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Resolving Disputed Permit Information Requirements Between the Applicant and Approval Officer

Operational Policy 2016-4

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1. Introduction

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

Under section 18 of AOPA, an application for a permit must be made in accordance with AOPA's regulations or the approval officer may deny the application.

The Administrative Procedures Regulation contemplates Parts 1 and 2 of an application, including a list of information and documents required for each part. The Part 2 application must be submitted to the NRCB within six months of the Part 1 application, unless the approval officer extends that deadline (to a maximum of one year total).

The approval officer has discretion to determine whether an application is complete, under section 18(2) AOPA. If the approval officer determines that an application is not complete, they may require additional information from the applicant to assess whether AOPA's requirements are met. In that case, under section 4 of the Administrative Procedures Regulation:

- 1) the approval officer gives notice to the applicant setting out the information that is required, and
- 2) if the applicant has not provided that required information within the required timeframe, the approval officer has discretion to deny the application under section 18(3) AOPA.

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

If an applicant disagrees that more information is needed, a stalemate may result. Under AOPA, an applicant cannot seek a board review until the approval officer has issued a decision on the application. Under this framework, it could be as long as a year (or even 18 months if a time extension is granted) from the date of the Part 1 to the date the approval officer denies the application.

This policy provides processes to resolve disputes about whether the application information is sufficient. The first process is an internal review or dispute resolution within the NRCB. The second process will move the application through the decision process and will allow permit applicants to request a board review of the approval officer's decision.

As with all permitting policies, approval officers have discretion to modify this policy when its strict application would be clearly unfair, or in other necessary and appropriate circumstances.

2. Informal processes to resolve disputes about requested information

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

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

3. Process to achieve a decision

If the internal review or dispute resolution process cannot resolve the matter, the applicant has the option to:

- 1) provide the disputed information
- 2) withdraw their application, or
- 3) ask the approval officer to continue to process the application so the applicant has the opportunity to request a board review of the approval officer's decision.

If the applicant requests that the approval officer continue processing the application, the NRCB will carry out the normal public and agency notice and comment process applying to the type of permit. After this process is complete, the approval officer will issue their decision. A denial, per Administrative Procedures Regulation section 4(3), will be issued if the approval officer continues to believe that the applicant has not provided information that the approval officer considers necessary to assess whether the applicant has met one or more of the AOPA requirements.

When an approval officer denies a permit application for this reason, the decision summary will identify the AOPA requirement(s) in question, and explain the additional information that was requested and why it is needed to determine whether the requirement was met. The decision summary will also state that, because the applicant has not provided the information in question, in the opinion of the approval officer, the applicant has failed to show that they've met the relevant AOPA requirement.

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

4. Public notice, courtesy letters, and agency referrals

When the applicant and the approval officer disagree whether outstanding information is required, the content of the public (newspaper) notice and courtesy letters will be nearly identical to those used for all permit applications that require public notice and courtesy letters.

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

The attached application forms have been received. The approval officer has requested additional information, which has not yet been received, in order to deem the application complete. Despite this, the applicant has requested that the approval officer continue processing the application based on the information already provided. See NRCB Operational Policy 2016-4 Resolving Disputed Permit Information Requirements between the Applicant and Approval Officer.

Following receipt and consideration of feedback and statements, the approval officer will issue their decision on the application.

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

Edmonton Office

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

Airdrie Office

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

Lethbridge Office

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

Morinville Office

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

Red Deer Office

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

NRCB Reporting Line: 1-866-383-6722

Email: info@nrcb.ca

Web address: www.nrcb.ca

Copies of the *Agricultural Operation Practices Act* can be obtained from the Queen's Printer at www.qp.gov.ab.ca or through the NRCB website.

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