

Decision Summary BA24011

This document summarizes my reasons for approving Registration BA24011 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA24011. 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 September 3, 2024, Yoke Farm Ltd. submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on September 3, 2024. On October 15, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 120 to 150 milking cows (plus associated dries and replacements)
- Constructing a new youngstock barn – 44 m x 36 m

a. Location

The existing CFO is located at NE 28-61-27 W4M in Westlock County, roughly 8 km Northwest of the Hamlet of Pibroch Alberta. The terrain is relatively flat sloping to the southeast with an oxbow lake 187 m east and the Pembina River 835 m east of the CFO.

b. Existing permits

To date, the NRCB has issued Authorization BA20014 to construct a synthetic lined liquid manure storage. This authorization recognized the CFO as grandfathered (existed on January 1, 2002) but never formally made a determination on livestock numbers as public notice was not completed. As a part of this application a formal grandfathering to determine the livestock numbers will be completed. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix D attached. The CFO's existing permitted facilities are listed in the appendix to the Registration.

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 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 314 metres. Therefore, the notification distance is 0.5 miles. (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 Westlock County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Westlock Town and County This Week newspaper in circulation in the community affected by the application on October 15, 2024, and
- sending 4 notification letters to people identified by Westlock County and as owning or residing on land within the notification distance.

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

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).

An Inspector with AGI provided a verbal response that they had no concerns with the application as it does not impact the milking area.

No other responses to the application were received.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) 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 expansion 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 Westlock County’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 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 10 and in Appendix C, the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around water well setbacks are discussed in the following parts of this decision summary.

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.” Westlock County is an affected party (and directly affected) because the proposed CFO expansion is located within its boundaries.

Ms. Kathleen Deshoux, a development officer with Westlock County, provided a written response on behalf of the County. Ms. Deshoux stated that the application is consistent with the County’s land use provisions of the municipal development plan. The application’s consistency with the land use provisions of Westlock County’s municipal development plan, is addressed in Appendix A, attached.

Ms. Deshoux also stated that the application is compliant with the setbacks required by the County’s land use bylaw (LUB).

8. Environmental risk of CFO facilities

When reviewing a new registration 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 Yoke Farm’s existing CFO facilities were assessed in 2017 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.

I assessed the risk related to the proposed youngstock barn and have determined that it poses a low risk to groundwater and surface water.

9. Exemptions

I determined that the proposed youngstock barn is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 m water well setback is warranted due to the well's location, completion, and protection.

10. Terms and conditions

Registration BA24011 specifies the cumulative permitted livestock capacity as 150 milking cows (plus associated dries and replacements) and permits the construction of the youngstock barn.

Registration BA24011 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 BA24011 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.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Registration BA24011: Authorization BA20014 (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.

11. Conclusion

Registration BA24011 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA24011.

Yoke Farm's deemed Registration and NRCB-issued Authorization BA200014 are therefore superseded, and their content consolidated into this Registration BA24011, unless Registration BA24011 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed Registration and Authorization BA20014 will remain in effect.

January 7, 2025

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemptions from water well setbacks
- C. Explanation of conditions in Registration BA24011
- D. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

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

“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.)

Yoke Farm’s CFO is located in Westlock County and is therefore subject to that county’s MDP. Westlock County adopted the latest amendments revision to this plan in January 2023, under Bylaw #05-2016.

Section 3.2.2.5 (Environmental Management) states *“The County shall discourage the development of permanent structures within flood hazard lands”*. It is not specifically clear what the County means by “flood hazard lands” as it is not defined. However, an amendment to the MDP in 2019 removed a previous reference to a 1:100 year flood plain. They also updated several maps on the County’s GIS website which clearly define flood risk zones along the Pembina River. In this case, Yoke Farms’ CFO is at least located 1 m above the 1:25 year flood plain as required by AOPA and is located outside the immediate flood hazard areas as found on the County’s updated maps. Finally, in the county’s response they indicated that the application is consistent with the MDP and had no concerns. Based on this I consider the application to be consistent with this provision.

Section 4.1 of the MDP relates to the agricultural area policies.

Policy 4.1.1.3 clarifies that the “primary use” of this area is for both “extensive and intensive agricultural uses and confined feeding operations”. This is considered a general guiding principle and is not considered a land use provision, therefore this is not relevant to my decision. In any respect, this application is consistent with this provision.

Policy 4.1.2.2 states in part that the county will provide “input” to the NRCB on applications for new or expanded CFOs, based on the “technical and locational merits” of each application. This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see Operational Policy 2016-7, Approvals, part 9.2.7). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA.

Policy 4.1.2.2 states further that CFOs and manure storage facilities “must fully satisfy all the requirements and regulations adopted under that Act, specifically the minimum distance separation requirements and the land base requirements.” The application meets both of these AOPA requirements.

Policy 4.1.2.3 states “Minimum distance separations for CFOs shall conform to standards set out in the Agricultural Operations Practices Act.” Together, the use of the term “minimum distance separation” in policies 4.1.2.2 and 4.1.2.3 appear to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. These MDP policies are likely not relevant to my MDP consistency determination, because these policies are based on AOPA’s MDS requirements. (See also Operational Policy, Approvals, part 9.2.7). That said, the CFO meets the MDS requirements under AOPA and meets all other AOPA technical requirements.

Policy 4.1.2.4 specifies CFOs requiring an approval, registration, or authorization maintain a 2.4 km setback from “corporate boundaries of any urban municipality within Westlock County” or a 0.8 km CFO setback from “Community Areas designated on Map 7.2.” Yoke Farm is not within any of these setbacks and therefore meets this policy’s setback requirement.

Policy 4.1.2.5 states that “CFOs 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 requires site-specific, discretionary determinations (see Operational Policy 2016-7, Approvals, part 9.2.7). Additionally, as the policy states CFOs will be discouraged, this appears to refer to new CFOs not expanding ones. Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA and the application is not for a new CFO rather the expansion of an existing CFO. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 4.1.2.6 states that in addition to AOPA, Area Structure Plans (ASP) in Westlock County and MDP policies in respect to CFOs should be followed. The development officer confirmed that there are no ASPs or IDPs in place at this time that are applicable to this location.

For these reasons, I conclude that the application is consistent with the land use provisions of Westlock County’s MDP.

APPENDIX B: Exemption from water well setbacks

1. Water Well Considerations

The proposed youngstock barn is to be located less than 100 m from a water well. I have confirmed that 1 water well is located approximately 56 m from it during a site visit and through satellite images. 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 collection area (MCA), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the applicant's proposed 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 is protected
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MCA
- d. Whether the well is up- or down-gradient from the 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 9.10.2.

Water well (House well):

This well is located approximately 57 m to the East of the dairy barn behind a shed in a protected bored culvert. The well log information is unknown and does not contain age or lithology encountered. There are two other wells onsite one drilled in 2018 (located more than 100 m) and one drilled in 2010, both indicate clay with some intermittent sand seams and no screen interval until 47 m in the 2018 well and 109 m in the 2010 well. The applicant indicated that they draw from the house well at a depth of 40 m. There are also 2 other wells (1980 and 1987) that have been previously decommissioned adjacent to the existing dairy barn that logged consistent with the other wells a clay lithology from ground surface to 77.72 m and 77.42 m respectively. Given the consistency across the site and other wells it is reasonable to conclude the house well has a similar protective layer.

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.¹

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at 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 BA24011.

Under the regulation, an approval officer may require a groundwater monitoring program of the water well in question. In my view, given meeting AOPA technical requirements, the information from other water wells, and the low risk, monitoring is not required.

APPENDIX C: Explanation of conditions in Registration BA24011

Registration BA24011 includes several conditions, discussed below:

a. Construction Deadline

Yoke Farm proposes to complete construction of the proposed facilities by Fall 2026. This time-frame is considered to be reasonable for the proposed scope of work. Therefore, deadline of December 1, 2026, is included as a condition in Registration BA24011.

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 BA24011 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the youngstock barn to meet the specification for category B (liquid manure shallow pits) and category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Yoke Farm to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the youngstock barn.

The NRCB routinely inspects 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 BA24011 includes a condition stating that Yoke Farms shall not place livestock or manure in the manure storage or collection portions of the new youngstock barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the registration requirements.

APPENDIX D: Determination of deemed permit status

Yoke Farm claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. A grandfathering determination is necessary in this case because it is necessary to determine grandfathered livestock numbers.

See NRCB Operational Policy 2023-1: Grandfathering (Deemed Permit), part 3.1.

Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO. I also determined the capacity of the CFO that was in place on January 1, 2002.

In this case, the operator bears the onus of providing sufficient evidence to support their claim (Operational Policy 2023-1: Grandfathering (Deemed Permit), part 2.3).

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities had capacity to confine livestock at or greater than the permit threshold sizes under AOPA. (See (Operational Policy 2023-1: Grandfathering (Deemed Permit), part 2.3).

To determine whether the CFO meets these two criteria, the NRCB may need to consider, among other things:

- a. whether the operation was a “confined feeding operation” or something else on January 1, 2002;
- b. what category(ies) of livestock the operation was confining and feeding on January 1, 2002;
- c. whether the operation was at livestock numbers that exceeded the AOPA thresholds;
- d. the footprint of the operation on January 1, 2002;
- e. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- f. How each of those facilities was being used on January 1, 2002

Notice:

As required under section 11(2) of the Administrative Procedures Regulation, I provided notice to those parties who would be entitled to notice if this were an application for a new approval/ registration/authorization. I determined the notification distance to be 0.5 miles on the basis of the deemed capacity claimed by the owner or operator under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 4.1.

In this case, the NRCB provided notice of the deemed permit determination as part of the notice for the proposed expansion application.

Evidence:

I was able to locate some records relevant to this grandfathering determination, including air photos, and satellite images.

The operator also provided me with records. These included historical photos and milking records.

In response to notice of the grandfathering determination, I did not receive any submissions relating to the grandfathering process.

Findings:

I considered whether this operation was a “confined feeding operation” on January 1, 2002.

- a. Records and satellite images show they have been a dairy for several decades with capacity above AOPA thresholds.

Having found the operation was a CFO with a grandfathered (deemed) permit, I then considered what the CFO’s physical capacity was to confine livestock on January 1, 2002. Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, this is the deemed capacity of the grandfathered CFO.

- a. Milking records from 2006 show 117 milking cows therefore making a claim of 120 is reasonable.
- b. No expansion construction was completed prior to this year indicating they’ve had that capacity prior to any changes.
- c. The facilities in air photos and satellite photos have remained consistent with the footprint.

Based on these findings, the CFO is considered to have a deemed registration and a deemed capacity of 120 milking cows (plus associated dries and replacements).

Validity today:

Finally, Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.0 suggests that field services staff assess the validity of a deemed permit today.

Under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.1, I considered whether the CFO has been abandoned since January 1, 2002. I considered factors relevant to abandonment, as identified in Operational Policy 2016-3: Permit Cancellations under AOPA Section 29. The dairy has continued to operate since it was purchased in the late 1970s and has years of milking records to support its current operation. I conclude this CFO has not been abandoned.