

## Decision Summary LA23018

This document summarizes my reasons for issuing Authorization LA23018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23018. 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 March 23, 2023, Hummel Holsteins Ltd. (Hummel Holsteins) submitted a Part 1 application to the NRCB to construct a liquid manure storage facility (MSF) with a total length of 86.9 m x 38.4 m x 2.4 m deep - exact shape see Technical Document LA23018) at an existing dairy confined feeding operation. Hummel Holsteins is constructing this MSF to increase their manure storage volume. Their current manure storage volume is below 9 months storage.

The Part 2 application was submitted on March 24, 2023, and I deemed the application complete the same day.

#### a. Location

The proposed MSF is located at NE 14-10-16 W4M in the Municipal District (M.D.) of Taber, roughly 5 km northeast of Taber, Alberta. The building site is gently undulating, with a general slope to the south.

#### b. Existing permits

The CFO has a deemed registration allowing the operation 140 milking cow dairy (plus associated dries and replacements). The grandfathering determination, made in conjunction with Authorization LA10039, included the footprint and the capacity of the facilities as they existed on January 1, 2002.

### 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 0.5 miles from the CFO

A copy of the application was sent to the M.D. of Taber, which is the municipality where the CFO is located.

None of the facilities are within 100 m of a bank of a river, stream or canal and no boundary of another municipality is within the notification radius.

### **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), and Alberta Agriculture and Irrigation (AGI).

Mr. Mike Swystun, a public health inspector with AHS, stated that AHS has no concerns.

No other responses were received.

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

I have determined that the proposed construction is consistent with the land use provisions of the M.D. of Taber'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 (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 M.D. of Taber is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Mr. Tom Anderson, a development officer with the M.D. of Taber, provided a written response on behalf of the M.D. of Taber in which he also shared comments made by the MD of Taber's planner, Bonnie Brunner. Mr. Anderson stated that the application is consistent with the M.D. of Taber's land use provisions of the municipal development plan. The application's consistency

with the M.D. of Taber's municipal development plan is addressed in Appendix A, attached.

Mr. Anderson noted that the application meets all applicable setbacks.

Mr. Anderson also stated that the area of the expansion is situated in an area identified in the Alberta Listing of Historic Resources as having a high potential to contain a historic resource. I forwarded this concern to the applicant who contacted the Historic Resources Management Branch to see if a permit is required. Ms. Martina Purdon, manager of regulatory approvals and information management at this department responded, stating that *"this area is noted to have a high potential to contain archaeological resources but, given that you are planning to construct a single building, formal Historical Resources Act approval is not required. Should any potentially historic material be encountered during construction, please notify our department immediately. Information about who to contact is provided in the attached document."*

Hummel Holsteins is reminded to alert the construction crew towards the possibility of encountering historic artifacts and immediately alert the Historic Resources Management Branch so that appropriate measures can be taken.

## **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](http://www.nrcb.ca).)

For the sake of efficiency, I first assessed the CFO's existing outdoor concrete liquid manure storage using the ERST. This facility appears to be the CFO's highest risk facilities, because it contains liquid manure and is the deepest facility at this CFO. The assessment found that this facility poses a low potential risk to groundwater and surface water. Because this is the CFO's highest risk facility, 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 the other existing facilities, using the ERST, is not necessary.

The proposed extension of the outside concrete manure storage is also determined to pose a low risk to groundwater and surface water.

## **8. Terms and conditions**

Authorization LA23018 permits the construction of the liquid manure storage facility.

Authorization LA23018 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 LA23018 includes conditions that generally address the construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

## **9. Conclusion**

Authorization LA23018 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23018.

Authorization LA23018 must be read in conjunction with Hummel Holsteins' deemed registration and NRCB issued Authorization LA0039 which remains in effect.

June 9, 2023

(Original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA23018

## **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.)

Hummel Holsteins’ CFO is located in the M.D. of Taber and is therefore subject to that county’s MDP. The M.D. of Taber adopted the latest revision to this plan on January 2004, under Bylaw #1723, consolidated to Bylaw #1980 in September 2021.

Sections 5.1.13 – 5.1.15 of the MDP provide policies “related to confined feeding operations.” The stated purposes of these policies include providing the NRCB with “requirements that the council of the M.D. of Taber wish to have considered when applications for CFOs are evaluated for approval....”

Each of the applicable sections are discussed below.

### Section 5.1.13

This section states that “CFOs” should be “discouraged” in the areas shown in Map 2 as “restricted”. This exclusion zone is a land use provision. Hummel’s CFO is not located within the CFO restricted zone.

### Sections 5.1.14(a)-(d)

These sections list setbacks for CFOs from roads and property lines. Hummel’s CFO is not within any of these setbacks.

### Section 5.1.15

Under this section, the Municipal District requests that the NRCB consider the four following items:

- a. the proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water supplies;
- b. the cumulative effect of a new approval on any area near other existing confined feeding operations;

- c. environmentally sensitive areas shown in the report, Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region;
- d. give[ing] notice to adjacent landowners even in the case of applications for registration or authorization.

Neither (a) or (b) are likely “land use provisions,” as they call for site-specific judgements about the acceptability of an individual operation in light of certain criteria (“proximity,” magnitude and nature of cumulative effect, effect on environmentally sensitive areas). As such, these two MDP policies are not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.).

At any rate, Hummel Holsteins’ CFO meets requirements related to item (a), which refers to the impact of the operation on drinking water supplies. Several of the requirements under AOPA and its regulations are designed to prevent or minimize leakage from CFO facilities and thus to prevent manure from reaching and contaminating surface water and groundwater. Because the application meets these requirements, this development would not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

Subsection (b) refers to cumulative effects of CFOs. AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area. Further, the NRCB’s Board members have directed approval officers not to consider cumulative effects in their permitting decisions. In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

The CFO is not located in an environmentally sensitive area as indicated in item 5.1.15(c) above.

Policy 5.1.15(d) is a procedural requirement so it is likely not a “land use provision.” Therefore, it is not relevant to my MDP consistency determination. At any rate, as explained above, the NRCB notified the Municipal District of Taber and several referral agencies. The notification requirements under AOPA have therefore been met.

For these reasons, I conclude that the proposed construction is consistent with the land use provisions of the Municipal District of Taber’s MDP.

## **APPENDIX B: Explanation of conditions in Authorization LA23018**

### **a. Construction Deadline**

Hummel Holsteins proposes to complete construction of the proposed new liquid manure storage facility by the fall 2023 or 2024. Typically, these kinds of projects can require more time due to availability of contractors. To allow for sufficient time to complete this project, I will set the construction completion deadline to December 31, 2025. This deadline is included as a condition in Authorization LA23018.

### **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 LA23018 includes a condition requiring:

- a. a completion report, stamped by a professional engineer, certifying that the concrete liquid manure storage has been constructed in accordance with the proposed design. At a minimum the report must confirm that the facility is constructed at the approved location; confirm its structural integrity; that the water table has been more than 1 m below the construction zone at all times; that the specifications of the concrete used meet the Technical Guideline Agdex 096-93 Concrete liners, category A - liquid manure liners; that the thickness of the concrete walls and slabs and the size and spacing of reinforcement ensure structural integrity, and that adequate water stops have been placed at all wall-floor and wall-wall joints.

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 LA23018 includes a condition stating that Hummel Holsteins shall not place livestock or manure in the manure storage or collection portions of the new liquid manure storage facility until NRCB personnel have inspected the liquid manure storage facility and confirmed in writing that it meets the authorization requirements.