



Decision Summary LA22007

This document summarizes my reasons for issuing Authorization LA22007 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22007. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 31, 2022, Will and Rob Rommens Dairies Ltd. (Rommens) submitted a Part 1 application to the NRCB to modify a dairy barn at an existing dairy CFO.

The Part 2 application was submitted on March 25, 2022. On March 28, 2022, I deemed the application complete.

The proposed modification involves:

- Extending the dairy barn by 24.7 m (90 ft.) to accommodate a milking robot (total dimensions (103.7 m x 31 m)
- Converting a portion of the existing milking parlour into a maternity area (straw pack) to house livestock (16 m x 15 m)

a. Location

The existing CFO is located at NE 15-20-14 W4M in the County of Newell, roughly 5 km east of the Village of Duchess. The terrain is flat at the site of the CFO. An irrigation canal runs in an east-west direction 95 m south of the CFO.

b. Permit History

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval 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 Authorization LA22007.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are "affected" by an authorization 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

A copy of the application was sent to the County of Newell, which is the municipality where the CFO is located.

3. Notice to other persons or organizations

Under NRCB policy, 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 Agriculture, Forestry and Rural Economic Development (AFRED), and Alberta Transportation (AT).

The NRCB received responses from Leah Olsen, planning technologist with AT. In her response Ms. Olson stated that a development permit from AT is not required and that there are no concerns with this application.

No other responses were received.

4. Municipal Development Plan (MDP) consistency

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

5. AOPA requirements

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

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- 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 groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

6. Responses from municipality

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." The County of Newell is an affected party (and directly affected) because the proposed modification of the dairy barn is located within its boundaries.

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

Ms. Jackson also listed the setbacks required by the County of Newell's land use bylaw (LUB) and noted that the application meets these setbacks.

7. Environmental risk of facilities

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.)

For the sake of efficiency, I first assessed the CFO's existing earthen liquid manure storage (EMS) and the open calf pens using the ERST. These appear to be the CFO's highest risk facilities, because the EMS is the deepest facility and therefore closest to a UGR and the open calf pens because they are an open facility with the highest surface water runoff potential. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both 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.

The dairy barn extension (extension and converted milking parlour area) meets all AOPA liner requirements and is presumed to pose a low risk to groundwater and surface water.

8. Terms and conditions

Authorization LA22007 permits the modification of the dairy barn by extending the dairy barn by 24.7 m (90 ft) and the conversion of the milking parlour into a maternity barn (straw pack).

Authorization LA22007 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA22007 includes conditions that generally address construction deadline(s), document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization LA22007 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22007.

Authorization LA22007 must be read in conjunction with Rommens' deemed approval, which remains in effect.

April 27, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA22007
- C. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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 22(2.1) 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.)

Rommens’ CFO is located in the County of Newell and is therefore subject to that county’s MDP. The County of Newell adopted the latest revision to this plan on February 2013, under Bylaw # 1705-10, consolidated to Bylaw 1761-13.

The MDP policies relating to CFOs are in part 7. Section 7.1 states that the County “shall restrict the development of CFOs within the established urban fringe areas ...”

Rommens’ CFO is not located in any of the urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 7.2 states that the NRCB “should also consider” the following:

- Proximity to water bodies to minimize negative impact on drinking water supplies;
- The “cumulative effect of a new approval” on any area new other CFOs;
- Environmentally sensitive areas as shown on the report “environmentally Significant Areas of the County of Newell (1991)”;
- Giving notice to adjacent landowners even in case of application for authorizations.

Rommens’ CFO is not close to a common body of water.

The second of these four items does not apply because this permit is for the modification of an existing dairy and therefore not a “new approval”. In addition, this provision is likely not a land use provision as it calls for site-specific discretionary judgements (viewed cumulatively with other existing CFOs), so it is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.)

As for the third item, the CFO is not located in an environmentally significant area as listed in the report and is therefore consistent with this policy.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on process and therefore does not need to be considered in my MDP consistency determination. As explained above, the NRCB did notify the County of Newell and several referral agencies. With that the notification requirements under AOPA have been met.

Section 7.3 of the MDP states that the county “may use the MDS method to establish separation distances between proposed developments and CFOs.” This policy appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. However, in several review decision, the NRCB’s board members have made it clear that approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. That said, the county may still rely on this policy to set appropriate setbacks from proposed residential or other developments that the county regulates, from Rommens’ CFO.

Section 7.4 of the MDP states that the county “will impose a CFO exclusion zone” around the City of Brooks shown on the map in Appendix C. The applicant’s CFO is not located in the designated CFO exclusion area, so the application is consistent with this part of the plan.

Finally, section 7.5 of the MDP states that, as a “general guideline”. The county will use an 800 meter development setback from all reservoirs. However, this setback can be adjusted on a case-by-case basis depending on topography and other factors. As proposed, the dairy barn extension meets this suggested setback of 800 meters to a reservoir and is therefore consistent with this policy.

For this reason, I conclude that the application is consistent with the land use provisions of County of Newell’s MDP.

Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also consider the County of Newell’s Land Use Bylaw # 1892-17 (consolidated to bylaw #1943-19 – April 2019). Under that bylaw, the subject land is currently zoned Agriculture. Although the land use bylaw does not explicitly mention CFOs (or intensive livestock operations) I would categorize it under ‘Agricultural operation’ which is a permitted use of land under that land zoning.

APPENDIX B: Explanation of conditions in Authorization LA22007

a. Construction Deadline

Rommens proposes to complete construction of the proposed new dairy barn extension and new maternity area by December 1, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2022 is included as a condition in Authorization LA22007.

b. 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, Authorization LA22007 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn extension to meet the specification for category B (liquid manure shallow pits) and for the maternity area (straw pack) category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Rommens to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meet the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization LA22007 includes a condition stating that Rommens shall not place livestock or manure in the manure storage or collection portions of the new dairy barn extension and new maternity area until NRCB personnel have inspected the new dairy barn extension and new maternity area and confirmed in writing that they meet the authorization requirements.

APPENDIX C: Determination of deemed permit status

Rommens 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, a site visit, and records of the owner or operator. Accordingly, under section 11(3) of the Administrative Procedures Regulation, I waived the notice that might otherwise be required for determination of a deemed permit.

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.

During my site visit on February 8, 2022, I inspected the dairy barn. The number of stalls present in the barn were 194. There were no visible signs of modifications inside the barn. According to Agdex 096-81: Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002, the number of freestalls is to be multiplied by a factor of 1.2 (Table 2). Therefore, 194 freestalls x 1.2 = 232.8 milking cows. Rommens’ claim to have milked 215 cows on January 1, 2002 is therefore reasonable.

I also compared aerial pictures taken between 1999 and 2003 (Valtus and google earth) with recent aeriels and determined that the footprint of the CFO has not changed. I have also determined, based on the facilities present at this CFO, that this dairy has housed its own dries and replacement stock, including steers. A list of all existing facilities has been included in an appendix to Authorization LA22007.

Based on these findings, the CFO is considered to have a deemed approval and a deemed capacity of 215 dairy cows (plus associated dries and replacements) and 20 steers.