



Decision Summary BA24005

This document summarizes my reasons for issuing Approval BA24005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA24005. 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 February 12, 2024, Vandeborn Farms Ltd. submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on February 15, 2024. On March 5, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 15,288 chicken layers to 35,000 chicken layers (pullets to remain at 18,500)
- Constructing a new layer barn – 13.7 m x 64 m

The application also notified the NRCB of the proposed construction of an egg collection room (15 m x 6 m). 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 existing CFO is located at NE 4-58-27 W4M in Westlock County, roughly 8 km NW from the Hamlet of Busby, AB. The terrain is rolling, sloping to the NE with a seasonal drainage approximately 50 m to the NW of the existing layer barn (Barn 8).

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 allowed for the operation of a 15,288 chicken layers and 18,500 chicken pullets CFO. The determination of the CFO’s deemed permit status under section 18.1 of AOPA is explained in Appendix C attached. The deemed facilities are listed in the appendix to the Approval BA24005.

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 0.5 miles. (The NRCB refers to this distance as the “notification distance”.)

A copy of the application was sent to Westlock County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- public advertisement in the Westlock News Newspaper in circulation in the community affected by the application on March 5, 2024, and
- sending 7 notification letters to people identified by the County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing.

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).

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 proposed expansion is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion 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.)

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 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." Westlock County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Kathleen Deshoux, a senior planning and 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 the county's municipal development plan is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 9.17). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

For the sake of efficiency, I first assessed the CFO's existing layer barn using the ERST. This appears to be the CFO's highest risk facility, as it collects the most manure and nearest to seasonal drainage. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, and surface water systems an

approval officer may require monitoring for the facility. However, in this case no such circumstances exist, and monitoring is not required.

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.

Ms. Deshoux listed the property line setbacks required by the Westlock County's land use bylaw (LUB) and noted that the application does not meet these setbacks. In follow up conversation with Ms. Deshoux, Westlock County has agreed to provide a variance of a 15% reduction in the setback. Vandeborn's application meets the setbacks with this variance.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments and a copy of the application was sent to EPA, who did not have any comments.

I am unaware of any active *Water Act* applications or EPEA applications regarding the location. If additional water licensing is needed an application is required by EPA. I am also unaware of any 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 any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed March 25, 2024).

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.

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.

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 as the County agreed to vary the Land use Bylaw setbacks and otherwise had no other concerns with the application.

10. Terms and conditions

Approval BA24005 specifies the cumulative permitted livestock capacity as 35,000 chicken layers and 18,500 chicken pullets and permits the construction of the new layer barn. Approval BA24005 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 BA24005 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

11. Conclusion

Approval BA24005 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA24005.

Vandenborn Farms' deemed approval is therefore superseded, and its content consolidated into this Approval BA24005, unless Approval BA24005 is held invalid following a review and decision by the NRCB's Board members or by a court, in which case the deemed permit will remain in effect.

April 17, 2024

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval BA24005
- C. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

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.

Conversely, “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.)

Vandenborn 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 4.1 of the MDP relates to the Agricultural Use Area, which is where Vandenborn Farms’ CFO is located.

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 20(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.” 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.” Vandenborn Farms is not within any of these setbacks and therefore meets this policy’s setback requirement.

Policy 4.1.2.5 states that CFOs are “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). Therefore, this policy is not relevant to the MDP consistency determination required by section 20(1) of AOPA. 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 Approval BA24005

Approval BA24005 includes several conditions, discussed below:

a. Construction Deadline

Vandenborn Farms proposes to complete construction of the proposed new layer barn by December 31, 2026. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2026 is included as a condition in Approval BA24005.

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 BA24005 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion 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. Vandenborn Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the 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 BA24005 includes a condition stating that Vandenborn Farms shall not place livestock or manure in the manure storage or collection portions of the new layer barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the approval requirements.

APPENDIX C: Determination of deemed permit status

Vandenborn Farms 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.

In this case, the operator bears the onus of providing sufficient evidence to support their claim (See NRCB Operational Policy 2023-1: Grandfathering (Deemed Permit), part 2.3).

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities had capacity to confine livestock at or greater than the permit threshold sizes under AOPA. (See Operational Policy 2023-1: Grandfathering (Deemed Permit), part 2.3).

To determine whether the CFO meets these two criteria, the NRCB may need to consider, among other things:

- a. whether the operation was a “confined feeding operation” or something else on January 1, 2002
- b. what category of livestock the operation was confining and feeding on January 1, 2002
- c. whether the operation was at livestock numbers that exceeded the AOPA thresholds;
- d. the footprint of the operation on January 1, 2002
- e. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- f. How each of those facilities was being used on January 1, 2002

Notice:

As required under section 11(2) of the Administrative Procedures Regulation, I provided notice to those parties who would be entitled to notice as part of the proposed expansion application. The notification letters for expansion sought information regarding the grandfathering claim as well as a public notice was placed in the Westlock News Newspaper on March 5, 2024

Evidence:

Aerial imagery and livestock records were available showing the existence of a poultry layer CFO that were relevant to this grandfathering determination. In imagery, barns 4 and 8 could be seen with attached feed mills as well as images of older barns that have existed or still exist but are not in use. The applicant also has historical bird placement and egg production records supporting their claim.

In response to notice of the grandfathering determination, I did not receive any submissions relating to the grandfathering process.

Findings:

I considered whether this operation was a “confined feeding operation” on January 1, 2002.

- a. what category of livestock the operation was confining and feeding on January 1, 2002;
- b. whether the operation was at livestock numbers that exceeded the AOPA thresholds;
- c. How each of those facilities was being used on January 1, 2002

As stated above, imagery shows the historical presence of the barns and with the historical livestock records available I’m satisfied the site housed chicken layers and pullets above the AOPA threshold.

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)(a) of AOPA, if a CFO existed on January 1, 2002, this is the deemed capacity of the grandfathered CFO.

The applicants claim of existing capacity of 15,288 layers and 18,500 pullets is reasonable given the dimensions of the barns and in comparison, with Agdex 096-81 Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002. The site was certainly above the AOPA threshold of 4,999 layers and pullets. As the applicant has applied and is by way of this decision and permit approved for an expansion to 35,000 layers and 18,500 pullets the existing numbers are moot.

Based on these findings, the CFO is considered to have a deemed registration with barns 4 and 8 remaining (the new barn will replace an old barn recently torn down).

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. I conclude this CFO has not been abandoned because the barns have been in operation since their construction prior to January 1, 2002 by the Vandeborn family and that the existing barns (4 and 8) are in good working condition and are still operating.