

## Decision Summary LA23005

This document summarizes my reasons for issuing Authorization LA23005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23005. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On January 23, 2023, First Fruit Farms Inc. (First Fruit) submitted a Part 1 application to the NRCB to construct an addition to a manure storage facility (MSF) at an existing poultry and beef CFO.

The Part 2 application was submitted on January 23, 2023. On February 8, 2023, I deemed the application complete.

The proposed construction involves:

- Constructing an addition to the permitted chicken broiler barn (21 m x 30.5 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

The CFO is already permitted under Approval LA21027.

### 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
- in the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a municipality entitled to divert water from that body within 10 miles downstream
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 1.5 mile(s) from the CFO

A copy of the application was sent to Vulcan County, which is the municipality where the CFO is located, and to the M.D. of Taber which has a boundary within the notification distance for the CFO.

### **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 Protected Areas (EPA), and the Bow River Irrigation District.

Mr. Jeff Gutsell, a hydrogeologist with EPA stated in his response that he has no concerns with the application at this time as the applicant has indicated that they do not require additional water license.

### **4. Municipal Development Plan (MDP) consistency**

I have determined that the proposed construction 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.)

### **5. AOPA requirements**

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

- Meets the required AOPA setbacks from all nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). As explained below in Appendix B, MDS does not apply for this application
- 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

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements. The inapplicability of MDS requirements is discussed in the following parts of this decision summary and in Appendix B.

### **6. Responses from municipalities**

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 facility 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 in their 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 her response, Ms. Joanne Bronsch, development coordinator, stated that the County has no concerns with the application. She added that the

CFO is within the IDP boundary and the lands within 1.5 miles of the CFO are zoned 'Rural Agriculture'.

## **7. Environmental risk of facilities**

New MSF which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require monitoring for the facility. In this case a determination was made, and monitoring is not required.

When reviewing a new authorization application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either 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](http://www.nrcb.ca).) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by First Fruit's existing CFO facilities were assessed in 2021 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

## **8. MDS**

I determined that the proposed addition to the chicken broiler barn is located within the minimum distance separation from one residence. As explained in Appendix B, under the Standards Administration Regulation 3(5)(c)(iii) MDS does not apply to this application due to the CFO not moving closer to the residence and the CFO is not increasing permitting livestock numbers or increasing annual manure production.

## **9. Terms and conditions**

Authorization LA23005 permits the construction of the addition to the chicken broiler barn.

Authorization LA23005 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 LA23005 includes conditions that generally address construction deadlines, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

## **10. Conclusion**

Authorization LA23005 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23005.

Authorization LA23005 must be read in conjunction with Approval LA21027, which remains in effect.

March 29, 2023

(Original signed)  
Nathan Shirley  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Minimum distance separation requirement
- C. Explanation of conditions in Authorization LA23005

## **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.)

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.

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. Additionally, the application is not for a new approval.

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 and several referral agencies, 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 of the AOPA technical requirements. 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 note that both counties were provided with a copy of the application for their review and comment.

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. First Fruit is not within the CFO exclusion area around the Hamlet of Travers. This application is therefore consistent with the IDP.

## **Appendix B: Minimum distance separation requirement**

The proposed construction is located within the MDS to First Fruit's CFO. The existing permitted barn is 185 m from the closest residence and the proposed addition will be on the north end of the barn further away from the residence. Due to this proximity, the applicant's proposed construction does not meet the minimum distance separation (MDS). However, the Standards and Administration Regulation 3(5)(c)(iii) provides approval officers authority to issue and authorization without adhering to MDS in certain circumstances. (Part 1 Standards and Administration Regulation 3(5)(c)(ii)).

Section 1(1)(d)(ii) of the Part 2 Matters Regulation under AOPA defines "expansion" as the construction of additional facilities to store more manure, compost materials or compost. First Fruit's proposed addition to the existing permitted broiler barn is moving further away from the nearest residence. They are not proposing to increase livestock numbers beyond their already permitted numbers, so they will not be increasing the annual amount of manure the CFO will produce. Additionally, the operation will not be moving any closer to the nearest residence. It is also noted that the existing permitted barn received a waiver from this residence owner when it was permitted.

Under part 1 of the Standards and Administration Regulation, section 3(5)(c)(iii), an approval officer may issue an authorization without adhering to MDS if the applicant is applying to expand an existing building on the site of the CFO and the amount of manure, composting materials and compost produced annually will not increase.

Considering each of these factors, I have concluded that section 3(5)(c)(iii) of AOPA applies. Therefore, the MDS is considered to be met for this application.

## **APPENDIX C: Explanation of conditions in Authorization LA23005**

Authorization LA23005 includes several conditions, discussed below:

### **a. Construction Deadline**

First Fruit proposes to complete construction of the proposed addition to the chicken broiler barn 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 Authorization LA23005.

### **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 LA23005 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken broiler barn category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. First Fruit to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the facilities.

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 LA23005 includes a condition stating that First Fruit shall not place livestock or manure in the manure storage or collection portions of the chicken broiler barn addition until NRCB personnel have inspected the addition and confirmed in writing that it meets the authorization requirements.