

Decision Summary RA23021

This document summarizes my reasons for issuing Registration RA23021 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23021. 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 a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On July 7, 2023, Darrin Rasmuson on behalf of Darcor Holsteins Inc., and Cory & Heather Rasmuson (Darcor) submitted a Part 1 application to the NRCB to construct a new dairy CFO.

The Part 2 application was submitted on July 12, 2023. On July 20, 2023, I deemed the application complete.

The proposed CFO involves:

- A new dairy operation with 195 milking cows (plus dries and replacements)
- Constructing a dairy barn - 74.4 m x 38.1 m
- Constructing a calf barn - 24.4 m x 12.2 m
- Constructing a synthetic lined liquid manure storage - 70 m x 42 m x 5.5 m deep

The application also notified the NRCB of the proposed construction of a milk house attached to the dairy barn (17.1 m x 12.2 m) and a feed kitchen (22.6 m x 9.8 m). These facilities are considered an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, these structures do not need to be permitted under the act.

a. Location

The proposed CFO is located at NW 25-47-23 W4M in the County of Wetaskiwin, roughly 11 km north of Gwynne, Alberta. The terrain is slightly undulating with a general slope to the southwest towards Coal Lake located approximately 1.8 km from the proposed CFO.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- 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 person or municipality entitled to divert water from that body

- within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

The land zoning on which the CFO is located would require a minimum distance separation of 346 metres. Therefore, the notification distance is ½ mile (805 m). (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to the County of Wetaskiwin, which is the municipality where the CFO is to be located. The CFO is not located within 100 m of the bank of the river, stream, or canal.

The NRCB gave notice of the application by public advertisement in the Pipestone Flyer on July 20, 2023. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. Nine notification letters were sent to people identified by the County of Wetaskiwin 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 Protected Areas (EPA), Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to utility right of way holder Apex Utilities Inc.

I did not receive any response from these organizations.

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.

There is no ALSA regional plan for the area where the proposed CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of the County of Wetaskiwin’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 CFO:

- 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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 9, the application meets all relevant AOPA requirements.

7. Responses from municipality 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." The County of Wetaskiwin is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. Jarvis Grant, a development officer with the County of Wetaskiwin, provided two written responses on behalf of the County. In the first response, Mr. Jarvis requested additional information regarding the setback of the proposed facilities to Coal Lake. In his second response, Mr. Jarvis stated that the application is consistent with the County of Wetaskiwin's land use provisions of the municipal development plan (MDP). The application's consistency with the County of Wetaskiwin's MDP is addressed in Appendix A, attached.

Mr. Grant also indicated that the application appears to meet the required land use bylaw's setbacks to property lines.

No other responses were received.

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). Calvin Willier and Phyllis Turkington provided an MDS waiver and are directly affected parties.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's proposed 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 proposed facilities pose 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.

9. Terms and conditions

Registration RA23021 specifies the cumulative permitted livestock capacity as 195 milking cows (plus dries and replacements) and permits the construction of a dairy barn, a calf barn, and a synthetic lined liquid manure storage.

Registration RA23021 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration RA23021 includes conditions that generally address construction deadlines, document submission, and construction inspections. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Registration RA23021 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23021.

August 30, 2023

(Original signed)
Francisco Echegaray
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration RA23021

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration 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.)

Darcor’s CFO is located in the County of Wetaskiwin and is therefore subject to that county’s MDP. The County of Wetaskiwin adopted the latest revision to this plan on April 11, 2023, under Bylaw 2023/05.

As relevant here, section 11.6 of the MDP aims to “support” CFOs while “minimizing conflicts with surrounding land uses and negative impacts on the environment through land stewardship best practices.” Additionally, the MDP notes that, while CFOs are under provincial jurisdiction, it is the county’s intent to “restrict new or expanded CFOs only in those locations where they are incompatible with neighbouring land uses or negatively impact sensitive environmental features”. The MDP also reports the county’s view that, the *Municipal Government Act* “requires” the county to identify where new CFOs may be located.

Objective 11.6.1 supports CFOs at appropriate locations.

Objective 11.6.2 conforms to the requirements of AOPA in determining Minimum Distance Separation for CFOs.

Objective 11.6.3 states 5 areas in which the county prohibits new or expanded CFOs within specified distances of the areas listed in the objective. Darcor’s CFO is located outside all the specified setbacks, and therefore, the application is consistent with this objective.

Objective 11.6.4 states that, notwithstanding objective 11.6.3, the county will support expanding or upgrading existing CFOs where “upgrades in technology and/or practices result in improved manure management and/or mitigation of negative impacts on surrounding land uses and the environment”. Darcor’s application is for a new CFO, and it is not located within any of the setbacks stated in 11.6.3, and therefore, this objective does not apply.

Objective 11.6.5 refers to CFOs within the setbacks in 11.6.3 that are “not in operation for a period of ten (10) years or more”, in which case the county considers these operations to be “without proper authorization to resume operation or expand”. This is not a land use provision and therefore, I won’t consider it. Regardless, the application is for a new dairy CFO and as such, objective 11.6.5 does not apply to this application.

Objective 11.6.6 states the county's support for "new residences where the residence is associated with a CFO within the Minimum Distance Separation of an existing CFO". I interpret this to be a requirement as relating to the development of residences near CFO's. The permitting of residences is within the municipality's jurisdiction.

Objective 11.6.7 states that the county requires CFO proponents to "demonstrate that their development will not result in environmental impacts from their proposed operation" and *may* recommend to the NRCB that an "Environmental Impact Assessment" be submitted along with the application. This is likely not a land use provisions. Nevertheless, the county has made no such request for this application.

Objective 11.6.8 states that the county "requests" the NRCB to include conditions in their decisions requiring CFO proponents to "enter into agreements with the county, which may include dust control, road use and off-site levies". The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Government Act* gives counties "direction, control and management" of all roads within their borders. In addition, municipalities have the knowledge, expertise, and jurisdiction to implement and enforce road use agreements. Nevertheless, the county has made no such request for this application.

For the above reasons, I consider the application to be consistent with the land use provisions of the County of Wetaskiwin's MDP. The county's response to the application confirms this conclusion.

APPENDIX B: Explanation of conditions in Registration RA23021

Registration RA23021 includes several conditions, discussed below:

a. Construction Deadline

Darcor proposes to complete construction of all proposed new facilities by April 2025. 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, 2025 is included as a condition in in Registration RA23021.

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, Registration RA23021 includes conditions requiring:

- a. Darcor to provide a completion report, stamped by a professional engineer, certifying that the synthetically lined liquid manure storage:
 - has been constructed in accordance with the proposed design, including the size, depth and dimensions;
 - is constructed in the approved location;
 - has a 60 mil HDPE enviro liner, or equivalent; and
 - was installed in accordance with the liner supplier's requirements, including under membrane surface preparation and proper sealing at all seams.

- b. The concrete used to construct the liner of the manure collection and storage portion of the dairy barn and the calf barn to meet the specification for category B (liquid manure shallow pits), and category C (solid manure – wet), and category D (solid manure – dry), respectively, in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas." Darcor 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. Registration RA23021 includes conditions stating that Darcor shall not place livestock or manure in the manure storage or collection portions of the dairy and calf barns, or place manure in the synthetic lined liquid manure storage, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the registration requirements.