

## Decision Summary RA23010

This document summarizes my reasons for issuing Authorization RA23010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23010. 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 15, 2023, Cornelis and Margarietha de With Dairy (de With Dairy) submitted a Part 1 application to the NRCB to convert a freestall area of an existing dairy barn into a straw pack area (15.2 m x 6.1 m). The application seeks to modify the existing concrete liner in the freestall area in order to convert it into a straw pack area.

The Part 2 application was submitted on April 17, 2023. On April 19, 2023, I deemed the application complete.

#### a. Location

The existing dairy CFO is located at NE 5-43-22 W4M in Ponoka County, approximately 27 km east of Ponoka, Alberta. The terrain of the area is flat to undulating with some low relief hummocky areas. The topography of the site slopes to the southwest.

#### b. Existing permits

The CFO is already permitted under Registration RA12016.

### 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 (805 m) from the CFO

A copy of the application was sent to Ponoka County, 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 Protected Areas (EPA) and Alberta Agriculture and Irrigation (AGI).

I only received a response from AHS.

Mr. Gordon Watt, an AHS executive officer, indicated that AHS has no concerns with this application and included some comments under the *Public Health Act* and its regulations.

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

I have determined that the proposed modification is consistent with the land use provisions of Ponoka 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 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 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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 9, the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around the 100 metre setback to a water well is discussed in part 8 and in more detail in Appendix B.

### **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." Ponoka County is an affected party (and directly affected) because the existing dairy CFO is located within its boundaries.

Mr. Peter Hall, the assistant CAO with Ponoka County, provided a written response on behalf of the county. Mr. Hall stated that the application is consistent with the land use provisions of Ponoka County's MDP. The application's consistency with Ponoka County's MDP is addressed in Appendix A, attached.

Mr. Hall indicated that the application meets the setbacks required by Ponoka County's land use

bylaw (LUB).

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

New CFO facilities 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 surface or groundwater 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 de With Dairy's existing CFO facilities were assessed in 2012 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. Exemptions**

I determined that the proposed conversion of the freestall area into a straw pack area inside the existing dairy barn is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 metre water well setback is warranted due to the construction and location of the water well, and the barn having roof and walls.

## **9. Terms and conditions**

Authorization RA23010 permits the modification of the freestall area of the existing dairy barn into a straw pack area.

Authorization RA23010 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 RA23010 includes conditions that generally address a construction deadline, document submission and a construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

## **10. Conclusion**

Authorization RA23010 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23010.

Authorization RA23010 must be read in conjunction with previously issued Registration RA12016 which remains in effect.

July 25, 2023

(Original signed)  
Francisco Echegaray, P.Ag.  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Exemption from a water well setback
- C. Explanation of conditions in Authorization RA23010

## **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.)

de With Dairy’s CFO is located in Ponoka County and is therefore subject to that county’s MDP. Ponoka County adopted the latest revision to this plan in October 2018, under Bylaw #6-08 MDP.

Sections 2.1 to 2.8 of the MDP deal with CFOs. I have reviewed these sections and find that these provisions generally apply to new or expanding CFOs. The MDP does not define “expansion,” so I will use the definition in the Part 2 Matters Regulation under AOPA. Section 1(1)(d)(i) of that regulation defines an “expansion” as the construction of additional facilities to confine more livestock. de With Dairy’s application does not involve confining more livestock, so I conclude that it is not an “expansion” under this definition. Therefore, the MDP policies relating to CFO “expansions” do not apply to the de With Dairy’s application. Irrespective, the application meets the policies for expanded CFOs.

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

## APPENDIX B: Exemption from a water well setback

### 1. Water Well Considerations

The proposed conversion of the freestall into a straw pack area inside the existing dairy barn is to be located less than 100 m from a water well. During a site visit, I confirmed that one water well is located approximately 10 m from it. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation* (SAR) under AOPA.

Section 7(2), however, allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure storage facility (MSF)/manure collection area (MCA), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF/MCA are presumed to be low if the applicant's proposed MSF/MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 10 m east of the dairy barn is likely EPA water well ID #274293. This well is reported to have been installed in 1987 with an above ground casing and has a perforated or screened zone from 14 m to 33.5 m below ground level across the stratigraphy. This well is used for non-domestic purposes. The well's log identifies a protective layer from ground surface to 9.1 m below ground level. The well has a driven seal from ground surface to 13.1 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is located cross-gradient of the CFO and MSF.

The NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.<sup>1</sup>

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<sup>1</sup> 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).

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA23010.

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for the proposed conversion of the freestall into a straw pack area inside the existing dairy barn.

## **APPENDIX C: Explanation of conditions in Authorization RA23010**

Authorization RA23010 includes several conditions, discussed below:

### **a. Construction Deadline**

de With Dairy proposes to complete construction of the proposed modification to the existing dairy barn by November 30, 2023. This time-frame may not be reasonable for the proposed scope of work. Allowing an additional construction season is more reasonable, therefore, a deadline of November 30, 2024 is included as a condition Authorization RA23010.

### **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 RA23010 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the proposed conversion of the freestall into a straw pack area inside the existing dairy 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.” de With Dairy shall 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.

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 RA23010 includes a condition stating that de With Dairy shall not place livestock or manure in the manure storage or collection portions of the conversion of the freestall into a straw pack area inside the existing dairy barn until NRCB personnel have inspected it and confirmed in writing that it meets the authorization requirements.