

Decision Summary BA24017

This document summarizes my reasons for issuing Registration BA24017 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA24017. 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 December 6, 2024, Bruce and Meredith Van Dijk operating as Arn-El Farm Ltd. (Arn-El Farm) submitted a Part 1 application to the NRCB to convert an existing swine CFO to a poultry CFO and to construct a manure storage facility (MSF). The existing facilities will be kept for manure storage use and possible repurposing in the future.

The Part 2 application was submitted on January 22, 2025. On February 11, 2025, I deemed the application complete.

The proposed change in category involves:

- Removing sows farrow to finish from the permit
- Permitting 20,000 chicken layers (plus associated pullets)
- Constructing a new layer barn – 55 m x 14 m (180 ft. x 46 ft.)

The application also notified the NRCB of the proposed construction of an auxiliary room (9 m x 14 m. 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 SE 21-62-3 W5M in the County of Barrhead, roughly 5 km north of Neerlandia AB. The terrain is flat sloping to the east with a seasonal drainage located approximately 700 m east of the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes municipal permit 15-2001, issued May 2, 2001. This deemed approval allowed for the expansion and operation of a 250 swine sow farrow to finish CFO. The determination of the CFO’s deemed permit status under section 18.1 of AOPA is explained in Appendix C, attached. The deemed facilities are listed in the appendix to the Registration BA24017.

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

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

The land zoning on which the CFO is located would require a minimum distance separation of 296 metres. Therefore, the notification distance is 0.5 miles. (The NRCB refers to this distance as the “notification distance”).

A copy of the application was sent to the County of Barrhead, 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 Barrhead Leader newspaper in circulation in the community affected by the application on February 11, 2025, and
- sending 7 notification letters to people identified by the County of Barrhead as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours at the NRCB office in Morinville.

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 Transportation and Economic Corridors (TEC).

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

A development and planning technologist from TEC replied to the application requesting the applicant apply for a roadside development permit. This information was sent to the applicant for their follow-up.

I did not receive any other responses for the application.

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 existing CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of County of Barrhead'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 construction:

- 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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 9 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 Barrhead is an affected party (and directly affected) because the existing CFO is located within its boundaries.

Ms. Debbie Oyarzun, CAO an acting development officer with the County of Barrhead, provided a written response on behalf of the County of Barrhead. Ms. Oyarzun stated that the application is consistent with the County of Barrhead's land use provisions of the municipal development plan (MDP). The application's consistency with the land use provisions of the County of Barrhead's MDP is addressed in Appendix A, attached.

Ms. Oyarzun also listed the setbacks required by Barrhead County's land use bylaw (LUB) and noted that the application meets these setbacks.

No other responses were received.

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. There may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, and surface water systems an approval officer may require groundwater, surface water, construction supervision or an exemption monitoring for the facility. In this case a determination was made, and no special circumstances were identified.

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing 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 9.17). 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.)

For the sake of efficiency, I first assessed the CFO's existing swine barns, manure pad, and tarp sheds using the ERST. These appear to be the CFO's highest risk facilities due to their age, construction details, and liner state. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both 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. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

9. Terms and conditions

Registration BA24017 specifies the cumulative permitted livestock capacity as 20,000 chicken layers (plus associated pullets) and permits the construction of the layer barn.

Registration BA24017 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 BA24017 includes conditions that generally address construction deadlines, document submission and construction inspection. 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 Registration BA24017: Municipal permit 15-2001 (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. Municipal Permit 15-2001 has no conditions associated with it, therefore, there are no conditions that will be carried forward.

10. Conclusion

Registration BA24017 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA24017.

Municipal Permit 15-2001 is therefore superseded, and its content consolidated into this Registration BA24017, unless Registration BA24017 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Municipal Permit 15-2001 will remain in effect.

March 26, 2026

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration BA24017
- C. 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.)

Arn-EI Farm’s CFO is located in the County of Barrhead and is therefore subject to that county’s MDP. The County adopted the latest revision to this plan on August 17, 2010, under Bylaw No. 4-2010.

Part 3.1.3 of the MDP lists 14 agricultural development policies and includes CFOs as among “primary use[s]” in the agricultural use area. The first policy recognizes agriculture as the priority land use in rural areas, supports agricultural diversification, encourages siting agricultural industries in agricultural areas, and discourages non-agricultural land uses in intensive agricultural areas. Of the remaining 13 policies, only 10 and 11 relate specifically to CFOs.

Policy 10 states “input shall be provided to the NRCB in responding to 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 NRCB Operational Policy 2016-7, Approvals 9.2.8). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(2.1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 11 states that “minimum distance separations shall conform to standards set out in the Agricultural Operation Practices Act.” “Minimum distance separations” appears to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. The CFO facilities meet AOPA’s MDS requirements.

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

APPENDIX B: Explanation of conditions in Registration BA24017

Registration BA24017 includes several conditions, discussed below:

a. Construction Deadline

Arn-El Farm proposes to complete construction of the proposed new layer barn by November 2025. This timeframe is considered to be reasonable for the proposed scope of work however, to account for unforeseen construction delays, a later deadline will be included. The deadline of December 1, 2026, is included as a condition in Registration BA24017.

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 BA24017 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the layer 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.”
- b. Arn-El Farm to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn.

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. Registration BA24017 includes a condition stating that Arn-El Farm shall not place livestock or manure in the manure storage or collection portions of the new layer barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the registration requirements.

APPENDIX C: Determination of deemed permit status

Arn-El 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 which facilities/footprint is grandfathered and, therefore, exempt from having to meet AOPA regulations under section 22(2.2) of AOPA).

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 was originally permitted by County of Barrhead on May 2, 2001, under development permit no. 15-2001. This permit allowed the construction and operation of a 250 sow farrow to finish CFO. This development permit is a deemed (i.e. grandfathered) approval under section 18.1(1)(b) of AOPA. The CFO’s deemed facilities are listed in the Appendix to Registration BA24017.

Notice:

Under section 11 of the Administrative Procedures Regulation, notice of a deemed permit determination is not required if the CFO was constructed pursuant to a development permit issued before January 1, 2002. See also Operational Policy 2023-1: Grandfathering (Deemed Permit), part 5.2.1.

Findings:

Under section 18.1(2)(c), the CFO’s deemed capacity is the capacity stated in the CFO’s development permit. Therefore, the CFO has a deemed capacity of 250 sow farrow to finish.

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 site was in operation with swine farrow to finish up until 2022, at which point they depopulated due to markets. I conclude this CFO has not been abandoned.

Under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.2, I considered if any of the liners have been disturbed, or any facilities changed in a way that constitutes “construction,” since January 1, 2002. My conclusion is that the facilities remain in good condition and will be grandfathered as they may be repurposed in the future.