

Decision Summary BA25005

This document summarizes my reasons for issuing Authorization BA25005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA25005. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On February 18, 2025, Rottier Farms Ltd. (Rottier Farms) submitted a Part 1 application to the NRCB to construct new manure storage facilities (MSFs) at an existing dairy CFO.

The Part 2 application was submitted on April 4, 2025. On April 28, 2025, I deemed the application complete.

The proposed construction involves:

- Constructing a new dairy barn – 85 m x 34 m
- Constructing a calf barn – 28.5 m x 7.4 m
- Constructing a new solid manure storage pad – 20 m x 34 m

The application also notified the NRCB of the proposed construction of a milk house. 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 proposed MSFs are located at the SE 15-62-1 W5M with the existing CFO located on the SW 14-62-1 W5M in Westlock County, roughly 5 km east of Jarvie, AB. The terrain is flat, sloping to the north with a tributary to the Pembina River located 622 m from the proposed facilities and 50 m to the existing facilities.

b. Existing 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 100 milking cows (plus associated dries and replacements) CFO. The determination of the CFO’s deemed permit status under section 18.1 of AOPA is explained in previously issued Decision PB25002.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- 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
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 0.5 miles from the CFO

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.

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).

I also sent a copy of the application to Pembina River Natural Gas Ltd as they are a Right of Way holder on the subject land.

After a discussion with a representative from AGI, the operator is reminded they need to inform the inspector during planning and construction of the milk house area.

Authorization BA25005 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).

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction 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.)

5. 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 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 8 and Appendix B, the application meets all relevant AOPA requirements.

6. Responses from municipality

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.

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 construction 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).

7. Environmental risk of facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface water and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require environmental or construction monitoring for the facility. In this case a determination was made, and monitoring is not required.

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 EMS and dry cow pens using the ERST. These appear to be the CFO's highest risk facilities, due to the liquid manure and the pens location on the site. 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.

8. Terms and conditions

Authorization BA25005 permits the construction of the new dairy barn, solid manure storage pad, and calf barn.

Authorization BA25005 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization BA25005 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization BA25005 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA25005.

Authorization BA25005 must be read in conjunction with Rottier Farm's deemed (grandfathered) registration PB25002, which remains in effect.

June 3, 2025

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization BA25005

APPENDIX A: Consistency with the municipal development plan

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

Rottier Farms’ 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, Rottier 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.” Rottier Farms’ CFO 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. 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. 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: Explanation of conditions in Authorization BA25005

Authorization BA25005 includes several conditions, discussed below:

a. Construction Deadline

Rottier Farm's proposes to complete construction of the proposed new solid manure storage pad, dairy barn, and calf barn by 2027. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2027 is included as a condition in Authorization BA25005.

b. Post-construction inspection and review delete the plural if only one condition applies

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, Authorization BA25005 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the solid manure storage pad to meet the specification category C (solid manure – wet), and the dairy barn, and calf barn to meet the specification category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
- b. Rottier Farm's to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the solid manure storage pad, dairy barn, and calf 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. Authorization BA25005 includes a condition stating that Rottier Farm's shall not place livestock or manure in the manure storage or collection portions of the new facilities until NRCB personnel have inspected the solid manure storage pad, dairy barn, and calf barn and confirmed in writing that it meets the authorization requirements.