

## Decision Summary RA20041

This document summarizes my reasons for denying Approval RA20041 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20041. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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.

### 1. Background

On August 26, 2020, Mark & Nina Astner, and Manna Farms Ltd. (Manna Farms) submitted a Part 1 application to the NRCB to expand an existing swine CFO from 3,000 to 4,200 feeder hogs. The Part 2 application was submitted on August 26, 2020. On September 8, 2020, I deemed the application complete.

There is no proposed construction included with this application.

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see [www.nrcb.ca](http://www.nrcb.ca).)

#### a. Location

The existing CFO is located at NE 8-44-21 W4M in Camrose County, roughly 1.6 km west of Little Beaver Lake and approximately 2 km northwest of Ferintosh, Alberta. The terrain is generally undulating with a predominant slope to the south.

#### b. Existing permitted facilities

The CFO is currently permitted under NRCB Registration RA04039 and Authorization RA20026. These permits allow the construction and operation of a 3,000 feeder hog CFO. The CFO’s existing permitted facilities are listed in Registration RA04039 and Authorization RA20026.

### 2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 this application, the distance is 1.0 mile. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are

entitled to provide evidence and written submissions. Camrose County is an affected party (and therefore also a directly affected party) because the proposed CFO expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Camrose Booster on September 8, 2020 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Camrose County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and right of way holders Ember Resources Inc. and Battle River Natural Gas Coop Ltd. Seventy-nine courtesy letters were sent to people identified by Camrose County as owning or residing on land within the affected party radius.

### **3. Responses from the municipality and referral agencies**

I received responses from the County and AEP. No responses were received from AHS, Ember Resources Inc. and Battle River Natural Gas Coop Ltd.

Ms. Kim Hunter, a development officer with Camrose County, provided two written responses on behalf of the county. As noted in section 2, Camrose County is a directly affected party.

In her initial response, Ms. Hunter stated that the application complies with the county’s municipal development plan (MDP). Additionally, she indicated that the CFO site, and all lands within 1,600 m of the CFO, are zoned as Agricultural and Lake Resort in the county’s land use bylaw (LUB). Although there is no construction, proposed with this application, Ms. Hunter listed the setbacks required by Camrose County’s LUB.

In a second response, received after the deadline for responses, Ms. Hunter corrected her initial response by indicating that since Little Beaver Lake is considered a “recreational lake”, and the proposed CFO expansion is located within the 2 mile exclusion zone from that lake, the application does not meet section 4.3.9 of the county’s MDP.

The portions of Camrose County’s MDP and LUB applicable to this application are addressed in Appendix A, attached.

Ms. Laura Partridge, a senior water administration officer with AEP, sent an email to the applicant and the NRCB, indicating that additional water licencing under the *Water Act* is required for the expansion.

#### **4. Responses from other directly affected parties**

The NRCB received four responses from six individuals. One of the responses supported the application.

All of the responses were from parties who own or reside on land within the 1.0 mile radius for affected persons. Because of their location within this radius and because they submitted timely responses, they are presumed to be directly affected by the application.

Other than the response in support, the directly affected parties raised concerns regarding:

- Increase in odours
- Property values

These concerns are addressed in Appendix B.

#### **5. Environmental risk screening of existing facilities**

When reviewing a new approval application for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool provides for a numeric scoring of risks, which can fall within either 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](http://www.nrcb.ca).) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 8.13.

In this case, the risks posed by Manna Farms' existing CFO facilities were recently assessed in June 2020. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

#### **6. Other factors considered**

In my opinion, the proposed CFO expansion is inconsistent with the land use provisions of Camrose County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements, including consistency with the county land use bylaw). Section 20(1)(a) of AOPA requires an approval officer to deny an application if it is not consistent with the land use provisions in a municipal development plan. For this reason I must deny the application.

For file completion, I also reviewed the application's consistency with all of the other technical requirements on the act, and determined that the proposed CFO expansion:

- Does not meet the required AOPA setbacks from the nearby category 4 residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS); and therefore, as set out in Section 3(1) of the Standards and Administration

Regulation, I must not issue a permit for the application. See Appendix C for more details on the MDS discussion.

- Can meet the required AOPA setbacks from water wells (with an exemption), springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Can meet AOPA's nutrient management requirements regarding the land application of manure
- Can meet AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

I did not consider any of the considerations listed in section 20(1)(b) of AOPA, including the application's effects on the environment, economy and community, as the application is inconsistent with the county's MDP as per Section 20(1)(a) of AOPA.

## **7. Conclusion**

Application RA20041 is denied because the proposed CFO expansion is inconsistent with the Camrose County's MDP, and does not meet the MDS requirement under AOPA.

However, in case the NRCB's board members review my denial decision and decide to overturn it following a review hearing, Appendix D provides my recommendations on the condition and permit consolidation that should be considered if an approval is granted.

November 6, 2020

(Original Signed)  
Francisco Echegaray, P.Ag.  
Approval Officer

## **Appendices:**

- A. Inconsistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Minimum Distance Separation
- D. Suggested conditions and consolidation of previously issued permits

## APPENDIX A: Inconsistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Manna Farms’ CFO is located in Camrose County and is therefore subject to that county’s MDP. Camrose County adopted the latest revision to this plan on April 12, 2016, under Bylaw 1372.

As relevant here:

Policy 4.3.7 of the MDP states: “applications for new or expanding CFOs shall meet the Agricultural Operations Practices Act.” As discussed in section 6 above, the application does not meet the AOPA’s minimum distance separation requirement.

Policy 4.3.8 states: “At the discretion of County Council, large CFOs shall be prohibited in the County.” This policy likely is not a “land use provision” because it calls for discretionary judgements about the size of the CFO.

Policy 4.3.9 states: “Development of new or expanding CFOs shall not be supported within 3,219 m (2 miles) of the City of Camrose, 3,219 m (2 miles) from any recreational lake, or 1,610 m (1 mile) from any other urban municipality or hamlet as outlined in the IDP.” Manna Farms’ CFO is located within 1,600 m of the Little Beaver Lake.

As noted in section 3 of the decision summary, Ms. Hunter on behalf of Camrose County confirmed that Little Beaver Lake is classified as a recreational lake, and the proposed CFO expansion is located within the exclusion zone from that lake; and therefore, she indicated that the application does not meet the county’s MDP.

The application is for a CFO expansion. Section 4.5 of Operational Policy 2016-7 (Approvals), defines expansion as an increase in animal numbers and manure production, whether or not there is accompanying construction. The MDP does not define “expansion,” so I will use the definition in the Part 2 Matters Regulation under AOPA. Section 1(1)(d)(i) of that regulation defines an “expansion” as the construction of additional facilities to accommodate more livestock. Manna Farms’ application involves confining more livestock, so I conclude that it is an “expansion” under this definition, and supported by the Approvals policy. The MDP policies relating to CFO “expansions” do apply to Manna Farms’ application, and; therefore, the application is inconsistent with this policy. Manna Farms is not located within any of the other setbacks outlined in this policy of the MDP.

For background information, as the approval officer who issued Authorization RA20026, I determined that the application to convert two existing hog barns from solid to liquid manure (by pouring concrete floors and constructing manure collection pits), and the construction of a new earthen liquid manure storage, without an increase in the permitted livestock numbers or manure production, was not considered to be a new or expanding CFO. Therefore, Authorization RA20026 met this section of the county's MDP.

Because of the inconsistencies with the county's MDP, I must deny the application under section 20(1)(a) of AOPA.

In my view, the MDP clearly intends to incorporate Camrose County's Land Use Bylaw (LUB) # 1373 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). Sections 1.5, 7.3.14, 8.3.3, and 10.3.3 of the MDP state that "the County's LUB serves as the regulatory document for making all land use related decisions". Accordingly, I considered the LUB. Under the LUB, the subject land is currently zoned General Agricultural (A) District. Under section 702.2 of the bylaw, CFOs are included in a list of "discretionary" land uses for that zoning category. NRCB policy states that approval officers will presume that an application is consistent with a LUB if the bylaw lists the proposed development as either a permitted or discretionary use (See Operational Policy 2016-7: *Approvals*, part 8.3).

## APPENDIX B: Concerns raised by directly affected parties

The following individuals own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

Dianne AuCoin  
S1/2 and SE 9-44-21 W4M

Tim and Roxanne Callaghan  
Lot 5, Block 4, Plan 7920846  
SE 9-44-21 W4M

Rick and Shannon Fisher  
342, RR 214 Camrose County

Norman Koop  
NE 16-44-21 W4M

Under NRCB policy, because these individuals have submitted a timely response, they are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.

In his response, Mr. Norman Koop supported the application and commended the applicants for their excellent management of their CFO.

The other directly affected parties raised concerns which are listed and summarized below, together with my analysis and conclusions:

1. **Increase in odours** – The individuals expressed concern about a potential increase in odours due to the proposed CFO expansion, and the impact on their quality of life due to odours.

### **Approval officer’s conclusion:**

AOPA’s minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Manna Farms’ proposed CFO expansion is located within the required MDS for category 4 residences located in the Little Beaver Lake Estates; and therefore, does not meet this AOPA requirement. See Appendix C for more details on the MDS analysis.

2. **Property values** – Some of the respondents indicated that the proposed CFO expansion will devalue their property

### **Approval officer’s conclusions**

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 , p. 5; see also, e.g. *Pigs R Us Inc.*, RFR 2017-11, p. 6 (stating that effects on land

values are “not a relevant Board consideration when the development is consistent with the MDP’s land use provisions.”).

As explained in Appendix A above, Manna Farms’ application is inconsistent with the land use provisions of the county’s MDP. This inconsistency may suggest that the effects on property values are not acceptable.

**Applicant’s response to the statements of concern**

In a letter dated October 16, 2020 Mark Astner, on behalf of Manna Farms, responded to one of the issues raised in the statement of concerns. The response from the applicants states the following:

...” We’re writing this in response to our neighbours concerns regarding our application for an increase to our facilities stocking numbers. We value the feedback from our community and hope to address their concerns.

To start, I have lived here for over 40 yrs. This area has been my only home/community and I strive to be a steward of the land that we occupy.

The concern that has been raised is the odour of the livestock. That is understandable as all livestock will emit odours.

We have recently completed a renovation to our facility converting away from dry bedding/manure to an all liquid system. This in part will largely reduce the smell from the facility and yard as we no longer will have large piles of raw manure being stored on the storage pads that were located around the facility. We now have liquid manure in the engineered and regulated storage lagoons only. Another part is having the ability to direct inject the liquid manure into the soil versus surface application and then incorporate as regulations require. This direct injection reduces the volatilization of the nutrients which is what the smell is. We practice variable application of the nutrients on our soil and sample the soil regularly so as to prevent nutrient build up and potential leaching. We diligently follow the rules and regulations under the Agricultural Operations Practices Act of Alberta that are enforced by the NRCB.

In closing, we are aware of the odours that come from this yard as our residence is on site and we are the first to smell it. We utilize our best managerial practices to minimize the odour as we can and continually look to new options for increased success in that area.”...



## APPENDIX C: Minimum Distance Separation (MDS)

AOPA's MDS is a means for mitigating odour and other nuisance impacts from CFOs. AOPA establishes four categories of MDS. Camrose County's land use bylaw (LUB), and the development officer's initial response to the application, specify that the lands within 1,600 metres of the boundary of Manna Farms' property are zoned A - Agriculture and LR - Lake Resort.

The county's LUB identifies the residences zoned LR as part of the Little Beaver Lake Estates. NRCB operational policy 2018-1: *Large Scale Country Residential Developments* gives approval officers guidance on how to identify large scale country residential development. Following that policy, I determined that these residences are large scale country residential.

Therefore, MDS for categories 1 and 4, as established by AOPA, applies to residences on lands surrounding Manna Farms.

The following table provides the MDS categories set out by the Standards and Administration Regulation, Schedule 1, sections 4(a)(b) and (d), and the required MDS calculations:

Land use zone	MDS Category	Required MDS	Nearest neighbour
Agriculture	Category 1	639 m	646 m
Country residential	Category 2	852 m	N/A
Commercial	Category 3	1,065	N/A
Large scale country residential	Category 4	1,704 m	1,434 m

An expansion factor cannot be applied, since the most recent construction, arising from an authorization, happened less than 3 years ago (Standards and Administration Regulation, Schedule 1 Section 6(3)). The proposed CFO expansion does not meet the AOPA's MDS requirement; and therefore, according to the Standards and Administration Regulation's Section 3(1), I must not issue an approval.

## **APPENDIX D: Suggested conditions and consolidation of previous permits**

If the NRCB board should direct an approval officer to issue an approval (following a board review), I recommend that the following condition should be considered, in addition to the consolidation of existing permits.

### **1. New condition**

#### **Manure application**

In a response letter, Mark Astner, on behalf of Manna Farms, indicated that they will direct inject manure produced at their CFO into the soil. I would recommend including this commitment from the applicant as a condition in the approval, requiring that all of the liquid manure produced at the CFO must be applied, to cultivated land, by direct injection.

### **2. Consolidation of previous permits and conditions**

For clarity, and pursuant to NRCB policy, previously issued Registration RA04039 and Authorization RA20026 should be consolidated with Approval RA20041 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all existing permits once the new permit is issued. This consolidation should be carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions, Approval RA20041 should include all existing terms and conditions from Registration RA04039 and Authorization RA20026. Construction conditions that have been met should be identified and included in an appendix to Approval RA20041.