

## Approvals Procedure Regulations

made under Section 66 of the  
Environment Act  
S.N.S. 1994-95, c. 1

Order in Council 95-287 (April 11, 1995), N.S. Reg. 48/95

### Citation

1 These regulations may be cited as the "Approvals Procedure Regulations".

### Definitions

2 In these regulations

- (a) "Act" means the Environment Act;
- (b) "activity" means an activity listed in the Activities Designation Regulations;
- (c) "Administrator", in respect of an application, means a person who has been designated by the Minister as the person responsible for the activity to which the application relates, and includes an acting Administrator;
- (d) "application" means an application
  - (i) for an approval,
  - (ii) to change the activity that is the subject of an approval,
  - (iii) to amend a term or condition of, add a term or condition to or delete a term or condition from an approval,
  - (iv) to renew an approval;
- (e) "completed application" means an application, including additional information submitted under subsection 53(2) of the Act, which enables the Minister or an Administrator to commence a detailed review of the application;
- (f) "confidential business information" includes a trade secret and know-how, but does not include information about the environmental effects or associated mitigation measures of a proposed activity;
- (g) "Department" means the Department of Environment and Labour;
- (h) "Minister" means the Minister of Environment and Labour;
- (i) "site" means the lands where an activity or proposed activity will take place identified in the manner described in clause 5(1)(e);
- (j) "trade secret" means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that
  - (i) is used, or may be used, in business or for any commercial advantage,

(ii) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,

(iii) is the subject of reasonable efforts to prevent it from becoming generally known, and

(iv) the disclosure of which would result in harm or improper benefit.

#### Application form

3 (1) An application for an approval shall be made on a form prescribed by the Minister.

(2) The application shall be made and signed by

(a) a person who is an authorized signatory of the applicant, in the case of an application referred to in subclause 2(d)(i);

(b) the approval holder, in the case of an application referred to in subclauses 2(d)(ii), (iii) or (iv); or

(c) by an agent of persons identified in clauses (a) or (b) who produces proof of authorization to make the application.

#### Confidential business information

4 (1) This Section is subject to the Freedom of Information and Protection of Privacy Act and regulations made thereto.

(2) Subject to subsection (1), all information which is filed with the Department, including information filed under Part V of the Act, shall be public information.

(3) Information which the applicant claims to be protected under the Freedom of Information and Protection of Privacy Act, including confidential business information, shall be clearly identified to an Administrator.

(4) Where an applicant claims information to be confidential business information, an Administrator shall review the claim and, until a decision is made pursuant to subsection (6), shall take adequate precautions to prevent disclosure of the information.

(5) When reviewing a claim pursuant to subsection (4), an Administrator may request additional information to support the claim, including what steps the applicant has taken to maintain the confidentiality of the information.

(6) Within 14 days following the date of receipt of the claim filed pursuant to subsection (4) or within such further time as may be agreed upon by the applicant and the Administrator, an Administrator shall advise the applicant in writing whether the claim is accepted or rejected in whole or in part.

(7) An appeal from a decision under subsection (6) shall be to the Minister or a person designated by the Minister.

(8) Information accepted to be confidential business information pursuant to subsection (6) shall not be disclosed to the public and an Administrator shall take adequate precautions to prevent the disclosure of the information.

(9) Where an Administrator rejects a claim under subsection (6), an applicant shall notify the Administrator in writing that

(a) the claim is waived and the applicant wishes to continue to proceed with the application under the Act and regulations; or

(b) the application is to be withdrawn, in which case an Administrator shall forthwith return to the applicant all of the information submitted with the application.

#### Approval application information

5 (1) Unless specified otherwise in an application form or by the Minister or an Administrator under subsection (2), an application shall be accompanied by the following information:

(a) the name, address, telephone and fax number of the applicant and, where applicable, proof of current registration with the Registrar of Joint Stock Companies;

(b) the location, capacity and size of the activity to which the application relates;

(c) the nature of the activity, the change to the activity or the amendment, addition or deletion, as the case may be;

(d) proof that the applicant either owns the site or has a lease or other written agreement or option with the landowner or occupier to enable the applicant to conduct the activity on the site or has the legal right or ability to conduct the activity without the consent of the landowner or occupier;

(e) a plan or sketch of the site, or, if the Minister or an Administrator deems necessary, a survey plan prepared by a licensed Nova Scotia land surveyor;

(f) if requested by the Minister or an Administrator, any municipal approval, permit or other authorization required pursuant to subsection 53(4) of the Act;

(g) detailed plans and specifications which, if required by the Minister or an Administrator, are stamped by a professional engineer licensed to practice in Nova Scotia;

(h) detailed description of the activity to which the application relates;

(i) details of site suitability and sensitivity, including proximity to watercourses, residences and institutions, geology and hydrogeology;

(j) copies of existing approvals that have been issued to the applicant relating to the activity under this Act or a predecessor to this Act;

(k) copies of any environmental assessment study reports which may pertain to the activity;

(l) the proposed or actual dates of construction commencement, construction completion, commencement of operation and project completion;

(m) a description of any substances, their environmental impact, the sources of the substances and the amount of each substance that will or might be released into the environment as a result of the activity, the method by which the substances will be released and the steps to be taken to reduce the amount of the substances released or to mitigate their impacts;

(n) a summary of required environmental monitoring information gathered during any previous approval period which has not already been submitted to the Department;

- (o) a summary of the performance of substance release control systems used for the activity, including performance during any previous approval period which has not already been submitted to the Department;
  - (p) an explanation for the release of substances into the environment as a result of the activity;
  - (q) proof that financial or other security, if required, will be provided;
  - (r) a description of any adverse effect, including surface disturbance, that may or will result from the activity and how it will be controlled;
  - (s) contingency plans to deal with any reasonably foreseeable sudden or gradual release of a substance which is likely to have a significant adverse effect;
  - (t) a preliminary abandonment or rehabilitation plan, and, if required, a final abandonment or rehabilitation plan;
  - (u) a description of any public consultation undertaken or proposed by the applicant;
  - (v) information required to be submitted as part of or in support of the application pursuant to any other regulation made under the Act; and
  - (w) any other information prescribed by the Minister in a directive, standard, policy, or guideline.
- (2) The Minister or an Administrator may waive in writing any of the requirements of subsection (1) if the Minister or the Administrator is satisfied that a requirement is not relevant to a particular application or that the application is an application for a renewal.

#### Completed application

- 6 (1) Where the application is not complete, the Minister or an Administrator shall notify the applicant in writing within 14 days of receipt of the application and request the information necessary to make the application complete.
- (2) An appeal shall be to the Minister on a decision whether an application is complete.
- (3) Where the information is not supplied by the applicant within 3 months of a request under subsection (1), an Administrator may reject the application and shall immediately advise the applicant in writing that the application has been rejected.
- (4) An applicant may request from an Administrator an extension of the 3-month time limit prescribed in subsection (3).
- (5) When the application is considered by the Minister or an Administrator to be a completed application, the Minister or an Administrator shall notify the applicant in writing and advise when a decision will be made as provided in subsection 54(2) of the Act.

#### Review of application

- 7 (1) During the review of an application, an Administrator may request oral information or additional written information from
- (a) an applicant or an agent of the applicant;
  - (b) a person who is directly affected by the application;

(c) a local authority, the Government, a Government agency or the Government of Canada or any agency or department of [the] Government of Canada; and

(d) any other source that an Administrator considers appropriate.

(2) An applicant shall be given an opportunity to respond to information received under clauses 1(b), (c) or (d).

(3) Before approving an application, the Minister or an Administrator may require that the applicant provide a consultative process in the area where the activity or the proposed activity is or will be located.

(4) Subsection (3) does not apply where an application has been processed under Part IV of the Act.

#### Purpose and scope of review

8 (1) The review of an application shall determine whether the impact on the environment of the activity conforms with regulations made pursuant to the Act, or with policies, standards or guidelines prescribed or adopted by the Minister.

(2) A review may include, but is not limited to, the following matters:

(a) proposed methods of reducing the generation, use and release of substances;

(b) available alternative technologies;

(c) design plans and specifications for the activity;

(d) site suitability, including soils, air and water quality, groundwater conditions, site drainage, water supply quantity and wastewater disposal alternatives;

(e) the proposed monitoring programs to measure emissions and their effect on the environment;

(f) proposed methods of management of the storage, treatment and disposal of substances;

(g) proposed plans to complete the rehabilitation required in connection with the activity and available information about the success or failure of similar plans elsewhere;

(h) the past performance of the applicant to provide for environmental protection with respect to the activity.

#### Issuance of approval

9 (1) The Minister or an Administrator may issue an approval pursuant to these regulations upon the payment of an administrative fee and a user fee which are approved by the Minister.

(2) Where there is a change in the name of the holder of an approval issued pursuant to these regulations, the holder of the approval shall advise the Minister or an Administrator in writing within 30 days of the change.

(3) If the Minister or an Administrator refuses to issue an approval, an Administrator shall advise the applicant in writing of the decision and inform the applicant about what appeal processes are available.

#### Sampling

10 The costs of any sampling, analysis or other service required in an approval shall be paid by the approval holder.

#### Duration of approval/renewal

11 (1) Unless provided otherwise in the Act or regulations and subject to subsection (2), where the Minister or an Administrator issues an approval, the Minister or the Administrator shall provide as a term and condition that the duration of the approval shall not exceed 10 years.

(2) The applicant may request an approval for a shorter duration than the 10 years prescribed in subsection (1).

(3) An approval may be renewed by the Minister or an Administrator with or without changes upon the payment of an administrative fee and a user fee which are approved by the Minister.

#### Transfers

12 (1) The sale of a controlling interest of a business or a transfer of an approval from a parent company to a subsidiary or an affiliate is deemed to be a transfer requiring consent under subsection 59(1) of the Act.

(2) Where financial or other security is required in respect of an activity, the Minister or an Administrator shall not approve a transfer, sale, lease, assignment or other disposition of the approval until the Minister or an Administrator is satisfied that financial or other security has been provided by the new owner or operator.

#### Security

13 (1) Where financial or other security is required by the Minister under Section 57 of the Act, the requirements shall be established by regulations made under the Act or by policies or guidelines established by the Minister under subsection 8(2) of the Act.

(2) Where financial or other security is required under the Act or by the regulations, the Minister or an Administrator shall not issue an approval until the Minister or the Administrator is satisfied that good and valuable security has been provided.

(3) The approval holder shall ensure that any security provided is kept valid

(a) for the term of the approval;

(b) for the term provided in subsection 21(4) where a site is to be abandoned; or

(c) for such other term as provided in a regulation made under the Act or prescribed by the Minister or an Administrator.

(4) If the security required under subsection (1) is provided on an annual basis, the approval holder shall no later than 60 days prior to the expiry of the security present evidence to the Minister or an Administrator that the security has been renewed.

#### Amount of security

14 (1) If required, financial or other security shall be in an amount determined by the Minister or an Administrator to be sufficient to ensure completion of rehabilitation of a site based on

- (a) the estimated costs of rehabilitation submitted by the approval holder;
  - (b) the nature, complexity and extent of the activity;
  - (c) the probable difficulty of rehabilitation, considering factors such as topography, soils, geology, hydrology and revegetation; and
  - (d) any other factors [that] the Minister or an Administrator considers to be relevant.
- (2) The approval holder shall prepare and provide detailed information in support of the estimated cost of rehabilitation.

#### Apportionment of security

15 The Minister or an Administrator may designate portions of a site on which the activity is or will be taking place and determine the amount of security to be provided by the approval holder for each portion so designated.

#### Adjustment of security

16 (1) The Minister or an Administrator may periodically review and either increase or decrease the amount of security required by the Minister or by the regulations where

- (a) the estimated cost of future rehabilitation changes;
- (b) the activity on the site is increased or reduced;
- (c) the site or any portion of it is rehabilitated;
- (d) the rehabilitation plan in an approval is changed;
- (e) the approval holder is conducting on the site more than one activity for which security is required;  
or
- (f) any other circumstances exist that may increase or decrease the estimated cost of rehabilitation.

(2) To complete a review under subsection (1), the Minister or an Administrator may require the approval holder to supply updated engineering drawings which show such matters as the extent of progressive rehabilitation and the areas of disturbance.

(3) The Minister or an Administrator may specify times or prescribe a schedule for re-evaluating and adjusting security provided by an approval holder.

(4) The Minister or an Administrator shall, within 7 days of a decision made under subsection (1), notify the approval holder in writing of any proposed adjustment to the amount of the security and, where the amount of the security required has been increased, the approval holder shall immediately post any additional security with the Department.

#### Form of security

17 (1) Security may be in one or more of the following forms:

- (a) cash;

(b) cheques and other similar negotiable instruments made payable to the Nova Scotia Department of Finance;

(c) Government guaranteed bonds, debentures, term deposits, certificates of deposit, trust certificates or investment certificates assigned to the Nova Scotia Department of Finance;

(d) irrevocable letters of credit, irrevocable letters of guarantee, performance bonds or surety bonds in a form acceptable to the Minister or an Administrator; or

(e) any other form of security which provides good and valuable consideration and that is approved in writing by the Minister or an Administrator.

(2) Any interest which may accrue on any security deposited with the Department shall be paid to the approval holder.

#### Return of security

18 (1) Subject to subsection 21(4), where the Minister or an Administrator certifies that rehabilitation has been performed satisfactorily on all or part of the site, the Minister or an Administrator may return or direct the return of all or part of the security provided.

(2) If the rehabilitation of the site has been partially completed, the Minister or an Administrator may, on application by the approval holder, return or direct the return of a part of the security in an amount determined by the Minister or the Administrator.

(3) Where the Minister or an Administrator decreases the amount of security under Section 16, the Minister or the Administrator shall within 7 days of the decision return or direct the return of part of the security provided together with any interest that may have accrued on the security.

(4) Where an application for an approval is submitted but no approval is issued, the Minister or an Administrator shall within 7 days of the decision return or direct the return of any security deposited with the Department.

(5) Upon the sale, transfer or other disposition of a site covered by security and upon consent being granted under Section 59 of the Act, the Minister or an Administrator shall, upon application by the approval holder, return the security to the approval holder if an approval is granted to the new owner or operator and security approved by the Minister or an Administrator is provided by the new owner or operator.

#### Forfeiture of security

19 (1) Where

(a) a person fails to comply with an approved abandonment plan, a rehabilitation plan or an order from the Minister or an Administrator regarding rehabilitation of the site and the failure to comply may, in the opinion of the Minister or the Administrator, prevent or otherwise interfere with rehabilitation of the site; or

(b) security required by the Minister or by the regulations is not renewed at least 60 days before its expiry date and rehabilitation is not complete,

the Minister or an Administrator may order that all or part of the security provided by the approval holder be forfeited.

(2) Where the Minister or an Administrator orders security to be forfeited under subsection (1), the Minister or an Administrator shall give written notice of the decision to the approval holder by fax or mail sent to the last known address of the approval holder.

(3) The Minister or an Administrator may spend as much of the security as is reasonably necessary to carry out the rehabilitation of the site and other lands on which the activity has an impact and keep records of any money spent.

(4) Where the amount of the forfeited security exceeds the amount required for rehabilitation, the Minister or an Administrator shall pay the excess amount to the approval holder.

(5) Where the amount of the forfeited security is insufficient to pay for the cost of rehabilitation, the approval holder remains liable for the balance of the cost.

#### Compliance monitoring

20 (1) Unless a waiver is provided in writing by the Minister or an Administrator, an approval holder responsible for an activity shall undertake compliance monitoring as prescribed in an approval, or as prescribed in the Act or regulations made pursuant to the Act.

(2) An approval holder shall submit the results of the compliance monitoring to the Department at any times specified by the Minister or an Administrator.

(3) A person responsible for compliance monitoring shall report a release of a substance into the environment which exceeds those authorized in the approval in such manner as prescribed either in the approval, or as directed in the Act or regulations made pursuant to the Act.

(4) The approval holder shall be responsible for the costs of any compliance monitoring required.

#### Abandonment

21 (1) An approval holder may abandon all or part of a site covered by an approval by notifying the Minister or an Administrator in writing at least 60 days prior to the date of the proposed abandonment.

(2) Unless the Minister or an Administrator approves otherwise in writing, an abandonment pursuant to subsection (1) does not relieve the approval holder or other persons responsible of any obligation contained in the Act, regulations, an approval or an order, or otherwise directed by the Minister or an Administrator to be performed by the approval holder.

(3) Unless exempted in writing by the Minister or an Administrator, an approval holder shall comply with obligations identified in subsection (2) for a period of 2 years from the date of abandonment or for a such longer or shorter time period [as] specified in writing by the Minister or an Administrator.

(4) Unless exempted in writing by the Minister or an Administrator, an approval holder shall ensure any security provided in respect of the activity on the site is kept in effect for the time period provided in subsection (3).

#### Rehabilitation

22 (1) An approval holder shall, to the satisfaction of the Minister or an Administrator, perform rehabilitation on the site in accordance with the Act and regulations, as specified in an approval or in accordance with an approved rehabilitation plan.

(2) An approval holder shall, upon request by the Minister or an Administrator, submit a final rehabilitation plan to the Minister or the Administrator to replace any initial or conceptual rehabilitation plan which may have been submitted.

(3) A rehabilitation plan shall be submitted to the Minister or an Administrator for approval 60 days prior to abandonment unless a method of rehabilitation has been approved by a regulation, guideline, standard or policy prescribed or adopted by the Minister.

(4) The Minister or an Administrator shall notify the approval holder within 14 days of submission of the rehabilitation plan whether the plan is approved or not.

(5) The Minister or an Administrator may issue a rehabilitation certificate if the Minister or the Administrator is of the opinion that rehabilitation of the site has been satisfactorily completed.

Effective date

23 These regulations shall come into force on, from and after April 11, 1995.

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