

Decision Summary LA25021

This document summarizes my reasons for issuing Approval LA25021 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA25021. 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 March 7, 2025, Hutterian Brethren of Acadia Ltd., operating as Acadia Colony Farming Co. (Acadia Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on March 11, 2025. On April 1, 2025, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken layer numbers from 14,500 to 48,960
- Increasing milking cow (plus dries and replacements) numbers from 60 to 100
- Decreasing swine farrow to finish numbers from 650 to 600
- Expanding the chicken layer barn (72.2 m x 15.3 m) to total dimensions of 108.2 m x 30.5 m

a. Location

The existing CFO is located at NE 7-26-3 W4M in the Municipal District (MD) of Acadia, roughly 13 km North-West of the Hamlet of Acadia Valley. The terrain is relatively flat with a gentle slope to the east. There are two marshes on site: one is located 30 m west from the cow shelter and pens and the dairy dry cow pens, the other is 90 m east of the dairy earthen manure storage.

b. Existing permits

To date, the CFO has been permitted under municipal development permit 00A-002 and under NRCB Authorization LA03032A. The NRCB permit allowed the construction of a hog quarantine barn and recognized the operation of a 650 swine farrow to finish, 60 milking cows (plus dries and replacements), and 14,500 chicken layer CFO. A 2010 amendment for LA03032A removed a second hog EMS and some conditions.

The recognition of livestock in Authorization LA03032 can be seen as a partial determination of the CFO's grandfathered status. In 2003 grandfathering was informal and often did not identify all facilities or livestock. Since the issuance of Authorization LA03032A, the applicant has requested a grandfathering determination of the following facilities and additional livestock that were not previously documented:

- Pullet barn
- Dry sow barn

- Farrow & nursery barn
- Grower & finisher barn
- Dairy barn
- Calf barn with pens
- Cow shelter with pens
- Macdonald barn
- Dairy earthen manure storage (EMS)
- Hog earthen manure storage (EMS)
- Dairy dry cow pens
- 22,000 chicken pullets
- 100 turkeys
- 400 ducks
- 100 geese
- 2,000 chicken broilers

The completed determination of the CFO's deemed permit status for these facilities and livestock under section 18.1 of AOPA is explained in Appendix C, attached. The updated list of the CFO's existing permitted facilities is included in the appendix to the Approval LA25021.

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 1.5 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 MD of Acadia, which is the municipality where the CFO is located, and to Special Area No. 3 which has a boundary within the notification distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in Oyen Echo newspaper in circulation in the community affected by the application on April 1, 2025, and
- sending 3 notification letters to people identified by the MD of Acadia and Special Area as owning or residing on land within the notification distance.

The full application was made available for viewing at the NRCB office in Lethbridge 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 Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Canadian Utilities Ltd., Dry Country Gas Coop Ltd., TC Energy (NGTL GP Ltd.), and Henry Kroeger Regional Water Services Commission as they are utility right-of-way (ROW) holders on the subject land.

I received responses from Brittany Van Norman, an assistant development and planning technologist with TEC, Brajesh Gautam, water approvals team lead with EPA, and Monique Cheung, a planning analyst with TC Energy.

In her response, Brittany Van Norman stated TEC has no concerns or objections to the proposed development and it is not subject to the requirements of the *Highways Development and Protection Regulation* and therefore, does not require a permit from TEC. She also mentioned that should the existing access require widening or improvements, a permit would be required, and all costs would be the responsibility of the applicant. The response from TEC was forwarded to the applicant for their information.

In his response, Brajesh Gautam stated he has no concerns from the *Water Act* side.

In her response, Monique Cheung stated that TC Energy has no concerns with the project proposed.

Approval LA25021 does not relieve the permit holder from complying with other applicable laws, such as safety codes, other municipal bylaws, provincial legislation (e.g. *Historical Resources Act*), and federal legislation (e.g. *Migratory Birds Convention Act*).

I did not receive any other responses.

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 the MD of Acadia's municipal development plan.

I have also determined that the application is subject to the intermunicipal development plan (IDP) between the MD of Acadia and Special Areas Board, which came into effect on June 26th, 2020.

The NRCB Board has directed approval officers to consider applicable IDPs since, under the *Municipal Government Act*, IDPs prevail over MDPs to the extent of inconsistency between the two statutory plans (see Decision 2022-02 Double H Feeders at p. 6-7; and NRCB Operational Policy 2016-7: *Approvals* at 9.2.1).

On that direction, I have determined that the proposed expansion is consistent also with the land use provisions of the applicable IDP. (See Appendix A for a more detailed discussion of the 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 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 municipalities 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 MD of Acadia is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Kenton Irvine-Peers, chief administrative officer with the MD of Acadia, provided a written response on behalf of the MD of Acadia. Mr. Irvine-Peers stated that the MD of Acadia has no comments to make on the application. The application’s consistency with the land use provisions of the MD of Acadia’s municipal development plan is addressed in Appendix A, attached.

Special Area No. 3 is also a directly affected party because their boundary is located within the notification distance. In addition, Acadia Colony’s CFO is located within the IDP boundary between the MD of Acadia and Special Areas Board. Mr. Darran Dick, a development officer with Special Areas No. 3, provided a written response on behalf of Special Areas. Mr. Dick stated that the proposed development appears to be in order. He also stated that due to the proximity to residences, they recommend the NRCB ensure the residents are accepting of the development, the residents are accepting of manure spreading, the development is constructed to prevent groundwater contamination, and there is sufficient water for the development.

In accordance with AOPA, landowners and occupants within the 1.5 mile notification distance were notified of the application. Additionally, the applicant is required to follow AOPA legislation, including setbacks to residences when spreading of manure. The proposed expansion has been assessed for environmental risk, including risk to groundwater, which is discussed in section 8, below. Water licensing falls outside of the regulatory authority of the NRCB under AOPA. However, EPA, who is responsible for the licensing of water under the *Water Act*, was sent a copy of the deemed complete application and stated they have no concerns.

Apart from municipalities, any member of the public may request to be considered “directly affected.”

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. 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. Based on the information in the application, as well as from a site visit, I did not identify any reasons to implement groundwater monitoring for the proposed expansion of the layer barn.

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 dairy ems, cow shelter and pens, and dairy dry cow pens using the ERST. These appear to be the CFO's highest risk facilities, as they are the closest to common bodies of water and are uncovered facilities. 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. 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. Kenton Irvine-Peers did not list the setbacks required by the MD of Acadia's land use bylaw (LUB), nor commented on if the application meets these setbacks. Upon review of the LUB, 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 under section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed May 13, 2025.

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

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. I see nothing in the information before me to suggest that effects on the environment will be unacceptable and, 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. I encountered no submissions or evidence, including from the MD of Acadia and Special Areas, that effects on the community and economy would be unacceptable. 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). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA25021 specifies the cumulative permitted livestock capacity as 100 milking cows (plus associated dries and replacements), 600 swine farrow to finish, 48,960 chicken layers, 400 ducks, 2,000 chicken broilers, 100 geese, 100 turkeys, and 22,000 chicken pullets; and permits the expansion of the layer barn.

Approval LA25021 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 LA25021 includes conditions that generally address construction deadline, 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 permits with Approval LA25021: Authorization LA03032A and the deemed permit (including MD Permit 00A-02) (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 LA25021 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA25021.

Acadia Colony's deemed permit, including MD permit 00A-02, and NRCB-issued Authorization LA03032A are therefore superseded, and their content consolidated into this Approval LA25021, unless Approval LA25021 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Authorization LA03032A and the deemed permit, including MD Permit 00A-02, will remain in effect.

May 14, 2025

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

- A. Consistency with municipal land use planning
- B. Explanation of conditions in Approval LA25021
- C. 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.

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.)

Acadia Colony’s CFO is located in the MD of Acadia and is therefore subject to that county’s MDP. The MD of Acadia adopted the latest revision to this plan on February 8th, 2022, under Bylaw 2022/782. The CFO is also within the plan boundary of the IDP between the MD of Acadia and Special Areas, so I also considered the land use provisions of that IDP.

MD of Acadia Municipal Development Plan

The MD of Acadia’s MDP states the following agricultural objectives in section 6.1:

- a) *To preserve the better quality soils for extensive agricultural land uses.*
- b) *To retain agricultural development as the primary economic activity in the MD of Acadia.*

Part a) of these objectives requires a determination of soil quality for extensive agricultural uses. As “better quality soils” is not specifically defined in the MDP, and because it refers to “extensive agricultural land uses” this policy is likely not relevant to my MDP consistency determination. Additionally, it looks to preserve better quality soils which I do not consider to be a land use provision I am to consider under AOPA.

Part b) of the objective seeks to retain agriculture as the primary economic activity in the municipal district. I do not consider this to be a land use provision, however, Acadia Colony’s proposed expansion of the layer barn would support this objective.

Section 6.2 a) of the MDP states “[t]he MD determines the protection and productive development of agricultural land as a valuable economic resource to be a top priority.” This appears to provide information on how much value the MD places on agricultural land and is likely not a land use provision. Therefore, this is not relevant to my MDP consistency determination.

Section 6.2 b) states “[e]very effort will be made to ensure, so far as practical, that viable farm holdings are neither severed nor fragmented by non-agricultural development and that extensive areas of good quality agricultural land are protected in order to encourage continued investment. Good quality agricultural land will be generally defined as Class 1, 2, 3, and 4 soils under the Canadian Land Inventory agricultural rating system of their equivalent (28% or greater) as determined by the MD of Acadia’s farmland assessment records.” This is likely not a land use provision, as it speaks to protecting agricultural land from being subdivided and determining what the MD considers “good quality agricultural land”. Therefore, this is not relevant to my MDP consistency determination.

Sections 6.2 c) and d) speak to the location and area of land required for non-agricultural development. These are likely not land use provisions, as they give direction to the MD on where it is appropriate for development not related to agriculture and how much land is required for such development, which are municipal planning matters. Further, the proposed expansion of the layer barn would be considered agricultural development. Nevertheless, I find these to be irrelevant to my MDP consistency determination.

Section 6.2 e) states “[w]here feasible, Council shall encourage the use of land conservation practices.” “Land conservation practices” is not specifically defined in the MDP. Further, this is directed at the Council of the MD of Acadia. Therefore, I do not consider this to be a land use provision and irrelevant to my MDP consistency determination.

Section 6.2 f) states “[c]ouncil supports the expansion of irrigation in the MD of Acadia.” This is not a land use provision that relates to CFOs, as it speaks to irrigation which is not regulated by the NRCB under AOPA. Therefore, this is not relevant to my MDP consistency determination.

Section 6.2 g) states “[c]ouncil supports and encourages the development of agricultural value-added facilities, diversified farming operations and home occupations and small scale recreation and tourism developments by farm families in agricultural areas.” This is directed at the council of the MD of Acadia and the types of development supported in agricultural areas and is likely not a land use provision. Regardless, the proposed expansion of the layer barn would be considered a “value-added facility” and also a “diversified farming operation” and would meet this objective.

For these reasons, there are no land use provisions in the MDP that I may consider in relation to this CFO. In general, the MDP is aspirational and relies on the MD of Acadia to carry out its concepts. In my view, the application is consistent with the land use provisions of the MD of Acadia’s MDP that I may consider.

Intermunicipal Development Plan with Special Areas

As directed by the NRCB Board in Board Decision 2022-02/LA21033 – *Double H Feeders Ltd.*, I also considered land use provisions of the IDP that exists between the MD of Acadia and Special Areas and that applies to this land location.

The “Special Areas Board & M.D of Acadia No. 34 Intermunicipal Development Plan” (IDP) was implemented under M.O No. MSD:054/20 and Bylaw No. 2020-770 on June 26th, 2020.

Section 3.3.3 of the IDP addresses CFOs. This section states “[i]t is recognized that approval of confined feeding operations ultimately lies with the NRCB. Prior to approvals being given within the Plan Area, both municipalities shall request the staff of the NRCB review local plans and

policies and consider these in their decision.” This is likely not a land use provision, as it explains how both the MD of Acadia and Special Areas recognize that the permitting of CFOs falls under the regulation of the NRCB and asked the NRCB to review local plans and policies. As Acadia Colony’s CFO is in the MD of Acadia, I consider that MDP to be the “local” plan and policy that would apply to this application and have considered the application to be consistent with the MD of Acadia’s MDP. For these reasons, I conclude that the application is consistent with the land use provisions of the IDP that I may consider.

APPENDIX B: Explanation of conditions in Approval LA25021

Approval LA25021 includes several conditions, discussed below, and carries forward a number of conditions from Authorization LA03032A and MD Permit 00A-02 (see sections 2 and 3 of this appendix). Construction conditions that have been met from historical permits are identified in the appendix to Approval LA25021.

1. New conditions in Approval LA25021

a. Construction deadline

Acadia Colony proposes to complete construction of the proposed expansion of the layer barn by January 30, 2027. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of January 30, 2027, is included as a condition in Approval LA25021.

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 LA25021 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the expansion 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. Acadia Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the expanded 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. Approval LA25021 includes a condition stating that Acadia Colony shall not place livestock or manure in the manure storage or collection portions of the layer barn expansion until NRCB personnel have inspected the layer barn expansion and confirmed in writing that it meets the approval requirements.

2. Conditions carried forward and modified from LA03032A

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that operating condition #4(b) from LA03032A should be carried forward and re-numbered to reflect the new construction conditions of this permit and the removal of the other manure application conditions.

3. Conditions not carried forward from LA03032A and MD Permit 00A-02

Approval LA25021 includes the terms and conditions in historical permits, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions (a), (b), (d), and (e) from MD permit 00A-02 and conditions #1(a-d), 4(a and c), and 5 from LA03032A should be deleted and therefore are not carried forward to Approval LA25021. My reasons for deleting these conditions are as follows:

Condition (a) of MD Permit 00A-02 calculates the minimum distance separation (MDS) and notes the application meets or exceeds that distance. This does not appear to be a condition per se, but rather a statement. Therefore, I will not be carrying forward this condition.

Condition (b) of MD Permit 00A-02 states the following:

- Maintenance of and/or access to approximately 160 acres for manure utilization from the poultry facility.
- Poultry litter not be applied on snow covered and/or frozen ground.
- Poultry litter be incorporated within 48 hours of land application.

The first point of condition (b) is redundant as it only speaks to the minimum land required for application of poultry manure, and not the other livestock of the CFO. Additionally, as part of this application, the applicant had to provide a minimum land base for the application of all livestock manure at this CFO, which is well above the minimum 160 acres required. The second point of condition (b) was updated in LA03032A to include manure from all livestock, and this condition has been carried forward as an operating condition of this approval. The third point of condition (b) is redundant as it is repeated in AOPA (Standards and Administration Regulation, Section 24(1)), and the opening paragraph of this approval states “[t]he permit holder shall comply with the requirements of the *Agricultural Operations Practices Act* (AOPA) and the regulations passed pursuant to that act.” Therefore, I will not be carrying forward this condition.

Condition (d) of MD Permit 00A-02 and condition 5 of LA03032A relate to the disposal of dead animals, which is regulated by Alberta Agriculture and Irrigation (AGI) under the *Animal Health Act*, *Disposal of Dead Animals Regulation*, and not regulated by the NRCB. Given AGI’s regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and may lead to inconsistency. Therefore, I will not be carrying forward these conditions.

Condition (e) of MD Permit 00A-02 states that “[a] fly control program should be maintained in and around the poultry facility”. This condition seems to suggest a fly control program be put in place rather than require one, and is also vague about the type of fly control program and would likely be difficult to enforce. Therefore, I will not be carrying forward this condition.

Conditions 4(a) and (c) of LA03032A speak to the applicant maintaining manure application records identified in the regulations and the incorporation of manure within 48 hours. These conditions are redundant, as they are repeated in AOPA (Standards and Administration Regulations, Sections 24(1) and 28), and the opening paragraph of this approval states “[t]he permit holder shall comply with the requirements of the *Agricultural Operations Practices Act* (AOPA) and the regulations passed pursuant to that act.” Therefore, I will not be carrying forward these conditions.

APPENDIX C: Determination of deemed permit status

Acadia Colony 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. (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 received a permit from the MD of Acadia on April 11, 2000, under development permit 00A-02. This permit allowed the construction of a new layer barn. The permit did not specify other permitted facilities nor state the CFO’s livestock capacity.

The CFO also received two Authorizations from the NRCB, LA03032 and LA03032A. These authorizations recognized the CFO has having the following livestock:

- 650 swine farrow to finish
- 60 milking cows (plus dries and replacements)
- 14,500 chicken layers

Accordingly, I assessed the status and capacity of the remaining claimed livestock and their associated facilities. This appendix should be treated as a completed grandfathering determination.

Under section 18.1(2)(b) of AOPA, if a CFO existed on January 1, 2002 with a municipal permit that does not specify the CFO’s livestock capacity, then the deemed livestock capacity of the CFO is the capacity of its enclosures to confine livestock on January 1, 2002.

Notice:

The remaining claimed structures (other than the layer barn) are primarily indoors. I found that the livestock type and capacity of these structures could reliably be determined by viewing historical aerial photos and records available on file. The aerial photos showed the presence of the pullet barn, dry sow barn, farrow & nursery barn, grower & finisher barn, dairy barn, calf barn with pens, cow shelter with pens, macdonald barn, dairy EMS, hog EMS, and dairy dry cow pens. The records available on file indicate livestock capacity above AOPA permitting threshold. 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 the capacity of the enclosures on January 1, 2002, including satellite images, water licenses, an MD permit application, MD Permit 00A-02, and decision summaries from Authorizations LA03032 and LA03032A.

In addition, during a site inspection, Ben Entz told me that the livestock capacity of the CFO has not changed, except for the layers and milking cows which are being increased as part of this application.

Findings:

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)(b) of AOPA.

- a. Application for MD Permit 00A-02 stated that the chicken pullet numbers were 15,000 and the application sought to construct a new layer barn and increase chicken layer numbers from 9,000 to 14,500.
- b. The Decision Summary for Authorization LA03032 stated the minimum distance separation (MDS) was based on a total of 2,812 livestock siting units (LSU) and the MDS is 745 m. Using our updated calculator for determining LSU and MDS, based on the additional livestock numbers the applicant is claiming to be grandfathered, the total LSU is 2851.9 with an MDS of 749 m.
- c. A water license was found on file as part of Authorization LA03032A. The license was issued in 1995 for the purpose of agricultural (stockwatering) with a gross diversion of up to 19 acre-feet. Based on a calculation using the Alberta Agriculture and Irrigation Daily and Annual Water Requirements tool, the water license would support the additional livestock that were not grandfathered as part of Authorization LA03032A.
- d. Satellite images show Acadia Colony has been a multi-livestock CFO for several decades with the following facilities existing on or before January 1, 2002:
 - Pullet barn - 74 m x 14.6 m
 - Dry sow barn - 114 m x 14.0 m
 - Farrow & nursery barn - 112 m x 20 m
 - Grower & finisher barn - 154 m x 24.3 m
 - Dairy barn - 49 m x 32 m
 - Calf barn with pens - 62 m x 13 m (barn) and 39 m x 25 m (pens)
 - Cow shelter with pens - 61 m x 12.2 m (shelter) and 113 m x 105 m (pens)
 - Macdonald barn - 34 m x 12.1 m (used to house the chicken broilers, turkeys, ducks, and geese)
 - Dairy EMS - 94 m x 44 m x 3.7 m deep (depth provided by applicant)
 - Hog EMS (two-cells) - 70.5 m x 32 m x 4.6 m deep and 200 m x 32 m x 4.6 m deep (depth provided by applicant)
 - Dairy dry cow pens - 130 m x 130 m

Under section 18.1(2) of AOPA, if a CFO existed on January 1, 2002, with a municipal permit that does not specify the CFO's livestock capacity, then the deemed livestock capacity of the CFO is the capacity of its enclosures to confine livestock on January 1, 2002. To determine the capacity of the existing CFO facilities, I used the standards from Technical Guideline Agdex 096-81 "Calculator for Determining livestock Capacity of Operations as They Existed on January 1, 2002". My assessment found that:

- The pullet barn had a capacity for 23,258 chicken pullets, making the claim of 22,000 chicken pullets reasonable.
- The macdonald barn had a capacity for 6,320 chicken broilers or 2,212 turkeys. The technical guideline does not have a capacity determination for ducks or geese, but the claim of 2,000 chicken broilers, 100 turkeys, 400 ducks, and 100 geese is reasonable.

Based on the evidence and findings above, and including the livestock already recognized in LA03032/LA03032A, the CFO is considered to have a deemed capacity of:

- 650 swine farrow to finish
- 60 milking cows (plus dries and replacements)
- 14,500 chicken layers
- 22,000 chicken pullets
- 2,000 chicken broilers
- 100 turkeys
- 400 ducks
- 100 geese

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 CFO facilities have been in continual use since 2002, and under the same operator. I conclude this CFO has not been abandoned.