of AOPA make it clear that parties can qualify as directly affected parties even if they are not affected persons, if they meet their burden of proving—based on written reasons—that they are directly affected by a permit application.

Under section 8(1)(b) of the AOPA Administrative Procedures Regulation, an application for directly affected party status must be in writing and must explain how the party may be directly affected by the approval officer's decision on the permit application.

AOPA does not define the term "directly affected" for this purpose. In the NRCB's view, a person should be considered directly affected if they can demonstrate that:

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

These matters are ordinarily addressed in the written statement of concern (for parties outside of the affected party radius). If they are addressed in a separate document, that

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

document must be submitted to the approval officer by the statement of concern deadline provided in the public notice.

6.4 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 there is another, neighbouring municipality, which has a border that is within the affected party radius from a proposed development. In these cases, the neighbouring municipality is an affected party under section 5(c) of the Part 2 Matters Regulation. The NRCB presumes this affected neighbouring municipality is also a directly affected party, as per the NRCB policy noted above.

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

That said, if the neighbouring municipality refers to its MDP in its written response to the application, the MDP may be relevant to an approval officer's consideration of other AOPA permitting factors, when relevant, including the effects of the application on the community and whether the proposed development is an appropriate use of land.

In addition, if the neighbouring municipality has entered into an inter-municipal development plan (IDP) with the local municipality, and the IDP is cross-referenced in the host municipality's own MDP, the approval officer will need to consider the confined feeding provisions in the IDP, if any, as part of their MDP consistency determination.

6.5 Easement holders

Easement holders are not generally considered an owner of the land.[2] Therefore, they do not automatically qualify as affected parties even when the area of land covered by the easement is within the affected party radius.

An easement holder may still qualify as a directly affected party, if they can show that their easement will be directly affected by a proposed development, whether the subject land is within or outside of the affected party radius (see part 6.3 of this policy).

Easement holders should respond to a permit application notice by the statement of concern deadline. They must explain in their response why they believe they are directly affected by the application.

The NRCB requires applicants to indicate easements and rights of way on the site plan submitted as part of their application, and contact information for the easement holders.

Operators are responsible for following the setbacks and any other requirements of the easements. The NRCB is not responsible for enforcing those requirements.

2. See, for example, *Husky Oil Operations Ltd. V. Shelf Holdings Ltd.*, 1989 ABCA 30 and *Stott v. Butterwick*, [19980 ABQB 760].

6.6 Petitions

Under AOPA, a person who requests to be considered a directly affected party and who wishes to respond to the merits of an application, must do both by providing written submissions within the deadline set out in the application notice.

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.

Approval officers will consider petitions just as they consider any other written submissions. Petitioners must print and sign their names and must also provide the addresses or legal land locations of their residence or owned land, and their contact information (telephone, fax, and email address), as set out in section 8(3) of the AOPA Administrative Procedures Regulation. This information must be legible to allow 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.

Using this information, approval officers will determine whether petition signers qualify as "affected parties" according to the same legislative test that applies to writers of individual submissions. Petition signers who do not qualify as affected parties will therefore not automatically qualify as directly affected parties. However, approval officers will still consider whether petition signers are directly affected parties, based on the factors described in part 6.3, above. As with people who provide individual submissions, petition signers have the burden of demonstrating that they are directly affected based on these factors. 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.

If one or more, but not all, signers of a petition qualify as directly affected parties, an approval officer will generally consider the overall petition as a valid response to the application notice, even if one or more of the other signers are not directly affected parties. In addition, regardless of whether any signers are directly affected parties, 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.

6.7 Organizations

6.7.1 Approval applications

Section 19(4) of AOPA states that an individual "person" or "organization" that is notified of an approval application may request to be considered a directly affected party with respect to that application. As with all parties, organizations must submit a timely written request for directly affected party status, and have the burden of demonstrating in their written request that they—or their members—are directly affected, based on the factors listed in part 6.3, above.

6.7.2 Registration applications

Section 21 of AOPA states who may qualify as directly affected parties with respect to registration applications, using the terms "persons," "owners" and "occupiers" of land. Unlike section 19(4), section 21 does not specifically include "organizations."

Notwithstanding this omission, the NRCB believes that AOPA intended to allow organizations to qualify as directly affected parties for registration applications, *if* the organizations meet the criteria that apply to other parties.

6.7.3 Authorization applications

Under section 21, only applicants and municipalities qualify as directly affected parties for authorization applications.

6.7.4 Organizations' participation as non-directly affected parties

An organization that is not a directly affected party may act as an agent for a directly affected party with respect to an AOPA permit application. The organization must provide clear evidence that the party has appointed the organization to be its agent for this purpose.

If an organization has not been appointed as an agent for a directly affected party, approval officers will still consider a submission from an organization with respect to a permit application, if the submission raises issues that are relevant to the application, and if the organization's submission is:

- included in or attached to a written submission from a directly affected party, or
- separately filed but cross-referenced in the directly affected party's submission.

7. 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 parts 1 and 2 above.

7.1 Two-part application process, establishing MDS and extensions

AOPA refers to filing a single "application" for a given permit. However, the AOPA Administrative Procedures Regulation (s. 3) 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. Section 3 of the regulation gives approval officers discretion to decide the format and required content of an authorization application. For consistency with the application format for approvals and registrations, approval officers will generally also require a two-part application for authorizations.

Under the AOPA Administrative Procedures Regulation (s. 2(2)), the Part 1 form (for approvals and registrations) requires the applicant's name and contact information, the numbers, category, and type of livestock that will be housed at the CFO, and the legal description of the land where the CFO is located. The Part 2 forms require more comprehensive and technical information, including site and design plans, and all the information needed by the approval officer to assess whether AOPA's specific, technical requirements have been met.

The act and the AOPA Administrative Procedures Regulation also give approval officers discretion to require applicants to provide more information than that required by the part 1 and 2 forms.

The purpose of having a two-part application process is related to section 3(2) of the Standards and Administration Regulation, which states that the minimum distance separation (MDS) "must be calculated … as of the date the application is received" by the approval officer. In other words, applicants must meet the MDS to those neighbouring residences that exist or have a development permit as of that application filing date.

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. However, the Part 1 application form states that an approval officer may deny an application if an applicant fails to submit their Part 2 application within six months after filing their Part 1 application.

If the applicant wishes to increase the permitted number of livestock after submitting a Part 1 application, they must submit a new Part 1 application that states the revised livestock numbers. The application's ability to meet the MDS requirement will be determined on the date the revised Part 1 application is received.

If the applicant wishes to decrease the permitted number of livestock after submitting a Part 1 application, the submitted Part 1 must be amended. The date the Part 1 was originally received will stand and be used as the date on which the application's ability to meet the MDS requirement is determined.

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 considerable time and resources needed to finish all of the 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.

In fact, if the NRCB applied the MDS requirements only as of the date the full application form was submitted (but not necessarily when the application was "deemed complete"), this approach might encourage applicants to skimp on the information provided with their application form in order to file their applications as soon as possible so they could "lock in" the earliest possible MDS calculation date. The end result would be somewhat like the two-step application process that the NRCB uses, because applicants would likely need to supplement their original applications.

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, with reasons, 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 approval officer will consider the extension request and advise the applicant of their decision, in writing. If an extension is granted, the approval officer must provide a copy of this decision to the municipality in which the proposed development is located.

7.1.1 Applicant requests to delay processing a completed permit application

Applicants occasionally ask approval officers to delay processing their permit application even after the approval officer has deemed their application complete. Sometimes this request is made because the municipality is in the

process of revising its municipal development plan and the expected changes will be favorable to the applicant. Another example is when the applicant needs to consider changing their proposed facility design due to changed construction cost estimates.

As noted in part 7.1 above, approval officers generally give applicants six months to file their part 2 application after filing their part 1. In addition, under section 6(4) of the AOPA Administrative Procedures Regulation, applicants have six months to provide any supplemental information requested by an approval officer. However, neither AOPA nor the regulations state when approval officers must make a final decision on a completed application. 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 MDS date.

Approval officers have broad discretion for scheduling their decision process. This discretion includes deciding whether to delay a decision at an applicant's request. In some instances, approval officers can accommodate a delay request without changing their own decision schedule.

In other instances, applicants may request a delay well past the approval officer's planned decision date. In these instances, an approval officer will not grant a delay of more than six months past the approval officer's planned permit decision date. Approval officers will consider delay requests (up to six months) 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.

To make these assessments, approval officers will consider all relevant factors, including:

- how long a delay the applicant is requesting
- if the delay request is premised on the future occurrence of an independent event, how likely that event is to occur (e.g. the municipal council's revision of its MDP)
- the length of the application process, and causes for any delays in that process, up until the date the applicant made their request for delay. If an approval officer grants an applicant's request for a delay of one month or longer, the approval officer will provide notice of the delay to the municipality and to all parties that submitted statements of concern.

7.2 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:

- If an operator wishes to change a condition in an existing permit or modify a permitted CFO facility, with no increase in livestock numbers, the operator must apply for an amendment to the existing permit.

- If an operator wishes to change a condition or modify a facility, and to increase the permitted number of livestock, the operator must apply for a new approval or a registration.

When issuing a new or amended approval or registration permit, the approval officer shall consolidate the existing permit(s) with the new permit. See part 10.5, below.

7.3 Resolving disputed application information requirements

Under section 4(1) of the Board Administrative Procedure Regulation, an approval officer may—after receiving a full permit application—require the applicant to provide any additional information the approval officer considers necessary.

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

7.4 Applicants' responses to concerns raised by directly affected parties

Approval officers will forward to permit applicants all written responses to an application submitted by directly affected parties. Concerns raised by referral agencies will also be shared with the applicant. Approval officers will provide applicants with a copy of all statements of concern received for their application within five working days, or longer if warranted by exceptional circumstances, after the response deadline closes. Permit applicants may then respond to the concerns, in writing, to the NRCB, if they choose to do so. Their responses must be filed within 20 working days or longer, if deemed reasonable by the approval officer.

An approval officer may also determine that an applicant's response to a concern raised by another party is needed for the approval officer to adequately address the concern. In this case, the approval officer will request that the applicant respond to the concern at issue. An applicant's failure to provide a response, when requested to do so, may result in postponement of the decision or denial of the application.

7.5 Notice of permit applications

Sections 19(1) and (1.1), and 21(1) and (1.1) of AOPA 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.

7.5.1 Public notice—approval and registration applications

Approval officers will publish notice of approval and registration applications in the primary local paper that serves the area within which the development is proposed. If publication in the local paper is not feasible, alternative forms of notice may be provided by other appropriate means, as determined by the approval officer. Public notice and a copy of the application are posted on the NRCB website until the deadline for written responses from referral agencies and directly affected parties.

Approval officers will provide a copy of the application to parties when requested.

7.5.2 Courtesy letters—approval and registration applications

Where practicable, approval officers will send courtesy letters to "affected persons," based on the names and addresses provided by the local municipality, of residents who live on or own property within the affected party radius. (The affected party radius is set out in section 5 of the Part 2 Matters Regulation.) Courtesy letters are not the official notice for the application, but refer the recipient to where the official notice is published and include contact information for the NRCB.

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

7.5.3 Notice to municipalities—all applications

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

- the Part 1 application, including the contact information, when it is submitted by the applicant, and
- the Part 2 application, when it is deemed complete by the approval officer.

The local municipality will be provided with an opportunity to respond to the application (see part 7.8 of this policy, below).

7.5.4 Notice to referral agencies—all applications

Approval officers will provide the agencies listed below with a copy of the completed Part 2 application, including contact information, as applicable to the application:

- Alberta Health Services (all applications)
- Alberta Environment and Parks, water licensing branch (all applications)
- Alberta Agriculture and Forestry (AF) (for dairy applications. AF requires its own inspection of dairy facilities. AF is also notified when concerns are raised by directly affected parties regarding the disposal of dead animals)
- Alberta Transportation (when a provincial road access agreement is required)
- Irrigation districts (when the proposed development is located within an irrigation district or when the applicant states that their water supply will be supplied by an irrigation district)

Authorizations will not be sent if the referral agency's regional office advises, in writing, that they do not want to receive them.

When referral agencies are notified of an application, they will be given a chance to provide comments on the application. Approval officers will also send relevant sections of statements of concern to referral agencies to comment on.

7.5.5 Notice to parties in an exclusion zone

When a CFO is proposed in an exclusion zone, as identified in a municipal

development plan, approval officers will notify the official bodies for which the exclusion zone has been developed (for example, the town council or First Nation). The approval officer will also send courtesy letters to individuals who reside on or own land in the exclusion zone, only if those individuals are within the "affected party" notification radius, in accordance with section 7.5.2 of this policy.

7.6 Notice of permit decisions

Sections 20(4), 22(3) and (3.1) of AOPA require all directly affected parties and parties that submitted statements of concern (but were not determined to be directly affected) to receive a copy of the approval officer's decision and be advised of their right to apply for a board review of the approval officer's decision. The AOPA Administrative Procedures Regulation requires parties to file their request for review within 10 working days of the date the party received the approval officer's decision.

7.7 Notice of permit cancellations

Section 29 of AOPA allows approval officers to cancel permits under several circumstances listed in that section, as discussed further in part 11, below. Section 12(2) of the AOPA Administrative Procedures Regulation and Operational Policy 2016-3: *Permit Cancellations Under AOPA Section 29* (updated April 2018) explain the notice and related procedures for permit cancellation decisions.

7.8 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 approval officers will apply when amending permits under this section of the act.

7.9 Notice for grandfathering determinations

As explained in part 12 of this policy, below, approval officers will occasionally need to determine, before considering an authorization application, whether a confined feeding operation is grandfathered under section 18.1 of AOPA. When making this "stand alone" grandfathering determination, approval officers will apply the notice and related procedures in the AOPA Administrative Procedures Regulation.

7.10 Municipal responses

The local municipality, and adjacent municipalities whose boundaries are within the affected radius, are provided with an opportunity to respond to the application.

Approval officers will accept oral responses from municipalities only if there are no concerns with the proposal and approval officers will confirm the oral response by email. Concerns must be provided in writing.

7.11 Deadlines for responses to applications

7.11.1 Approval applications

Section 20 of AOPA states that directly affected parties must have a "reasonable opportunity" to review the information relevant to the application

and to provide evidence and written submissions in response to the application. Section 19 sets out the timelines an approval application must be available to members of the public for viewing and the timelines for their response:

- The application must be available for viewing for 15 working days after it is deemed complete.
- Any party that has received notice has 10 working days from the receipt of notice to apply for directly affected party status.
- Any party that has viewed the application has 20 working days after the application is deemed complete to apply for directly affected party status.

The NRCB has simplified the timelines by providing a common deadline of 20 working days after the application is deemed complete for all parties, including municipalities, to provide their response.

If a statement of concern is received by mail after the due date, but is post-marked on or before the due date, the approval officer will accept the statement of concern provided that the decision has not been issued. Statements of concern sent by other means must be received on or before the deadline to ensure they are considered.

7.11.2 Registration and authorization applications

- **Registration applications**

  Section 21 of AOPA requires affected parties to apply for directly affected party status and provide statements of concern regarding the application within 10 working days of notification. The NRCB allows a five working day period for delivery of mailed statements, consistent with Alberta's *Interpretation Act*. In order to simplify the administration of these different timeframes, the NRCB has adopted a 20 working day timeline for parties to respond to registration applications.

  Section 21 does not provide an opportunity for affected municipalities to submit comments on a registration application.[3] However, the NRCB views this as an unintentional omission, rather than legislative intent to preclude municipal participation. The NRCB's interpretation is based on section 21, as read in its entirety, and is consistent with AOPA's provisions for municipal comment on approval applications, and with AOPA's general purposes. In any event, decisions issued by the NRCB board and the provincial court have taken the approach that notice provisions should err on the side of being more, not less, inclusive.

  Approval officers will also give copies of registration applications to referral agencies and municipalities, and ask them to comment.

3. Section 21(1) *requires* that affected municipalities receive notice of registration applications and section 21(2) states that affected municipalities are directly affected parties. Section 21(3) provides for affected individuals' opportunity to comment on registration applications, but does not refer to affected municipalities in this context.

- **Authorization applications**

  Section 21 of AOPA does not provide for public notification for authorization applications, but does require approval officers to notify local municipalities.

  Approval officers will also notify and provide copies of the authorization application to referral agencies for their information, and give them an opportunity to comment on the application.

  The NRCB has also adopted the 20 working day timeline for municipalities and referral agencies to respond to authorization applications.

7.11.3 Deemed complete date (for notification)

- **Approval and registration applications**

  Under sections 19(4) and 21(3)(a) of AOPA, persons may apply for directly affected party status within 20 days after an approval officer has deemed an application for an approval or a registration to be complete. Approval officers will consider the date the public notice appears in the local paper as the official date the application is deemed to be complete. This approach ensures that all parties have the full 20 working days to respond after being notified of the application.

  If public notice is inserted in more than one paper, the last date of publication is the date the application is deemed complete. 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 courtesy letters before the official date.

  Approval officers will adjust the 20 working days to reflect the date the notice is published, if the local paper fails to publish the public notice on the insertion date.

- **Authorization applications**

  Under section 21(3)(a) of AOPA, the only directly affected parties for authorization applications are the operator and the local municipality. For these applications, the approval officer will set the deemed completed date as the date that the information is sent to the municipality.

- **Timeline for the applicant to provide additional information**

  The approval officer may identify additional information required to support an application after it has been deemed complete, or as a result of information provided by referral agencies or statements of concern. The approval officer will consult with the applicant to determine a reasonable time period for the applicant to provide the additional information. This time period should typically not exceed six months but may be extended at the discretion of the approval officer.

7.11.4 Extensions to provide a response—municipalities and referral agencies

Sections 19 and 21 of AOPA do not provide extensions for municipalities and referral agencies to provide input. However, the NRCB has chosen to allow municipalities and referral agencies 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 and referral agencies may not allow a response within the 20 working day period. Their request must indicate the reason for the extension and must confirm that their response will be provided within the extension period.

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

Approval officers will respond within five working days, in other than exceptional circumstances, with a written decision on the request.

7.11.5 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 statement of concern. In exercising this discretion, approval officers should consider granting extension requests only in exceptional circumstances.

7.12 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.

At the outset of their application process, permit applicants typically request preliminary MDS calculations. When MDS problems are identified, applicants usually also try to obtain any needed MDS waivers.

If MDS waivers are required, approval officers will not deem an application complete until all of the required waivers have been submitted. If an applicant disagrees with an approval officer's judgement that a waiver is needed, the approval officer will follow the process provided in Operational Policy 16-4: *Resolving Disputed Permit Information Requirements between the Applicant and Approval Officer*.

Neighbours who sign waivers may revoke their waivers by notifying the NRCB in writing. Applicants seek waivers early in the application process when complete information about the proposed development may not be available. 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.

The NRCB will allow neighbours to revoke their waivers only until the deadline for directly affected parties to submit a statement of concern (SOC). 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 an SOC 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.

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 (up until the SOC deadline), even if the waiver has a “no-revoke” clause written in. If the neighbour revokes the waiver before the SOC deadline, the permit applicant may choose to pursue private remedies with respect to the no revoke clause.

The approval officer will forward any revoked waiver to the applicant for their information as soon as practical after receiving it.

As noted in part 6.2, above, 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.

7.12.1 Form and fact sheet

The NRCB has developed a waiver form and accompanying fact sheet. These documents require the applicant to give 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 unless they include the same declarations and information provided on the NRCB’s form. (This required information includes personal phone numbers and email addresses for all persons signing a waiver. The information is needed for contact and record-keeping purposes but is not publicly released.) The approval officer will advise the applicant if a waiver does not meet these requirements.

7.12.2 Waivers with conditions

Waivers occasionally include conditions. If the conditions in a waiver are reasonably enforceable by the NRCB, and the applicant and neighbour have both signed the waiver, the approval officer will treat the conditions as commitments by the applicant. Under the policy in part 9.4, below, the approval officer will adopt the waiver conditions as enforceable conditions in the permit (if the approval officer ultimately issues a permit for the proposed development). If a waiver includes conditions that are not enforceable under AOPA, the approval officer will advise the applicant, and attempt to advise the party(s) that signed the waiver, that the condition(s) in the waiver are not enforceable and cannot be accepted. The approval officer will require the neighbour to confirm, in writing, whether the waiver still stands without the condition(s). Approval officers have discretion to determine which conditions, if any, are enforceable.

7.13 Linking AOPA permits with water licences

CFOs and other manure storage or collection facilities requiring a permit under AOPA may also require one or more permits from other provincial agencies. Neither AOPA nor any other legislation requires or provides for a coordinated or linked process to streamline these permit proceedings. However, for the sake of efficiency, the NRCB and Alberta Environment and Parks (EP) have adapted their procedures to provide a one-window approach for linking AOPA permit applications with applications to EP for a water licence under the *Water Act*.

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

- The approval officer will issue a joint public notice for both the AOPA permit and the *Water Act* licence application.
- 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 EP. The deadline for responses is the longer of AOPA's 20 working days or the *Water Act*'s 30 calendar days.
- The approval officer will not make a final AOPA permit decision until EP issues the *Water Act* licence or states that there are no obstacles to its issuing the licence in the future.
- If the ministry denies the water licence, the NRCB approval officer will not issue the AOPA permit unless:
  - the applicant demonstrates that an alternative water supply is available or that additional licensed water supply is no longer needed; and
  - 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 EP 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 Environment and Parks, and will continue to process the AOPA application and issue a decision.

The linkage process is voluntary. It is reasonable to ensure that applicants for an AOPA permit, who do not link their applications, have acknowledged the risks of constructing a permitted facility under AOPA if they have not secured the water they need for their operation. Approval officers will not determine an application to be complete until the applicant has signed one of the four declarations in the application form. These state that either:

- the applicant wishes to apply through the NRCB for both the AOPA permit and a *Water Act* licence, or
- the applicant wishes to apply separately for the AOPA permit and the *Water Act* licence, or
- the applicant does not require an additional water licence, or
- the applicant is uncertain about the need for a *Water Act* licence.

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

- 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.
- 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*.

In addition, the applicant must indicate if their confined feeding operation is located in the South Saskatchewan River Basin and acknowledge that the basin is currently closed to new surface water allocations.

8. Permitting criteria and choosing or amending permit conditions

AOPA sets out technical requirements and other permitting criteria. Parts 8.1 to 8.8 of this policy, below, 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.

8.1 Burdens and standard of proof

Applicants for AOPA permits generally have the burden or onus of demonstrating that the application meets the requirements of AOPA for the permit they have applied for. Similarly, permit applicants who request a variance under section 17(1) of AOPA have the onus of demonstrating why a variance should be granted.

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

For all burdens of proof, the *standard* of proof is the balance of probabilities ("more likely than not").

Approval officers will apply all burdens of proof fairly, flexibly and pragmatically.

8.2 Determining consistency with municipal development plans

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 (MDP) and to deny any application that is inconsistent with those MDP provisions.

8.2.1 Independent MDP consistency determinations

The NRCB values and has regard for input from the municipality and other parties. An approval officer will provide notice to the local municipality and request its input regarding the application's consistency with the municipality's MDP. An approval officer also has discretion to request additional clarification or other input from the municipality regarding its MDP provisions.

While approval officers solicit the input of municipalities, under AOPA approval officers ultimately must interpret MDPs and make the MDP consistency determinations required by the act. Thus, approval officers will have close

regard for municipal input but are not bound to follow a municipality's views regarding the meaning and application of its MDP, or the case by case opinion of its municipal council.

8.2.2 New and amended municipal development plans

In making MDP consistency determinations, approval officers will use the MDP in effect on the date they issue their permitting decision, even if it is not the same version of the MDP that was in effect when the Part 1 application was received.

8.2.3 Relevance of statutory plans and land use bylaws to MDP consistency determinations

Approval officers will consider land use provisions in:

- other planning documents that are "statutory plans" under the *Municipal Government Act*, if the municipal development plan cross-references those other planning documents.
- a municipality's land use bylaw, if the text of the municipal development plan provides a clear intent to adopt a land use bylaw provision by referring to it as a land use provision. See *Folsom Dairy Ltd.*, NRCB Board Decision 2015-01, pp. 5-6.

If a municipality is too small to require a municipal development plan under the *Municipal Government Act*, and the municipality has not adopted an MDP, the approval officer will consider the municipality's land use bylaw and any other relevant planning document.

8.2.4 Interpreting municipal development plan terminology

Some municipal development 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, approval officers will interpret these types of provisions 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.

8.2.5 Municipal development plan "land use provisions"

As noted above, the MDP consistency determination relates only to MDP "land use provisions." AOPA does not define this term. Nor is it defined in the *Municipal Government Act*, which is the statute by which MDPs are adopted.

The NRCB considers MDP provisions that require certain procedures, such as a meeting with the local community, as outside the scope of MDP "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.

Some MDP 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:

- CFOs that use state-of-the art odour or runoff management technologies, or
- 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 MDP policies.

All of these waiver-type clauses call for site-specific, discretionary judgements. In these instances, approval officers must decide whether to:

- disregard the discretionary waiver part of the MDP provision (or the stand-alone, generic waiver provisions), and then apply the setback requirement; or,
- disregard *both* the waiver and the setback components.

The approval officer's choice between these two options will be based on how the setback and waiver are worded and on whether the approval officer believes the municipal council would have wanted to enforce the setback if the waiver could not be considered.

Approval officers will only consider CFO exclusion zones (or setbacks) identified in the MDP if the exclusion zones are not based on and do not directly modify AOPA's minimum distance separation requirements.

8.2.6 Municipal development plan "tests and conditions"

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

AOPA's provisions for ignoring MDP "tests or conditions" are in addition to the act's provisions that limit MDP consistency determinations to MDP "land use provisions." However, it is unclear whether the Legislature considered MDP "tests or conditions" to be a sub-set of MDP provisions that are, or that are not, "land use provisions."

The NRCB interprets the act's references to MDP "tests or conditions" as covering MDP provisions that require environmental assessments, as well as MDP 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). MDP setbacks from lakes or other water bodies are generally not considered "tests or conditions."

8.3 Consistency with land use bylaws

Approval officers will deem an application to be consistent with a land use bylaw, when the bylaw is relevant, if the bylaw lists the proposed development as either a permitted or discretionary use. In some cases, other land use bylaw provisions (e.g. exclusion zones) may preclude a consistency finding. Ordinarily, if a type of proposed land use is not listed in a land use bylaw as either a permitted or discretionary use for a given zoning district, the municipality intended to preclude that land use in that zoning district. (Some land use bylaws state that an un-listed land use may still be permitted if it is similar in nature to a listed land use.) However, this approach may not apply to CFOs. In some or many land use bylaws in Alberta, municipal councils did not list CFOs as either permitted or discretionary land uses simply because of the NRCB's primary role—since AOPA took effect on January 1, 2002—for permitting "above threshold" CFOs. In other words, the councils felt that it was unnecessary to address CFOs in their land use bylaws given that the NRCB, rather than municipal councils, is responsible for permitting above threshold CFOs.

Some land use bylaws state that this is the reason why they do not address CFOs. However, not all land use bylaws make this intention clear.

For simplicity and consistency, approval officers will presume that a land use bylaw did not intend to preclude a proposed new or expanded CFO in a given zoning district, if the bylaw omits CFOs from its lists of permitted and discretionary land uses, *and* the bylaw does not otherwise expressly prohibit CFOs in that district.

8.4 Municipal permitting matters

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). Sections 22(1)(b) and (2)(b) of the act 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.

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. Sections 22(1)(b) and (2)(b) imply the same limitation.

Because consistency with the municipal land use provisions is directly addressed by AOPA, these sections of the act allow approval officers to consider other conditions that the municipality could reasonably require. Approval officers will consider the municipality`s response to the application and conditions the municipality indicates it would like to have included with the permit. Approval officers have discretion to decide which conditions it will include, but must justify their decision in the written reasons issued with their permit decision.

8.5 Increase in livestock numbers

Approval officers will only approve an increase in livestock numbers if there is enough permitted capacity to house the livestock numbers at the confined feeding operation.

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

8.6.1 Preliminary MDS determinations

Under section 3(4) of the Standards and Administration Regulation, approval officers will provide preliminary MDS determinations for prospective AOPA permit applicants, when requested. These determinations help applicants with planning. They are not *final* minimum distance separation determinations. Approval officers will not make a final MDS determination until after they have considered the completed permit application, responses from directly affected parties, and all other relevant materials.

Approval officers may also provide MDS calculations for confined feeding operations when requested by a municipality. For this purpose, the approval officer should use existing or projected livestock categories, types and numbers provided by the municipality or other party. These calculations are for hypothetical purposes only; they are not binding in actual permit proceedings.

8.6.2 Scope of “residences”

Under section 2 of Schedule 1 of the regulations, the MDS is measured from the proposed development to the “outside walls of neighbouring *residences* (not property line)” (emphasis added).

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. (For these unconstructed residences, approval officers will consult site plans and engineering designs that are referenced in a valid municipal development permit, to determine the location of the residence’s outside walls.)

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.

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. The range of these factors varies from case to case, but generally includes:

- How the structure is classified by the municipality;
- Whether the structure has or should have obtained a municipal development permit for residential use;
- The nature of the structure’s construction;

- The types of uses that the structure could support; and
- How the structure is currently being used and has been used in the past.

Based on these factors, approval officers have, on occasion, treated seasonal cottages or cabins as residences for MDP purposes. That said, the term residence does not encompass all permanent or temporary structures that are capable of providing shelter for people from the elements.

8.6.3 Large scale country residential

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

8.6.4 Reducing minimum distance separation

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

8.6.5 Temporary change in use of a CFO

On occasion, an owner of a confined feeding operation will apply to have their permit amended to allow temporary conversion of the use of a permitted facility. The amendment could reduce the required minimum distance separation for the facility.

The owner may then apply for a permit to expand or modify the facility, while it is still temporarily converted. In this case, the approval officer may use the facility's *original* MDS in deciding whether to permit the proposed expansion or modification.

Approval officers must document in the permit amendment the dates allowed for the temporary conversion.

8.6.6 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:

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

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.

An example is when a small 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. In this example, 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 residence.

8.6.7 Changing the category of livestock

An operator who wishes to change the livestock category for their operation (for example, beef 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.

8.6.8 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 type of livestock that the proposed CFO will contain. The schedule does not provide specific guidance for calculating MDS for multi-species CFOs.

In order to calculate the MDS for a multi-species CFO, approval officers will determine the livestock siting units (LSUs) for each species and add them together. The total LSU is then used to calculate the MDS. The livestock type that has the most restrictive MDS is used to calculate the MDS for the operation.

8.6.9 Varying 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 “minimum distance separation” (MDS). However, section 3 provides two exceptions to this general rule:

- 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.
- 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.

Approval officers should use their authority in sections 3(5) and 3(7) only in unusual circumstances, 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. If over-used, MDS waivers or reductions would defeat the important nuisance mitigation functions of MDS.

8.7 Technical requirements in AOPA and the Standards and Administration Regulation

8.7.1 Setbacks from water wells

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

- **Measuring the distance to a water well for proposed additions to existing facilities**

  For a proposed addition to (or other enlargement of) an existing barn, pen, or other manure storage facility, the approval officer will measure the distance from the closest part of the *entire* facility (that is, including the existing part of the facility) to a water well, rather than measure from the closest part of the addition.

  This measuring approach is based on the NRCB's view that additions to manure storage facilities are generally integrated with the existing parts of the facility, from a manure management standpoint. Therefore, when considering those facilities' risks to nearby water wells, it is reasonable to view a facility as one overall structure, rather than separate the existing portion from the proposed addition.

- **Exemption from the 100 metre setback**

  Under section 7(1)(b)(2)(a) of the regulation, approval officers may grant an exemption from the 100 metre water well setback if the owner or operator of a proposed MSF "demonstrates" 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 must:

  (a) presume that the MSF poses a low risk of directly contaminating the aquifer, if the MSF meets all other AOPA technical requirements.

  (b) consider whether the nearby water well could act as a conduit for aquifer contamination from the MSF, if manure contaminants actually leak or run off from the MSF.

  When considering (b) above, approval officers should determine: how the well was constructed; whether it is being properly maintained; the distance between the well and the proposed MSF; the estimated well pumping rate; and whether the well is located up- or down-gradient of the MSF, in terms of both surface and sub-surface flows.

  Approval officers will also use the NRCB's water well screening tool to determine whether an exemption is appropriate.

  If the basis for granting an exemption is a commitment by the applicant to decommission the water well, the approval officer may need to include a condition in the permit for the MSF that requires the well to be decommissioned.

- **Groundwater monitoring**

  Under section 7(2)(b) of the regulation, an approval officer may require the owner of an MSF to monitor groundwater from a water well as a condition for granting an exemption from the 100 metre water well setback. When granting a water well setback exemption, risk-based factors will be used to determine whether water well water monitoring is required, and if so, the type of monitoring required (e.g., frequency, chemical parameters to be monitored).

8.7.2 Hydraulic conductivity measurements for liners and naturally occurring protective layers

Section 9(5) and (6) of the Standards and Administration Regulation sets out the hydraulic conductivity requirements for liners and naturally occurring protective layers of proposed manure storage facilities and manure collection areas. Sometimes applicants arrange for laboratory measurements of the in situ 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 field hydraulic conductivity values. This is because of the potential variability of soils, differences in compaction methods and variances in compaction.

To account for these discrepancies, approval officers will increase the lab measurements of hydraulic conductivity 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 will be considered representative of the field conditions.

8.7.3 Presumptions for considering effects on the environment, community and economy, and the appropriate use of land

For approval applications, AOPA section 20(1)(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 can *presume* that the effects of a proposed development will be acceptable and the proposed development will be an appropriate use of land.

Several of these circumstances are listed below. The presumptions are decision-making guides and are not meant to be definitive or unchangeable. The presumptions can be overcome by contrary evidence obtained by an approval officer, or provided by a municipality, other directly affected parties, or by referral agencies.

- **Acceptable environmental effects**

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

- **Acceptable community effects and appropriate use of land**

  If an application is consistent with the MDP or with the land use bylaw (if the municipality does not have an MDP), the proposed development is presumed to pose acceptable effects on the community and to be an appropriate use of land.

- **Acceptable effects on the economy**

  If an application is consistent with the MDP or with the land use bylaw (LUB) (if the municipality does not have an MDP), 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 MDP or LUB to the "land use provisions" in those documents. However, approval officers have discretion to determine how much weight should be given to the relevant MDP and LUB provisions.

If the municipality has an MDP, approval officers have discretion to consider:

- the LUB, in addition to the MDP
- how much weight to give each of these two documents, if they are not consistent with each other

8.8 Considering specific nuisance or health effects

AOPA does not expressly require approval officers to consider nuisance or health effects of proposed developments, when deciding whether to issue permits under the act. However, section 20(1)(ix) of AOPA does require 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. Approval officers may use the discretion afforded them by the act to consider these effects for registration or authorization applications, as they deem appropriate.

It is difficult for approval officers to consider the effects that may stem from air emissions, for several reasons. There are widely varying scientific opinions on the effects of air emissions from CFOs, and on levels of emissions that could be a concern from a health standpoint. Non-health related effects of odours and odour levels are subjective, and to date, air quality monitoring and modeling technology and expertise is limited and expensive. Air modeling data is also limited and has a high margin of error.

For these reasons, approval officers will not consider the health and odour effects of CFO air emissions on their own initiative when reviewing approval applications.

Approval officers will refer all applications to Alberta Health Services for its information and to identify any potential health issues related to the proposed development. Statements of concern that identify potential health issues will be referred to Alberta Health Services for its input and response.

8.8.1 Odour from a manure storage facility or 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 a waiver, the party has considered the potential odour nuisance, and is giving up their right for the required minimum distance separation and its odour nuisance protection.

8.8.2 Dust and fly control

Section 20(1) of the Standards and Administration Regulation requires CFO owners to "employ reasonable measures to control the level of infestation of flies" at their facilities. In addition, section 20(2) of the 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 to acceptable levels. Given this practice, and the operational requirement in section 20(1), approval officers will not require a dust or fly control program as a matter of course when issuing permits under the act. However, approval officers may consider doing so if sufficient concerns are raised by the municipality or other directly affected parties, or if the NRCB's compliance division has reported that the operation has experienced significant issues with fly/dust control.

8.9 Municipal road use agreements

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.

Approval officers will apply part 10.1, below, and Operational Policy 2016-1: *Amending Municipal Permit Conditions* when considering whether to amend municipal permit conditions relating to road use agreements.

8.10 Water supply or quantity

Alberta Environment and Parks (EP) 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 part 7.13, above. Water supply concerns that are raised in a statement of concern will be referred to EP. In addition, all applications for an AOPA permit, including registrations and authorizations, are referred to EP for information and response as required.

8.11 Dead animal disposal

The *Animal Health Act* regulates the disposal of dead livestock and is administered by Agriculture and Forestry. AOPA does not address dead animal disposal.

Approval officers will not include new conditions relating to dead animal disposal in permits under AOPA, unless the operator has made a specific commitment in their application relating to dead animal disposal.

However, some municipal development permits that are deemed (i.e., grandfathered) permits under AOPA contain conditions relating to dead animal disposal. Part 10.1 below, and Operational Policy 2016-1**:** *Amending Municipal Permit Conditions***,** set out NRCB policy regarding whether approval officers can delete or amend these conditions.

8.12 Miscellaneous concerns

8.12.1 Compliance with other legislation

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

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

8.12.2 Applicant compliance with AOPA

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

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

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

8.13 Environmental risk assessments—existing buildings and structures

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

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

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

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

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

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

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

9. Permit terms and conditions

9.1 Environmental risks of existing facilities

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

9.2 Post-construction completion

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

9.3 Post-construction inspections

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

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

9.4 Applicant commitments that are more stringent than AOPA

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

9.4.1 Amending permit conditions from an applicant's previous commitments

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

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.

If a municipal permit that is deemed (i.e., grandfathered) under AOPA has a condition that is more stringent than AOPA, the approval officer will follow Operational Policy 2016-1: *Amending Municipal Permit Conditions* when considering whether to delete or amend the condition.

10. Amending and consolidating AOPA permits

10.1 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.

When considering whether to amend deemed municipal permits, approval officers will follow Operational Policy 2016-1: *Amending Municipal Permit Conditions*.

10.2 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. That section prescribes several procedures for approval officers to follow when amending permits on their own motion, but provides no limit on the scope or type of amendments that approval officers can make on their own motion. Section 9 of the AOPA Administrative Procedures Regulation and Operational Policy 2016-2: *Approval Officer Amendments under Section 23 of AOPA* provide policy guidance on these substantive and procedural issues.

10.3 Minor amendments

Sections 19(1) and 21(1) AOPA generally require notice to affected parties of permit applications and allow directly affected parties to provide written responses to those applications. However, sections 19(1.1) and 21(1.1) allow approval officers to forego these "notice and comment" procedures for an application to amend a permit, if the proposed amendment is for a "minor alteration to an existing 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…."

The NRCB broadly interprets the term "existing," in reference to "buildings or structures," to include 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.

In contrast, the NRCB views "minor alterations" somewhat narrowly. In the NRCB's view, minor alterations exclude changes that will create additional capacity, encroach on the minimum distance separation to a given residence, or encroach on another setback required by AOPA. All of these can have significant effects and therefore should be subject to the notice and comment processes that otherwise apply.

See part 7.5 of this policy for notice requirements.

10.4 Amending board-ordered permit conditions

Following their review of a permit decision, the NRCB's board members (collectively, the "board") may require an approval officer to adopt additional permit conditions or to change existing conditions. The board decision usually states the subject matter of the required new or amended condition, but leaves it to the approval officer to adopt the specific wording of the condition.

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 request that the condition 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, unless the board decision requiring the condition states otherwise. (In some decisions, the board provides specific instructions regarding if and how a board-ordered condition can be amended.)

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.

10.5 Consolidating permits

Approval officers will consolidate a CFO's previously-issued permits (including any written or unwritten deemed permits) when issuing a new approval or registration, or an amendment of an approval or registration. 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, and then cancelling all existing permits, including all deemed permits. The cancellation will be stated in a term of the new permit, which should read:

> *[PERM #s] is/are canceled and is/are no longer in effect, unless the **[new Approval/Registration]** is held invalid, in which case [PERM #s] remain/s in effect.*

- **Cancelling deemed permits as part of a consolidation**

  When cancelling deemed permits that are unwritten, but have been previously determined to exist under section 18.1 of AOPA, approval officers will refer to the previous grandfathering determination. If an operator claims that they have an unwritten deemed permit, but that claim has not been verified by the NRCB, the approval officer's decision will state the following:

  "*The NRCB has not verified the operator's deemed permit claim. If the claim is valid, the claimed deemed permit is being canceled for purposes of this consolidation*."

- **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.

The reasons for making these changes or deletions include:

- to avoid duplication or to otherwise integrate all terms and conditions into one coherent permit document
- to clarify an ambiguous provision
- to drop terms or conditions that are no longer needed

The last reason listed above does not apply to existing construction conditions, which will be carried forward even when the construction has been completed in accordance with the permit requirements.

When carrying forward construction conditions, approval officers will list, in an appendix to the consolidated permit, the existing construction conditions that have already been met, and identify the permit they are from.

Approval officers will explain in the decision summary which existing conditions are not being carried forward or are being changed, and the reasons.

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. Approval officers will apply that policy when they consider amending municipal permits.

11. Cancelling AOPA permits

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

- when the permit holder "requests or consents" (s. 29(1)(a))
- when a permitted CFO has been sold, assigned or otherwise disposed of (s. 29(1)(a.1))
- when a permitted CFO or manure storage facility has been "abandoned" (s. 29(1)(b))

Under section 29(2) of AOPA, approval officers can include "terms and conditions" in a permit cancellation. This authority allows approval officers to require remediation or reclamation as part of their cancellation decision.

Section 12 of the AOPA Administrative Procedures Regulation sets out the notice requirements for a permit cancellation. Operational Policy 2015-1: *Construction Deadlines* should also be consulted, when the "abandonment" has occurred due to a missed construction deadline.

In addition, approval officers will routinely cancel permits when issuing a new permit or when amalgamating permits.

11.1 Cancelling permits that include grandfathering determinations

Some CFOs are covered by deemed (that is, grandfathered) permits, but have also received a second permit from the NRCB for specific, non-grandfathered facilities. (For example, a CFO may have a deemed permit for one dairy barn and one liquid manure storage lagoon,

but may have received an NRCB-issued permit to replace the lagoon with a new liquid manure storage facility.)

In some of these instances, the approval officer who issued the NRCB permit may have determined the CFO's grandfathered status as part of the process for reviewing the application for that permit. (This determination is usually included in the decision summary explaining the approval officer's reasons for issuing the new permit.)

Occasionally, an approval officer needs to cancel the NRCB-issued permits—for example, if the CFO owner decides not to construct the NRCB-permitted facility after all. In this circumstance, cancellation of the NRCB-issued permit does not affect the CFO owner's rights under their deemed permit. Accordingly, when cancelling the NRCB-issued permit, the approval officer will indicate in the decision summary or letter notifying the owner and other parties of the permit cancellation that the CFO's deemed permit is still in effect.

If the NRCB-issued permit was for an *expansion* of a grandfathered CFO, the approval officer may have consolidated the CFO's deemed permit with the new permit allowing the expansion, and cancelled the deemed permit as part of that consolidation. If, after receiving the permit allowing the expansion, the CFO owner decides not to go through with the expansion but to continue operating the existing CFO, the approval officer will need to amend the NRCB-issued permit so that it no longer allows the expansion, but continues to allow the grandfathered operation. (Rather than issue a separate amendment and leave the existing permit in place, the approval officer will typically issue a new, amended permit and cancel the existing one.)

12. Grandfathering determinations

When considering a permit application to expand or modify an existing CFO, an approval officer must consider the CFO's status under AOPA as of the application date. If the applicant claims that the CFO is grandfathered under AOPA (i.e., it existed as a CFO on January 1, 2002), the approval officer should verify this claim, before deciding whether to issue the requested permit.

- **Approval and registration applications**

  When an applicant's grandfathering claim must be verified to support an approval or registration application, the approval officer should verify the grandfathering claim as part of the normal application process. In this circumstance, the public notice of the application will state the livestock capacity and describe the CFO that the applicant claims is grandfathered, and solicit input from directly affected parties on the grandfathering claim. If the CFO has a municipal permit, the notice will also identify if the livestock capacity claimed by the applicant is different than the livestock capacity allowed by the permit.

- **Authorization applications**

  When an authorization application is contingent on an applicant's grandfathering claim, the approval officer should assess whether the operation is grandfathered before processing the authorization application. Approval officers should follow section 11 of the AOPA Administrative Procedures Regulation and Operational Policy 2016-6: *Public Notice on Grandfathering Decisions* when making this grandfathering determination. If the approval officer determines that the operation holds a deemed permit under AOPA, the approval officer will conduct the permitting process as for any authorization application.

12.1 Deemed capacity

AOPA is ambiguous as to how a grandfathered confined feeding operation's capacity should be determined when its physical capacity on January 1, 2002 is greater than the

capacity stated in its municipal permit. Policy 2016-5: *Determining Deemed Capacity for Grandfathered CFOs* provides an approach for determining deemed capacity in this circumstance.

13. Construction deadlines

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

APPENDIX A: List of Operational Policies and Guidelines

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

- Operational Policy 2012-1: *Unauthorized Construction*
- Operational Policy 2015-1: *Construction Deadline*s
- MDS Waivers (form and fact sheet)
- Operational Policy 2016-1: *Amending Municipal Permit Conditions*
- Operational Policy 2016-2: *Approval Officer Amendments under Section 23 of AOPA* (updated April 23, 2018)
- Operational Policy 2016-3: P*ermit Cancellations under AOPA Section 29* (updated April 23, 2018)
- Operational Policy 2016-4: *Resolving Disputed Permit Information Requirements between the Applicant and Approval Officer*
- Guide for Distinguishing between Confined Feeding Operations and Seasonal Feeding and Bedding Sites (for Cattle Operations) (Fact sheet)
- Operational Policy 2016-5: *Determining Deemed Capacity for Grandfathered Confined Feeding Operations*
- Operational Policy 2016-6: *Public Notice for Grandfathering Decisions* (updated April 23, 2018)
- Operational Guideline 2016-9: *Meat Goat CFO Determinations*
- Operational Policy 2018-1: *Large Scale Country Residential Developments (for Determining Minimum Distance Separation)*

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 F 780-427-0607

Calgary Office
19th Floor, Centennial Place
250 - 5 Street SW
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.