

Decision Summary RA24042

This document summarizes my reasons for issuing Approval RA24042 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24042. 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 October 16, 2024, Jan van de Brake on behalf of Willem and Hendrijke van de Brake, operating as Thornspyc Dairy Ltd. (Thornspyc Dairy), submitted a Part 1 application to the NRCB to expand an existing dairy operation and requested a grandfathering determination for 150 milking cows (plus dries and replacements).

The Part 2 application was submitted on December 20, 2024. On January 30, 2025, I deemed the application complete.

The proposed expansion involves:

- Increasing the permitted livestock capacity from 150 to 300 milking cows (plus dries and replacements)
- Decommissioning and constructing a new solid bedding pack barn – 110 m x 40 m
- Decommissioning and constructing a new youngstock shed #2 – 125 m x 16 m
- Constructing an addition to youngstock shed #3 to make one continuous shed – 125 m x 50 m (final dimensions)

a. Location

The existing CFO is located at SW 22-40-27 W4M in Lacombe County, roughly 4 kilometers southwest of the City of Lacombe. The terrain is relatively flat and slopes to the southeast. The closest common body of water is Lacombe Lake, which is approximately 1.6 kilometers southeast of the CFO.

b. Existing permits

The site is not covered by any municipal development permits. As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. This deemed registration allows for the construction and operation of a 150 milking cow dairy (plus dries and replacements) CFO. The determination of the CFO's deemed permit status and capacity under section 18.1 of AOPA is explained in Appendix D, attached. The deemed facilities are listed in the appendix to the Approval RA24042.

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 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 Lacombe County, which is the municipality where the CFO is located. I also forwarded a copy to the City of Lacombe, as the proposed CFO expansion is within the Intermunicipal Development Plan (IDP) between the city and the county.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Lacombe Express newspaper in circulation in the community affected by the application on January 30, 2025, and
- sending 67 notification letters to people identified by Lacombe County 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 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), Alberta Agriculture and Irrigation (AGI), and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to ATCO Gas and Pipelines Ltd. and Vesta Energy as they are right of way/easement holders.

Ms. Laura Partridge, a senior water administration officer with EPA, responded to the application stating that additional water licensing under the *Water Act* will be required for the proposed expansion. The applicant is reminded it is their responsibility to ensure they have sufficiently licensed water for the proposed expansion.

Ms. Cheryl Marcyniuk, a development and planning technologist with TEC, responded to the application stating that TEC has no objections to the application, but that the proposed development falls within the permit area of provincial highway 2, as outlined in Section 4(1) of

the Highways Development and Protection Regulation. She stated that a permit must therefore be obtained from TEC. The applicant has been made aware of this response and is reminded that it is their responsibility to ensure they have obtained the necessary permits from TEC for the proposed expansion.

Lastly, I received a response from AGI providing the name of the inspector that is responsible for the application.

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 CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Lacombe County's municipal development plan, as well as the land use provisions of the City of Lacombe/Lacombe County IDP (See Appendix A for a more detailed discussion of the County's and the IDP 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 11 and in Appendix C, the application meets all relevant AOPA requirements. The exemptions that are 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." Lacombe County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Allison Noonan, a planning services administrative assistant with Lacombe County, provided a written response on behalf of Lacombe County. Ms. Noonan stated that the

application is consistent with Lacombe County's land use provisions of the municipal development plan. The application's consistency with the land use provisions of Lacombe County's municipal development plan is addressed in Appendix A, attached.

Ms. Noonan also stated that the subject land is identified in the City of Lacombe/Lacombe County intermunicipal development plan (IDP), as well as the QEII West Area Structure Plan. I have determined that the application is consistent with these planning documents, which is addressed in Appendix A, attached.

In addition to the County, the city of Lacombe is an affected party because the proposed expansion lies within the boundaries of the Lacombe County/City of Lacombe intermunicipal development plan (IDP).

Ms. Jennifer Kirk, a senior development officer with the City of Lacombe, provided a written response on behalf of the City of Lacombe. Ms. Kirk stated that the city does not have any objection to the proposed expansion. The application's consistency with the land use provisions of the Lacombe County/City of Lacombe IDP is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." No responses were received from any person, organization, or member of the public.

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 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 earthen manure storage (EMS) and the dairy barn using the ERST. These appear to be the CFO's highest risk facilities, because the EMS is used to store liquid manure, and the manure collection and storage portions of the dairy barn are within 10 meters to a water well. 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.

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 monitoring for the facility. In order to address the proximity to CFO facilities and construction of water well ID #283528, a water well monitoring condition will be included in the permit.

9. Exemptions

I determined that the proposed solid pack barn, youngstock shed #2 and youngstock shed #3 are 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 location upslope from the facilities. A water well monitoring condition will also be required in the permit to address the results of the water well exemption screening that I completed (see Appendix C, below).

10. Other factors

Because the approval application is consistent with the MDP/IDP 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.

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

I have considered the effects the proposed 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, and the applicant has been reminded that it is their responsibility to ensure they have received the appropriate water licensing for the proposed CFO expansion.

I am not aware of any written decision of the Environmental Appeals Board for this location (<https://eab.gov.ab.ca/status.htm>), accessed March 24, 2025.

Finally, I considered the effects of the proposed 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 Lacombe County, and my own observations from a site visit.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, I presumed that the effects in 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/IDP 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 MDP/IDP (see NRCB Operational Policy 2016-7: Approvals, part 9.10.9). In my view, this presumption is not rebutted.

11. Terms and conditions

Approval RA24042 specifies the cumulative permitted livestock capacity as 300 milking cows (plus dries and replacements) and permits the construction of the solid bedding pack barn and youngstock sheds #2 and #3.

Approval RA24042 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 RA24042 includes conditions that generally address a construction deadline, monitoring, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

12. Conclusion

Approval RA24042 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24042. Thornspyc Dairy's deemed registration is therefore superseded, and its content consolidated into this Approval RA24042, unless Approval RA24042 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed registration will remain in effect.

April 23, 2025

(Original signed)

Sarah Neff
Approval Officer

Appendices:

- A. Consistency with municipal land use planning
- B. Exemptions from water well setbacks
- C. Explanation of conditions in Approval RA24042
- D. Determination of deemed permit status

APPENDIX A: Consistency with municipal land use planning

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of 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.

However, in Board Decision 2022-02 Double H Feeders Ltd., the NRCB Board directed approval officers away from a narrow reading of section 20 of AOPA. An approval officer should determine an application’s consistency with not just the MDP, but also the IDP (if one applies). Given changes to the hierarchy of statutory plans under the *Municipal Government Act*, the Board suggested that ignoring an applicable IDP could lead to absurd outcomes in the event of a conflict between an MDP and an IDP.

“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.)

Thornspyc Dairy’s 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 March 13, 2025, 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.”

Thornspyc Dairy’s application is for an existing CFO and is therefore consistent with this policy.

As for section 3.9.1’s reference to IDP’s or other plans approved by the County’s Council, the proposed expansion is located within the City of Lacombe/Lacombe County IDP, as well as the QEII West Area Structure Plan.

Section 5.2 of the City of Lacombe/Lacombe County IDP relates to agriculture.

Subsection 5.2.1 states that “Unless otherwise provided in this Plan, the provisions of the County’s MDP, relevant ASPs and LUB regarding the use and development of agricultural land shall apply to the areas designated as agricultural.”

I consider this section to be a source of insight for the interpretation of the remaining portions of the IDP relating to CFOs.

Subsection 5.2.4 states that consistent with the direction provided in the County’s MDP, input shall be provided on applications for CFOs within the IDP boundary to the NRCB under 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.

Thornspyc Dairy’s application is for an existing CFO and is therefore consistent with this policy.

Subsection 5.2.5 states that “Input on applications for CFOs within the boundaries of both the QEII West and QEII North ASPs shall be consistent with the policies pertaining to CFOs stated in the ASPs.

Pertaining to the QEII West ASP in which Thornspyc Dairy’s CFO is located, subsection 5.1.3 states that “existing CFOs are supported in this Plan. Existing operations will be allowed to expand dependent on approval from the NRCB”.

Subsection 5.1.4 states that the County will request that the NRCB not allow any new CFOs within the Plan Area”.

As mentioned above, Thornspyc Dairy’s application is for an existing CFO and is therefore consistent with this policy.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County's MDP, the City of Lacombe/Lacombe County IDP, and the QEII West ASP that I may consider.

APPENDIX B: Exemptions from water well setbacks

1. Water Well Considerations

The proposed solid pack barn, and youngstock sheds 2 and 3 are to be located less than 100 m from water wells. I have confirmed that 2 water wells are located between 30-70 m from the facilities during a site visit and via aerial imagery. 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 wells:

- a. How the wells were constructed
- b. Whether the wells are being properly maintained
- c. Whether the wells are 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 ID # 283528

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 30 m east of the proposed youngstock shed 2, 45 m west of the proposed solid pack barn, and 86 m northwest of the proposed youngstock shed 3 is likely EPA water well ID # 283528. This well is reported to have been installed in 1981 and has a perforated or screened zone from 32 m to 55 m below ground level across topsoil, clay/gravel and hard shale layers. The well is a pit well, located within the utility room of the dairy barn, and is protected by a metal cover. The well is used for domestic and non-domestic purposes. The well's log identifies protective layers from 0.6 m to 28.7 m below ground level. The well has a driven seal from ground surface to 32.9 m below ground level (across the protective clay/till layers). The well appeared to be in good condition at the time of my site inspection. The well is up-gradient of the proposed construction and cross gradient of the existing dairy barn.

Water well ID # 274469

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 75 m north of the proposed youngstock shed 2 is likely EPA water well ID # 274469. This well is reported to have been installed in 1965 and has an unknown perforated or screened zone. The well is a pit-less well and has aboveground casing. The well is used for domestic and non-domestic

purposes. The well's log identifies protective layers from 4.9 m to 26 m below ground level. The well has a driven seal from ground level to an unknown depth. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the CFO and proposed MCA.

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

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA24042.

Despite the above, I am of the opinion that a water well monitoring condition should be included in the approval.

Under the regulation, an approval officer may require a groundwater monitoring program of the water wells in question. In my view, a monitoring program is required due to the proximity of water well ID # 283528 to the proposed MCAs, the proximity of the well to an existing MCA, and the construction of the well. Therefore, a condition has been added to Approval RA24042 requiring annual sampling of water well ID # 283528.

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for the solid pack barn, and youngstock sheds 2 and 3.

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

APPENDIX C: Explanation of conditions in Approval RA24042

Approval RA24042 includes several conditions, discussed below.

a. Construction Deadline

Thornspyc Dairy proposes to complete construction of the proposed new facilities by winter of 2026. It is of my opinion that a longer timeframe is more appropriate to allow for construction or material delays. Therefore, a construction deadline of November 30th, 2027, will be included as a condition in Approval RA24042.

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, Approval RA24042 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portions of the solid pack barn and youngstock sheds 2 and 3 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. Thornspyc Dairy to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the solid pack barn and youngstock sheds 2 and 3.

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 RA24042 includes conditions stating that Thornspyc Dairy shall not place livestock or manure in the manure storage or collection portions of the new solid pack barn or youngstock sheds 2 or 3 until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

c. Water well monitoring

As noted in Decision Summary RA24042 and Technical Document RA24042, the Water Well Exemption Screening Tool scores indicated an exemption is likely. However, due to the proximity of water well ID # 283528 to existing and proposed facilities, and the well's construction, a condition will be included in Approval RA24042 requiring the permit holder to sample and test raw groundwater from water well ID # 283528, according to water well monitoring requirements prescribed by the NRCB in writing (“Sampling for Water Well Monitoring” Fact Sheet). The NRCB may, based on the monitoring results and at its discretion, revise those requirements from time to time, in writing.

d. Facility decommissioning

As noted in part 1 above, Thornspyc Dairy has proposed to decommission and rebuild the solid bedding pack barn and youngstock shed 2. A condition has been included in Approval RA24042 requiring the existing solid bedding pack barn and youngstock shed 2 to be decommissioned in accordance with Technical Guideline Agdex 096-90, “Closure of Manure Storage Facilities and Manure Collection Areas”.

APPENDIX D: Determination of deemed permit status

Thornspyc Dairy 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 20(1.2) 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 (See NRCB 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. what category of livestock the operation was confining and feeding on January 1, 2002
- b. whether the operation was at livestock numbers that exceeded the AOPA thresholds;
- c. the footprint of the operation on January 1, 2002

Notice:

I found that the livestock type and capacity of the structures could reliably be determined by viewing historical aerial photos and records of the owner or operator. Accordingly, under section 11(3) of the Administrative Procedures Regulation, I waived the notice that might otherwise be required for determination of a deemed permit.

Evidence:

I was able to locate some records relevant to this grandfathering determination, including historical aerial photos. The imagery is dated 2002 and shows a clear footprint of the operation. When comparing the historical image to current imagery of the CFO, the facilities and footprint of the operation have not changed (see TD RA24042 Appendix B).

The operator also provided me with a record. This included a letter from Lacombe County dated July 12, 1999. The letter states that the County was aware Thornspyc Dairy was milking 150 cows, and that a development permit would not be required to construct a replacement dairy barn.

In addition, during a site inspection, operator Jan Van de Brake on behalf of Thornspyc Dairy stated that the operation was milking 150 cows prior to 2002, and that there has not been any construction or changes since.

Findings:

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO's deemed capacity is its physical capacity to confine livestock on January 1, 2002.

I consulted the NRCB's Technical Guideline Agdex 096-81 "Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002". For dairy operations with free stall barns, the following calculation is provided:

Calculated animal # = 1.2 animals per stall, multiplied by the # of stalls

For Thornspyc Dairy: (1.2 animals per stall) * (144 stalls) = 173 milking cows

In using the calculator, I found that the main milking barn, consisting of the free stalls, had the capacity for 173 milking cows. This is consistent with the operator's claim of 150 milking cows.

In addition to the milking barn, I also determined the following structures to be included in the grandfathered CFO:

- Calf hutch barn
- Youngstock shed #2
- Youngstock shed #3
- Bedded pack barn
- Free stall dairy barn
- Dairy parlor
- Earthen manure storage (EMS)

Based on these findings, before Approval RA24042 is issued, the CFO is considered to have a deemed registration and a deemed capacity of 150 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. As noted in several site visits and discussions with the operator, the CFO facilities have been in continual use since 2002. I therefore conclude this CFO has not been abandoned.