

Decision Summary RA24045

This document summarizes my reasons for issuing Approval RA24045 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24045. 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 November 5, 2024, Gert Schrijver on behalf of Mars Dairy Ltd. (Mars Dairy) submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on March 3, 2025. On April 24, 2025, I deemed the application complete.

The proposed expansion involves:

- Increasing the permitted number of milking cows (plus associated dries and replacements) from 200 to 400
- Constructing a freestall addition (with pits) to the existing dairy barn – 144 m x 23 m
- Constructing a parlour building (72 m x 24 m) which includes a calf barn – 45 m x 7 m
- Constructing a sand separation building – 15 m x 15 m
- Constructing an earthen manure storage (EMS) – 167 m x 55 m x 3.5 m deep
- Decommissioning the existing EMS

a. Location

The existing CFO is located at NW 18-38-19 W4M in the County of Stettler, roughly 5 km south of Stettler. The terrain is generally flat with an overall slope to the northwest. A large seasonal slough exists roughly 299 m to the north 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 County of Stettler Development Permits No. 9963F-99, issued July 27, 1999, and No.9985F-99, issued October 20, 1999. This deemed approval allows for the construction and operation of a 200 milking cow CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix F attached. The deemed facilities are listed in the appendix to the Approval RA24045.

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 the County of Stettler, which is the municipality where the CFO is located. No other municipalities are located within the notification distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Stettler Independent newspaper in circulation in the community affected by the application on April 24, 2025, and
- sending 30 notification letters to people identified by the County of Stettler 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’s Red Deer office.

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 Ember Resources Inc. and Apex Utilities Inc. as they are right of way holders.

A representative from AGI responded and provided the name of the inspector responsible for the application.

Ms. Cindy Skjaveland, a property technologist with TEC, responded on behalf of TEC. Ms. Skjaveland stated that due to the proximity of the site to Highway 56, a roadside development permit will be required. This response was forwarded to the applicant for their information and action.

No other responses were received.

Approval RA24045 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. 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 existing CFO is to be located.

5. MDP, IDP consistency

I have determined that the proposed expansion is consistent with the land use provisions of the County of Stettler's municipal development plan. (See Appendix A for a more detailed discussion of the County's planning requirements.)

The site is not subject to an Intermunicipal Development Plan (IDP).

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from nearby residences, with two exceptions (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of these residences have signed written waivers of the MDS requirement to their residences
- 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 E, the application meets all relevant AOPA requirements. The exemptions that are required to address the AOPA requirements around water well setbacks are discussed in section 9 and Appendix D 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." The County of Stettler is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Rich Fitzgerald, a development officer/GIS coordinator with the County of Stettler, provided a written response on behalf of the County of Stettler. Mr. Fitzgerald stated that the application is consistent with the County of Stettler's land use provisions of the municipal development plan

(MDP). He also confirmed that the site is not subject to an IDP. The application's consistency with the land use provisions of the County of Stettler's MDP is addressed in Appendix A, attached.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (see NRCB Operational Policy 2016-7: Approvals, part 7.2.1). Brad & Beverly Wohlgemuth and Tim & Rita Unruh provided MDS waivers and are directly affected parties.

Apart from municipalities, any member of the public may request to be considered "directly affected". The NRCB received responses from two individuals.

Both of the two individuals who submitted responses own or reside on land within the one mile notification distance for affected persons. Because of their location within this distance, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.)

The directly affected parties raised concerns regarding water usage, odour and presence of flies from spreading manure, property values, and littering from silage plastic. These concerns are addressed in Appendix C.

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, porous subsurface materials, or surface water systems an approval officer may require groundwater monitoring for the facility. The information on this file supports the assumption that risks to groundwater and surface water are low and groundwater 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, freestall milking barn, and young stock pens using the ERST. These appear to be the CFO's highest risk facilities as the barn and EMS contain liquid manure, and both the EMS and the young stock pens are at least partially uncovered. 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. Exemptions

I determined that the proposed sand separation facility, freestall addition, and new EMS are located within the required AOPA setback from a water well. As explained in Appendix D, an exemption to the 100 m water well setback is warranted due to the well's construction, indoor nature of the freestall addition, and upslope location of the well relative to the new EMS.

10. 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. Fitzgerald stated that the application exceeds the minimum yard requirements. Additionally, I have reviewed the setbacks required by the County of Stettler's land use bylaw (LUB) and determined 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.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://eab.gov.ab.ca/status.htm>, accessed July 18, 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 on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted, and the directly affected parties' concerns have been addressed.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted, and the directly affected parties' concerns have been addressed.

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). The zoning for the land where the CFO is located is agricultural. In my view, this presumption is not rebutted.

11. Terms and conditions

Approval RA24045 specifies the cumulative permitted livestock capacity as 400 milking cows (plus associated dries and replacements) and permits the construction of the parlour building with calf barn, sand separation building, new EMS and the freestall addition.

Approval RA24045 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 RA24045 includes conditions that generally address construction deadlines, document submission, decommissioning, and construction inspection. For an explanation of the reasons for these conditions, see Appendix E.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval RA24045: County of Stettler Development Permits No. 9963F-99 and 9985F-99 (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 E discusses which conditions from the historical permits are or are not carried forward into the new approval.

12. Conclusion

Approval RA24045 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24045.

Mars Dairy's deemed approval, including municipal development permits no. 9963F-99 and 9985F-99 are therefore superseded, and their content consolidated into this Approval RA24045, unless Approval RA24045 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed approval, including County of Stettler Development Permits No. 9963F-99 and 9985F-99 will remain in effect.

July 31, 2025

(Original signed)

Lynn Stone
Approval Officer

Appendices:

- A. Consistency with municipal land use planning
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Exemptions from water well setbacks
- E. Explanation of conditions in Approval RA24045
- F. 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), and any applicable intermunicipal development plan (IDP).

This does not mean consistency with the entire MDP or IDP. 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 20(1.1) of the Act precludes approval officers from considering MDP or IDP 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 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.)

Municipal Development Plan (MDP)

Mars Dairy’s CFO is located in the County of Stettler and is therefore subject to that county’s MDP. The County of Stettler adopted the latest revision to this plan on August 9, 2023, under Bylaw 1704-23. Section 4.15 of the MDP speaks specifically to CFOs.

Under section 4.15, subsections (a) to (g) specify what the County will include in their response to the NRCB. These points are procedural and are not valid land use provisions.

Subsection (h) states that the County will support new and/or expanding CFOs, if they are located outside of the listed exclusion zones. Mars Dairy’s existing CFO is not located in an exclusion zone and is therefore consistent with this policy.

Subsections (i and j) list several future residential expansion areas. It goes on to state that where area structure plans, outline plans, and concept plans identify future residential development, an 800 m exclusion zone exists. Mars Dairy’s existing CFO is not located in any of these areas and is therefore consistent with this policy.

For these reasons, I conclude that the application is consistent with the land use provisions of the County of Stettler’s MDP that I may consider. There are no IPDs in place for the location of Mars Dairy’s CFO.

APPENDIX B: Determining directly affected party status

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Brad & Beverly Wohlgemuth and Tim & Rita Unruh. See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.

The following individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party radius”, as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation: (see NRCB Operational Policy 2016-7: Approvals, part 7.2.1.)

- Allen Watson (SW 13-38-20 W4M)
- Steven Kromm (NW 17-38-19 W4M)

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

The directly affected parties raised the following concerns: water usage, odour and presence of flies from spreading manure, property values, and littering from silage plastic.

Water usage: Mr. Watson responded that he was concerned about the extreme strain the increase in water requirements would have on the aquifer.

Approval officer's comments: Alberta Environment and Protected Areas (EPA) is responsible for licensing the use of groundwater and surface water in Alberta. The water licensing process includes an opportunity for members of the public to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (See NRCB *RFR 2024-04 Ridder Farms* at pg. 6.)

Page 4 of Technical Document RA24045 provides options for how applicants wish to have their *Water Act* licence processed. Mars Dairy selected option 2, requesting that the AOPA permit be processed separately from the *Water Act* licence. This option acknowledges that it is the applicant's responsibility to ensure that they have adequate water licensing. The applicant is reminded of this requirement.

Odour and presence of flies from spreading manure: Mr. Kromm responded that Mars Dairy spreads manure in close proximity to his home. He detailed concerns about enjoyment of their property due to odour and flies.

Approval officer's comments: Manure application is regulated under sections 24 and 25 of the Standards and Administration Regulation. Section 24(1) of the regulation requires manure to be incorporated within 48 hours of application when it is applied to cultivated land. Incorporation reduces odours and runoff by working the manure into the soil. This type of land application of manure is typically limited to once or twice per year and is of short duration. Odours from manure spreading (and the associated flies) typically do not persist for extended periods of time.

Under section 24(5)(a) of the regulation, manure does not need to be incorporated after surface application on forages, or on no-till cropland, in order to conserve the soil. However, the manure must be applied at least 150 m from any residence. This setback helps mitigate the odour from manure spreading without incorporation.

Complaints about CFO-related issues can be reported to the NRCB's 24-hour toll-free reporting line (1-866-383-6722) and will be followed up on by an NRCB inspector. Neighbours can also call any NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

Property values: Mr. Kromm expressed concern about the negative effect the expanded CFO would have on his property values.

Approval officer's comments: In several review decisions, the NRCB's Board members have consistently stated that concerns regarding effects on land or property values are "not a subject for [the Board's] review under AOPA" or for approval officers' consideration of permit applications. According to the Board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans..." *Zealand Farms, RFR 2011-02* at pg. 4, and *Pigs R Us Inc. RFR 2017-11/BA17002* at pg. 6.

As explained in Appendix A and part 10 of the decision summary, Mars Dairy's application is consistent with the land use provisions of the County's MDP and the zoning for the area, which suggest that the proposed CFO expansion is an appropriate use of land in the area.

Littering from silage plastic: Mr. Kromm expressed concerns about silage plastic blowing into his yard and land. He included several pictures of this.

Approval officer's comments: Regulating littering is outside of the scope of AOPA. Mars Dairy is encouraged to manage waste responsibly.

APPENDIX D: Exemptions from water well setbacks

1. Water Well Considerations

The proposed EMS, sand separator facility, and freestall addition are proposed to be located less than 100 m from a water well.). I have confirmed that one water well is located approximately 20 m from the new EMS, 15 m from the freestall addition, and 18 m from the sand separator facility during a site visit. This is in conflict with 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 storage facility (MSF), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF are presumed to be low if the applicant's proposed MSF meets AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. The indoor nature of the sand separator facility and freestall addition
- c. The upslope location of the water well in relation to the new EMS
- d. The direction of groundwater flow (to the north), from prior engineering assessments.

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 9.10.2.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 20 m south of the new EMS, 15 m north of the freestall addition, and 18 m east of the sand separator facility, is likely EPA water well ID # 296769. This well is reported to have been installed in 2001 and has a perforated or screened zone from 21.03 m to 25.91 m below ground level across shale and sandstone layers. The well has an above ground casing. This well is used for non-domestic purposes. I note that in my conversations with the applicant, the water well is used presently for the barn and livestock facilities. The well's log identifies protective layers from 9.45 m to 12.5 m below ground level. The well has a bentonite seal from ground surface to 17.68 m below ground level (across the clay, till and shale layers). The well appeared to be in good condition at the time of my site inspection. A prior leak detection assessment determined that the direction of groundwater flow was to the north. Therefore, the well is up-gradient to the new EMS and cross-gradient to the sand separator facility.

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 RA24045.

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

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for the new EMS, freestall addition, and sand separator facility.

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 E: Explanation of conditions in Approval RA24045

Approval RA24045 includes several conditions, discussed below, and carries forward a condition from the County of Stettler Development Permit No. 9985F-99 (see sections 2 and 3 of this appendix). Construction conditions from historical County of Stettler Development Permits No. 9963F-99 and 9985F-99 that have been met are identified in the appendix to Approval RA24045.

1. New conditions in Approval RA24045

a. Construction above the water table

Section 9(3) of the Standards and Administration Regulation under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

The information provided in Envirowest’s Site and Soil Assessment (March 3, 2025) and subsequent letter (dated April 1, 2025) state the water table is conservatively measured at 4.0 m below grade.

Based on this information, the proposed earthen manure storage facility meets the one metre requirement of section 9(3). However, because the height of the water table can vary over time, a condition is included requiring Mars Dairy to cease construction and notify the NRCB immediately if the water table is observed to be 1 m or less from the bottom of the liner.

b. Groundwater protection requirements

Mars Dairy proposes to construct the new earthen liquid manure storage (EMS) with a 1.0 metre thick compacted soil liner. Section 9 of AOPA’s Standards and Administration Regulation specifies a maximum hydraulic conductivity for this type of liner in order to minimize leakage.

To demonstrate compliance with this standard, Mars Dairy provided lab measurements of the hydraulic conductivity of the materials that will be used to construct the compacted soil liner. Lab measurements of hydraulic conductivity are made in a precisely controlled setting and are typically based on a small soil sample. Therefore, the NRCB generally multiplies lab-measured hydraulic conductivity values by a factor of 10 to reflect the potential variability in actual liner materials and conditions that can reasonably be expected to be achieved in the field.

The regulations provide that the actual hydraulic conductivity of a one metre thick compacted soil liner must not be more than 1×10^{-7} cm/sec.

In this case, the lab measurement was 2.148×10^{-9} cm/sec. With the required ten-fold modification, the expected field value is 2.148×10^{-8} cm/sec. This expected value is below (better than) the maximum value in the regulations. Therefore, the proposed liner meets the hydraulic conductivity requirement in the regulations and no condition is required.

c. Construction Deadline

Mars Dairy proposes to complete construction of the proposed facilities by end of 2027. In my opinion, a timeframe that allows for three full construction seasons is more reasonable for the

proposed scope of work. The deadline of November 30, 2028, is included as a condition in Approval RA24045.

d. 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 RA24045 includes conditions requiring:

- a. Mars Dairy to provide an engineer's completion report certifying that the EMS was constructed with the same liner material as that used for hydraulic conductivity testing and that the EMS was constructed according to the proposed procedures and design specifications.
- b. the concrete used to construct the liner of the manure collection and storage portion of the freestall barn addition and sand separation facility to meet the specification for category B (liquid manure shallow pits) and category C (solid manure – wet) respectively; and for the calf barn to meet the requirements for category D (solid manure – dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas".
- c. Mars Dairy to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the freestall barn addition, sand separation facility, 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. Approval RA24045 includes conditions stating that Mars Dairy shall not place livestock or manure in the manure storage or collection portions of the new freestall barn addition or calf barn, nor allow manure in the sand separation facility or the EMS until NRCB personnel have inspected these facilities and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward from County of Stettler Development Permit No 9985F-99

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition 1 from the County of Stettler Development Permit No. 9985F-99 should be carried forward.

Condition 1 states that dead animals must be hauled to a rendering plant. As stated in the NRCB's Amending Municipal Permit Conditions Operational Policy 2016-1, approval officers must not, on their own motion, delete or amend a municipal permit condition relating to dead animal disposal that is more stringent than the *Animal Health Act*.

The original condition restricts the operator to using rendering as the only method of disposal. Since the *Animal Health Act* outlines several different methods of dead animal disposal, I interpret this condition as being more stringent than the *Animal Health Act*. Therefore, the condition is carried forward.

3. Conditions not carried forward from County of Stettler Development Permit No 9985F-99

Approval RA24045 includes the terms and conditions in County of Stettler Development Permit

No. 9985F-99, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions 2-8 from County of Stettler Development Permit No. 9985F-99 should be deleted and therefore are not carried forward to Approval RA24045. My reasons for deleting these conditions are as follows:

Condition 2 requires that the lagoon is able to accommodate at least 14 months of storage for a 200 milking cow dairy. This condition is no longer relevant as the CFO is proposing to increase to 400 milking cows (plus associated dries and replacements).

Condition 3 states that manure must be incorporated into the soil within 48 hours after spreading. This condition is already a part of AOPA's spreading requirements, which all CFOs are required to follow. For clarity, this condition will be removed.

Condition 4 states that the applicant is required to have a written agreement to spread on cropland. The agreement must be valid for 5 years. The applicant has already provided a sufficient amount of land for manure spreading. Furthermore, the land is owned by the applicant. This condition is no longer relevant and will therefore be removed.

Condition 5 states that a water licence is required from Alberta Environment. All CFOs are required to have sufficient water licensing. A copy of this application has been forwarded to EPA for their information. To avoid conflicting requirements, this condition will be removed.

Condition 6 states that the "existing use to be registered with the local Alberta Agriculture, Food, and Rural Development Office in Stettler, Alberta". It is unclear what is required to be registered with Alberta Agriculture. However, the site is "registered" with the NRCB, who holds regulatory authority over CFOs in Alberta. Due to the impossibility of enforcing this condition, it will be removed.

Condition 7 states that manure storage must have a permeability of less than one inch per year. This condition is difficult to enforce, as it does not specify which manure storage facility it is referring to. Presumably, it relates to the earthen manure storage facilities that were built with this development permit. This condition is therefore no longer relevant as the applicant is proposing to decommission those facilities and replace them with a new EMS, which meets the permeability requirements under AOPA. Therefore, this condition will be removed.

Condition 8 states that a site plan for the operation must be prepared. This condition is impossible to enforce as I have no way of knowing if a site plan was prepared at that time. As part of this application, Mars Dairy has provided an updated site plan. Therefore, this condition will be removed.

No conditions existed in County of Stettler Development Permit 9963F-99.

APPENDIX F: Determination of deemed permit status

Mars 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 are 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 constructed pursuant to a municipal development permit before 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 was originally permitted by the County of Stettler on July 27, 1999, under development permit no. 9963F-99, and on October 20, 1999, under development permit no. 9985F-99. These permits allowed the construction and operation of a dairy CFO with 200 milking cows. 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 Appendix of Approval RA24045.

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 200 milking cows.

Validity today:

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

Under Operational Policy 2023-1: Grandfathering (Deemed Permit), part 9.1, I considered whether the CFO has been abandoned since January 1, 2002. I considered factors relevant to abandonment, as identified in Operational Policy 2016-3: Permit Cancellations under AOPA Section 29. The dairy has been fully operational since 2002. This is supported by NRCB records of previous site visits, as well as historical aerial photography. 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 no such activities have taken place.