



Decision Summary RA23024

This document summarizes my reasons for issuing Approval RA23024 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23024. 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 approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On July 28, 2023, Hutterian Brethren Church of O.B. operating as O.B. Holdings Inc. (O.B. Holdings) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on May 10, 2024. On May 21, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing the permitted number of milking cows from 110 to 240 (plus associated dries and replacements)
- Constructing a new dairy barn – 134.4 m x 43.3 m (441.5 ft. x 142.33 ft.)
- Constructing a new calf barn – 48.8 m x 33.5 m (160 ft. x 110 ft.)
- Constructing a new heifer shed – 122.1 m x 30.5 m (400.67 ft x 100 ft.)
- Constructing a new earthen liquid manure storage (EMS) – 61 m x 61 m x 4.9 m deep (200 ft. x 200 ft. x 16 ft. deep)
- Decommissioning the old dairy barn and dairy corrals

The application also notified the NRCB of the proposed construction of an office attached to the dairy barn. This facility is an “ancillary structure,” under section 1(1)(a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure is part of the CFO but does not need to be permitted under the Act.

a. Location

The existing CFO is located at S½ 22-54-2 W4M and NE 15-54-2 W4M in the County of Vermilion River, roughly 10 km northeast of Marwayne, AB. The terrain is undulating, sloping to the west towards Cabin Lake, located approximately 150 m from some of the existing CFO facilities.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA15041. That permit allowed the construction and operation of a 10,000 chicken layer, 4,000 chicken broiler, 110 milking cow (plus associated dries and replacements), 1,000 duck and 300 geese multi species CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval RA23024.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by an approval 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 specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is 1 (one) mile. (The NRCB refers to this distance as the “notification distance”.)

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 the County of Vermilion River, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in the Vermilion Voice newspaper in circulation in the community affected by the application on May 21, 2024, and
- sending 1 notification letter to people identified by the County of Vermilion River as owning or residing on land within the notification distance.

The full application was also made available for viewing during regular business hours.

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 Environment and Protected Areas (EPA) and Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to Cenovus Energy Inc., Canadian Natural Resources Ltd., and ATCO Electric Ltd. as they are right of way holders.

I received a response from EPA. Ms. Laura Partridge, a senior water administration officer with EPA, provided information to the applicant to review their existing water licences as the department has no record of *Water Act* authorizations. The applicant is reminded that they are responsible for obtaining licences under the *Water Act*.

No other responses were received.

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 expansion is consistent with the land use provisions of the County of Vermilion River'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 expansion:

- 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's nutrient management requirements regarding the land application 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 10 and in Appendix B, 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 Vermilion River is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Roger Garnett, director of planning and community service with the County of Vermilion River, provided a written response on behalf of the County. Mr. Garnett stated that the application is consistent with the County of Vermilion River's land use provisions of the municipal development plan (MDP). The application's consistency with the land use provisions of the County of Vermilion River's MDP is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements may be 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 and/or groundwater monitoring for the facility. In this case a determination was made, and monitoring is not required.

When reviewing a new approval 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 O.B. Holdings' existing CFO facilities were assessed in 2015 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Mr. Garnett also indicated that the application meets the setbacks required by the County of Vermilion River's land use bylaw (LUB).

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or section 109 of the *Water Act* in respect of the subject of this application. Furthermore, the application meets AOPAs technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed June 26, 2024).

Finally, I considered the effects of the proposed CFO expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from the County of Vermilion River, and my own observations from site visits.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, I presumed that the

effects on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (see NRCB Operational Policy 2016-7: Approvals, part 9.10.9). I considered the County's land zoning, and in my view, this presumption is not rebutted, and I note that the County of Vermillion River's response states that the application is consistent with their MDP.

10. Terms and conditions

Approval RA23024 specifies the cumulative permitted livestock capacity as:

- 10,000 chicken layers,
- 4,000 chicken broilers,
- 240 milking cows (plus associated dries and replacements),
- 1,000 ducks, and
- 300 geese,

and permits the construction of the new dairy barn, calf barn, heifer shed, and the EMS.

Approval RA23024 contains terms that the NRCB generally includes in all AOPA approvals, 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, Approval RA23024 includes conditions that generally address construction deadlines, document submission, decommissioning of old dairy facilities and construction inspections. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval RA23024: Approval RA15041 (see NRCB Operational Policy 2016-7: Approvals, part 11.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval RA23024 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23024.

Approval RA15041 is therefore superseded, and its content consolidated into this Approval RA23024, unless Approval RA23024 is held invalid following a review and decision by the

NRCB's board members or by a court, in which case Approval RA15041 will remain in effect.

July 19, 2024

(Original signed)

Francisco Echegaray, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA23024

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval 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 20(1.1) 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.)

O.B. Holdings’ CFO is located in the County of Vermilion River and is therefore subject to that county’s MDP. The County of Vermilion River adopted the latest revision to this plan in May 2022, under Bylaw 19-03.

Part 5 of the MDP is titled Sustainable Development, and through objectives and policies it sets the direction for the County’s future growth and development.

This part defines sustainable development “as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” Further, in this part the MDP states that “Land is a limited resource and how we use it reflects our community values and priorities.”

Part 5.9 of the MDP states the goal to conserve agricultural land. This part includes their objectives, which includes “preserving existing productive farmland for agricultural use from incompatible, non-farming related uses and support the continuation of agricultural operations and agriculture support activities in the County.”

Policies 5.9.2 (b), (c), (d), (e) and (f) of the MDP relate specifically to CFOs.

Policy 5.9.2. (b) of the MDP states that the County’s response to a CFO application will be based on the “technical and locational merits of each application.” As this provision is directed specifically at the County’s response, it likely is not directly relevant to the NRCB’s own “MDP consistency” determination. In addition, the provision is not a “land use provision” because it calls for a discretionary judgment regarding the merits of each application. For these reasons, I conclude that this provision is not relevant to my MDP consistency determination. At any rate, as noted in part 6 above, the application meets the requirements in AOPA’s regulation, so the application is arguably consistent with this MDP policy.

This policy also state that CFOs must “fully satisfy all the requirements and regulations” under AOPA, specifically the minimum distance separation requirements and the land base requirements.” Policy 5.9.2 (c) echoes this policy somewhat by stating that “[m]inimum distance separations for CFOs shall conform to standards set out in” AOPA. These two policies likely are

not relevant “land use provisions.” At any rate, the application meets the MDS and all other AOPA requirements, so it is consistent with these policies.

Policy 5.9.2 (d) states that “In addition to the minimum distance separation requirements provided through regulations adopted under the Agricultural Operation Practices Act, the County’s policy is that confined feeding operations requiring registration or approval and manure storage facilities requiring authorization under that Act must be sustainable within 2.4 km (1.5 miles) of the corporate boundaries of any urban municipality within the County of Vermilion River or within 0.8 km (0.5 miles) of the Community Areas designated on Map 1, which areas shall be considered an urban fringe when calculating the regulations approved under the Agricultural Operation Practices Act.

O.B. Holdings’ CFO site is outside of all the setbacks stated in the policy, therefore meets this policy.

Policy 5.9.2 (e) states that “CFO’s will be discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be of concern”.

This policy is likely not a “land use provision,” because it calls for a discretionary judgment regarding the merits of each application, therefore, it is not relevant to my MDP consistency determination. At any rate, the CFO site is not in an area where slope instability is a concern, and as previously noted in section 8 of this decision summary, the CFO’s proposed facilities pose a low potential risk to groundwater. The application meets the requirements in AOPA’s regulation, so the application is consistent with this MDP policy.

Policy 5.9.2 (f) requires that in addition to meeting the requirements of AOPA and the County’s MDP, the application must meet the County’s Area Structural Plan.

The location of where O.B. Holdings’ CFO is located is not part of an Area Structural Plan.

Based on my independent review of the County’s MDP, I conclude that the application is consistent with the land use provisions in the County’s MDP. This conclusion is supported by the County’s responses to the application.

APPENDIX B: Explanation of conditions in Approval RA23024

Approval RA23024 includes several conditions, discussed below, and carries forward a number of conditions from Approval RA15041. Construction conditions from historical Approval RA15041 that have been met are identified in the appendix to Approval RA23024.

1. New conditions in Approval RA23024

a. Groundwater protection requirements

O.B. Holdings proposes to construct the new earthen liquid manure storage (EMS) with a 1.5 metre thick naturally occurring protective layer. Section 9 of AOPA's Standards and Administration Regulation specifies a maximum hydraulic conductivity for this type of protective layer in order to minimize leakage.

O.B. Holdings measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layers proposed to be used to protect the groundwater resource.

The regulations provide that the actual hydraulic conductivity of a 10 metre thick naturally occurring protective layer must not be more than 1×10^{-6} cm/sec.

In this case, the in-situ measurement was 1.5×10^{-7} cm/sec. This value is below the maximum value in the regulations. Therefore, the proposed naturally occurring protective layer meets the hydraulic conductivity requirement in the regulations and no additional condition is required.

b. Construction Deadline

O.B. Holdings proposes to complete construction of the proposed new facilities by November 30, 2028. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2028 is included as a condition in Approval RA23024.

c. 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, Approval RA23024 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn to meet the specification for category B (liquid manure shallow pits) and category C (solid manure – wet), and the heifer shed and calf barn must 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."
- b. O.B. Holdings to 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. Approval RA23024 includes conditions stating that O.B. Holdings shall not place livestock or manure in

the manure storage or collection portions of the new dairy barn, calf barn and heifer shed, or place manure in the new EMS, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

d. Facility Decommissioning

As noted in part 1 above, O.B. Holdings proposes to decommission the existing dairy barn and dairy corrals. Conditions have been included in Approval RA23024 requiring the existing dairy barn and dairy corrals to be decommissioned in accordance with Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas".