

Decision Summary RA24014

This document summarizes my reasons for issuing Authorization RA24014 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24014. 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 March 18, 2024, Jeff Nielsen on behalf of Nielsen Farms Ltd. (Nielsen Farms) submitted the Part 1 and Part 2 applications to the NRCB to construct a manure storage facility (MSF)/manure collection area (MCA) at an existing dairy CFO.

On March 19, 2024, I deemed the application complete.

The proposed construction involves:

- Constructing a bred heifers barn – 79.9 m x 18.3 m

a. Location

The existing CFO is located at SE 8-41-26 W4M in Lacombe County, roughly 1 km northwest of the City of Lacombe, Alberta. The terrain is undulating sloping towards the southeast.

b. Existing permits

To date, the CFO is already permitted under Approval RA10007 and Authorization RA15024.

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 ½ mile (805 m) from the CFO

None of the CFO facilities are located within 100 m of a bank of a river, stream, or canal.

A copy of the application was sent to Lacombe 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 Environment and Protected Areas (EPA) and Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to ATCO Gas and Pipelines Ltd. as a right of way holder.

I received a response from EPA.

Ms. Laura Partridge, a senior water administration officer with EPA, requested the applicant to check their water requirements and to ensure that the water wells are properly licensed. She also requested that the applicant make sure they have the appropriate licensed water under the *Water Act*.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of Lacombe 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 (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The proposed barn is to be located further away than other existing CFO facilities relative to a residence located within the MDS. The MDS does not apply with respect to that residence, as the residence was constructed after the owner of the CFO started construction of the CFO (Section 8(c) of the Standards and Administration Regulation).
- 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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements.

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.

Municipalities that are affected parties are identified by the Act as "directly affected." Lacombe County is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Mr. Nicklas Baran, a planner/development officer with Lacombe County, provided a written response on behalf of the County. Mr. Baran stated that the application is consistent with Lacombe County's land use provisions of the municipal development plan (MDP). The application's consistency with Lacombe County's MDP is addressed in Appendix A, attached.

Mr. Baran also indicated that the application meets the setbacks required by Lacombe County's land use bylaw (LUB).

7. Environmental risk of facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, porous subsurface materials, or surface water systems an approval officer may require surface and/or groundwater monitoring for the facility. In this case, a water well condition is already in place for the CFO; therefore, additional monitoring is not required as a part of this application.

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.) 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 9.17.

In this case, the risks posed by Nielsen Farms' existing CFO facilities were assessed in 2010 and 2015 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

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

8. Terms and conditions

Authorization RA24014 permits the construction of the bred heifers barn.

Authorization RA24014 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 RA24014 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA24014 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24014.

Authorization RA24014 must be read in conjunction with NRCB previously issued Approval RA10007 and Authorization RA15024 which remain in effect.

April 22, 2024

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA24014

APPENDIX A: Consistency with the municipal development plan

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

“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 9.2.7.)

Nielsen Farms’ CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on July 6, 2017; updated April 11, 2024, under Bylaw No. 1238/17.

Section 3.3.1 states that “All lands in the County shall be deemed to be agricultural lands unless otherwise designated by the Municipal Development Plan, an approved statutory or non-statutory, the Land Use Bylaw, or provincial legislation.”

I consider this section to be a source of insight for the interpretation of the remaining portions of the MDP and land use bylaw (LUB). The county’s LUB is discussed further below.

Section 3.9.1 of the county’s MDP states that “The County shall provide input on applications for confined feeding operations to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operation Practices Act*. The County’s support is subject to the following:

a) no new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:

- i) a town, village, summer village or hamlet;
- ii) an area developed or designated for multi-lot residential use; or
- iii) a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development,

except that where provincial regulations require a larger setback distance, that distance shall apply.

Further restrictions on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other local plan approved by Council.”

This application is to construct a new manure storage facility at an existing CFO, not for the development of a new CFO, therefore the above 1.6 km setbacks are not relevant to my MDP consistency determination.

As for section 3.9.1's reference to intermunicipal development plans (IDP) or other plans approved by the county's council, the CFO is located within lands identified as part of the City of Lacombe/Lacombe County IDP and the QEII North of Lacombe Area Structural Plan (ASP).

The sections in the IDP related to CFOs state:

5.2.4. Consistent with the direction provided in the County's MDP, the City and County shall provide input on applications for confined feeding operations within the IDP Boundary to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operation Practices Act* (AOPA). The County's and City's support shall be subject to the following:

- a) no new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:
 - i. the City of Lacombe or the Hamlet of Rosedale Valley
 - ii. an area developed or designated for multi-lot residential use; or
 - iii. a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development.

5.2.5. Input on applications for confined feeding operations within the boundaries of both the Highway 2 West and QE2 North ASPs shall be consistent with the policies pertaining to CFOs stated in the ASPs.

Section 3.6.4 of the QEII North of Lacombe ASP precludes new confined feeding operations within the plan area. Existing confined feeding operations within and those adjacent to the plan area will be allowed to expand subject to approval from the Natural Resources Conservation Board.

Nielsen Farms' application is to construct a new manure storage facility at an existing CFO, not for the development of a new CFO, therefore it meets the IDP and the ASP.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County's MDP, the IDP and the ASP. This conclusion is supported by the county's response to the application.

APPENDIX B: Explanation of conditions in Authorization RA24014

Authorization RA24014 includes several conditions, discussed below:

a. Construction Deadline

Nielsen Farms proposes to complete construction of the proposed new bred heifers barn by October 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2025 is included as a condition in Authorization RA24014.

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 RA24014 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the new bred heifers 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.” Nielsen Farms 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 in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization RA24014 includes a condition stating that Nielsen Farms shall not place livestock or manure in the manure storage or collection portions of the new bred heifers barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the authorization requirements.