

Decision Summary LA21027

This document summarizes my reasons for issuing Approval LA21027 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21027. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 20, 2021, First Fruit Farms Inc. (David and Shirley Wiens) (First Fruit) submitted a Part 1 application to the NRCB to expand an existing CFO.

First Fruit self-reported the expansion of an existing feedlot operation without a permit. An NRCB inspector contacted First Fruit to inspect the construction and was satisfied that the owner and operator of this CFO reported and is in the process to acquire a permit for said facilities. The facilities are currently not populated.

The Part 2 application was submitted on May 31, 2021. On June 9, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing beef finishers from 300 to 2000 head beef finishers
- Adding 60,000 chicken broilers
- Constructing a broiler barn – 21.3 m x 121.9 m (70 ft. x 400 ft.)
- Constructing a manure storage pad – 18.3 m x 18.3 m (60 ft. x 60 ft.)
- Constructing a catch basin – 47 m x 47 m x 5 m
- Permit already constructed feedlot pens – pen area 1: 16,597 m² (irregular shape; overall footprint), pen area 2: 48 m x 48 m, pen area 3: 2 x 63 m x 178 m

a. Location

The existing CFO is located at SE 15-15-19 W4M in Vulcan County, roughly 11 km northwest of the Village of Enchant. The terrain is gently sloping to the south. The closest common body of water is an irrigation canal 880 m to the north.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix C attached. The deemed facilities are listed in the appendix to the Approval LA21027.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by an approval application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is 1½ miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Vulcan County, which is the municipality where the CFO is located, and to the Municipal District (MD) of Taber which has a boundary within the affected party radius.

The NRCB gave notice of the application by public advertisement in the Vulcan Advocate on June 9, 2021 and the Vauxhall Advance on June 10, 2021. The full application was made available for viewing on the NRCB website for public viewing. As a courtesy, thirty five letters were sent to people identified by Vulcan County and the MD of Taber as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Bow River Irrigation District.

The NRCB received responses from AEP and Alberta Transportation. No responses were received from AHS or the Bow River Irrigation District.

Jeff Gutsell, a hydrogeologist with AEP stated in his response that it appears that there is a water well at this land location that is not licensed (see Technical Document LA21027). He also requested that, because this CFO is within an irrigation district, that First Fruit supplies AEP with documentation that a sufficient water conveyance agreement is in place to support the expansion. Because water well licensing and water conveyance agreements are outside the NRCB’s jurisdiction, I will not further discuss this issue. A copy of AEP’s response has been forwarded to First Fruit for its information and action.

Chris Poirier, a development and planning technologist with Alberta Transportation stated in his response that a permit is not required and that his department has no concerns with this application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Vulcan County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

7. Responses from municipalities and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." Vulcan County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Anne Erickson, a development officer with Vulcan County, provided a written response on behalf of Vulcan County. Ms. Erickson stated that the application is consistent with Vulcan County's land use provisions of the municipal development plan. The application's consistency with Vulcan County's municipal development plan is addressed in Appendix A, attached.

The Municipal District of Taber is also a directly affected party because the CFO is within the intermunicipal development plan boundary. In his response, Brian Peers, Director of lands, planning and development, stated that the CFO is within the IDP boundary and the lands within 1.5 miles of the CFO are zoned 'Rural Agriculture'. He requested the CFO owner to contact the

county office to discuss infrastructure impacts. This response has been forwarded to First Fruit for its information and action.

No responses were received from any other person, organization, or member of the public.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered directly affected (See NRCB Operational Policy 2016-7: Approvals, part 6.2). Todd Nikkel provided an MDS waiver and is therefore a directly affected party.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater.

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

The assessment found that the existing feedlot poses a low potential risk to groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

I also considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP and IDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA21027 specifies the cumulative permitted livestock capacity as 60,000 chicken broilers and 2,000 beef finishers and permits the construction of the broiler barn, manure storage pad, catch basin and permits the use of the already constructed feedlot pens.

Approval LA21027 contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

In addition to the terms described above, Approval LA21027 includes conditions that generally address construction deadline(s), document submission and construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

11. Conclusion

Approval LA21027 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21027.

First Fruit's deemed registration is therefore superseded, unless Approval LA21027 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed registration will remain in effect.

July 26, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21027
- C. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

First Fruit’s CFO is in Vulcan County and is therefore subject to that county’s MDP. Vulcan County adopted the latest revision to this plan on April 4, 2012, under Bylaw #2012-003.

Part 4 of Vulcan County’s MDP deals specifically with CFOs. That part starts by stating (p. 14) that CFO development within the county [c]ontinues to influence the local economy and landscape. The preservation of the agricultural lifestyle is promoted and maintained through these operations. The potential issues caused by CFOs may be mitigated through long-range planning so those nearby settlements can still enjoy the rural lifestyle of the County.

Sections 4.1 to 4.3 of the MDP provide specific policies for CFOs.

Section 4.1 precludes new CFOs in the exclusion zones shown in Appendix B of the MDP. First Fruit’s existing CFO is not within any of the exclusion zones shown in this MDP appendix.

Sub-sections 4.2(a), (c) and (d) of the MDP provide several setbacks to roads. Based on the site plan, the proposed CFO facilities meet these setbacks.

Sub-section 4.2(b) states that applications for CFOs “adjacent” to a highway “should be referred to Alberta Transportation for a roadside development permit.” This is likely not a land use provision (and, therefore, is not relevant to my MDP consistency determination), because of its procedural focus. At any rate, as noted in part 3 of the decision summary above, the NRCB notified Alberta Transportation of First Fruit’s application and they confirmed that a roadside development permit is not required.

Sub-sections 4.3(a) and (b) of the MDP list two factors that the NRCB “should consider” in its review of applications. These factors are:

- (a) the cumulative effects of a new approval on any area near other existing confined feeding operations
- (b) impacts on environmentally sensitive areas shown in the report “Vulcan County: Environmentally Sensitive Areas in the Oldman River Region” Sub-section

(a) is likely not a “land use provision,” because it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects.

Sub-section (b) is also likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the acceptable levels of impacts on environmentally sensitive areas. Nevertheless, First Fruit’s application is consistent with this sub-section because the CFO site is not within any environmentally sensitive area shown in the report referenced in the MDP.

Sub-section 4.3(c) calls for “giving notice to adjacent landowners” of AOPA permit applications. This policy is likely not a “land use provision” because of its procedural focus and is therefore not part of my consistency determination. The NRCB did notify Vulcan County, several referral agencies, and landowners within a 1.5 mile radius as identified by Vulcan County of the approval application, in accordance with NRCB policy.

Lastly, sub-section 4.3(d) of the county’s MDP calls for the NRCB to consider “proof of the availability of water, specifically, confirmation of access and appropriate provision of the sufficient quantity and suitable quality of the required water supply.” This sub-section is likely not a “land use provision,” or, the sub-section is a “term or condition” under section 22(1.1) of AOPA. Therefore, this sub-section is likely not relevant to my MDP consistency determination (Beyond the MDP consistency context, under NRCB policy, approval officers will consider water supply issues only to the extent of requiring applicants to sign one of the water licensing declarations on page 5 of Technical Document LA19054. See Operational Policy 2016-7: Approvals, part 8.10).

For these reasons, I conclude that the application is consistent with the land use provisions of Vulcan County’s MDP. The county’s response confirms my conclusion.

The CFO is also subject to the intermunicipal development plan (IDP) between Vulcan County and the MD of Taber. The IDP with its latest revision was adopted on February 2018 under Bylaw No. 1927 & Bylaw o. 2017-035.

Sections 3.2.4 to 3.2.6 provide policies specific for CFOs.

Section 3.2.4 states that existing CFOs are allowed to continue to operate under acceptable operating practices and within the requirements of AOPA.

First Fruit is an existing CFO and meets all requirements of AOPA. Therefore, this application is consistent with this policy.

Section 3.2.5 speaks on notifying the other municipality if CFO applications are received.

Although this is not a land use provision, I would like to note that both counties received a copy of the application for their review.

Section 3.2.6. Discusses the CFO exclusion area around the Little Bow Reservoir and the little Bow River, in the area of the Hamlet of Travers. Frist Fruit is not within the CFO exclusion area around the Hamlet of Travers. This application is therefore consistent with the IDP.

APPENDIX B: Explanation of conditions in Approval LA21027

a. Construction Deadline

First Fruit proposes to complete construction of the proposed new broiler barn, manure storage pad and catch basin by November 30, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Approval LA21027.

b. Decommissioning of a feedlot pen (feedlot pen 14)

First Fruit proposed to decommission 'feedlot pen 14' which is located in the northeast of the CFO so that they can construct the chicken broiler barn in its place. A condition will be added that states that First Fruit shall decommission this pen prior to starting construction of the chicken barn and shall follow the instruction as set out in Technical Guideline Agdex 096-90 for facilities posing a low risk to groundwater and surface water.

c. Post-construction inspection and review

The NRCB's general practice is to include conditions in new or amended permits to ensure that the new or expanded facilities are constructed according to the required design specifications. Accordingly, Approval LA21027 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the chicken broiler barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
- First Fruit to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.
- First Fruit to provide evidence or written confirmation from a qualified third party that the catch basin has been constructed at the location and the depth in accordance with this approval.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21027 includes conditions stating that First Fruit shall not place livestock or manure in the manure storage or collection portions of the new broiler barn, manure storage pad and catch basin until NRCB personnel have inspected the broiler barn, manure storage pad and catch basin and confirmed in writing that they meet the approval requirements.

APPENDIX C: Determination of deemed permit status

First Fruit claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO/MSF.

The investigation was to determine the capacity of the CFO that was in place on January 1, 2002.

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- b. How each of those facilities was being used on January 1, 2002

I found that the livestock type and capacity of the structures could reliably be determined by viewing historical aerial photos and records of the owner or operator. Nevertheless, the NRCB published notice of the deemed permit determination as part of the notice for the proposed chicken broiler barn and construction of feedlot pens application, in the Vauxhall Advance on June 10, 2021.

Aerial pictures taken between 1999 and 2003 (Valtus and Google Earth) show two pen areas. The pen area east (immediately east of the grain bins) measured 46 m x 56 m and has since been decommissioned. The second area, located to the west, measures 95 m x 30 m. This area is still in operation.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO’s deemed capacity is its physical capacity to confine livestock on January 1, 2002.

Using Technical Guideline Agdex 096-81, the feedlot area (58,407 ft²) has the capacity to hold 292 head finisher cattle with an estimated space requirement of 200 ft² per head.

Based on these findings, the CFO is considered to have a deemed registration and a deemed capacity of 300 head finisher cattle.

I did not receive any submissions relating to grandfathering.