



Decision Summary RA23031

This document summarizes my reasons for issuing Approval RA23031 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23031. 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 20, 2023, Stonybrook Farms Ltd. (Stonybrook Farms) submitted a Part 1 application to the NRCB to expand an existing dairy CFO and construct a new manure storage facility (MSF) and manure collection area (MCA).

The Part 2 application was submitted on November 23, 2023. On April 11, 2024 (once all water licensing application information was received and Alberta Environment and Protected Areas (EPA) indicated they had everything needed to proceed with public notice), I deemed the application complete.

Stonybrook Farms Ltd.'s application included a signed declaration indicating that they wanted to apply through the NRCB for both the *Water Act* licence and their AOPA approval; and therefore, this is a joint *Water Act*/AOPA application. EPA processes the *Water Act* application, and makes a decision about issuing a water licence; however, the NRCB and EPA have a joint public notice in the newspaper, and coordinate the receipt of written responses to the applications. On May 13th, after the completion of public notice, the applicant chose to de-link the applications.

The proposed expansion involves:

- Increasing livestock numbers from:
 - 350 milking cows to 450 milking cows,
 - 40 dry cows to 70 dry cows, and
 - 240 replacement stock (up to 24 months) to 500 replacement stock (up to 24 months)
- Constructing a new heifer barn – 187 m x 25 m
- Constructing a new solid manure storage pad (attached to new heifer barn) – 15 m x 23 m

a. Location

The existing CFO is located at W $\frac{1}{2}$ 14-41-27 W4M in Lacombe County, roughly seven kilometres northwest of the City of Lacombe, Alberta. The terrain is undulating with a general slope to the southeast.

b. Existing permits

The CFO has been most recently permitted under NRCB Approval RA18038. That permit allowed the construction and operation of a 350 milking cows, 40 dry cows, and 240

replacement stock (under 16 months of age) CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval RA23031.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream
- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is 1.5 miles. (The NRCB refers to this distance as the "notification distance".)

None of the CFO facilities are located within 100 m of a bank of a river, stream, or canal.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Lacombe Express newspaper in circulation in the community affected by the application on April 11, 2024, and
- sending 52 notification letters to people identified by Lacombe County as owning or residing on land within the notification distance.

The full application was made available for viewing by appointment during regular business hours.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Environment and Protected Areas (EPA), and to Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to Just Freehold Energy Corp., Transglobe Energy Corp., ATCO Gas and Pipelines Ltd., and Spark Infrastructure Corp. as they are right of way holders.

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 Lacombe 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 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

The exemption that addresses the AOPA requirements around setback to water wells are discussed in the following parts of this decision summary including Appendix D.

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

Ms. Allison Noonan, a planning services administrative assistant with Lacombe County, provided a written response on behalf of the county. Ms. Noonan stated that the application is consistent with the land use provisions of Lacombe County's municipal development plan. The application's consistency with the land use provisions of the Lacombe County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from 3 individuals.

All of the 3 people who submitted responses own or reside on land within the 1.5 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)

These 3 directly affected parties raised concerns regarding groundwater use, road traffic, soil nutrient accumulation on manure spreading lands, animal welfare, cumulative effects due to the number of CFOs and continuing expansion in the area. These concerns are addressed in Appendix C.

8. Environmental risk of CFO facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST 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.) 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 supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 9.17.

In this case, the risks posed by Stonybrook Farms' existing CFO facilities were assessed in 2014 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

I also assessed the proposed heifer barn and solid manure storage pad, using the NRCB's risk screening tool, and determined that they pose a low risk to groundwater and surface water.

9. Exemptions

I determined that the proposed heifer barn is to be 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 and completion design.

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.

Ms. Noonan stated that the application meets the setbacks required by Lacombe County's land use bylaw (LUB).

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 have considered statement of concerns submitted under section 109 of the *Water Act* in respect of the subject of this application. Stonybrook Farms Ltd, through HCL Consulting, has or will address these concerns and forward them to Alberta Environment and Protected Areas. I

forwarded both the application, and the concerns relating to water supply, to EPA for their information and response. On May 13, 2024, Stonybrook Farms sent a written request to the NRCB to de-link their *AOPA* and *Water Act* licence applications.

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 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 (see Appendix C, below).

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 stated the application meets the required setbacks and the development is a permitted use and consistent with the MDP. The directly affected parties' concerns have also been addressed (see Appendix C, below).

11. Terms and conditions

Approval RA23031 specifies the cumulative permitted livestock capacity as 450 milking cows, (plus 70 dry cows and 500 replacement stock up to 24 months old) and permits the construction of the heifer barn and solid manure storage pad.

Approval RA23031 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 RA23031 includes conditions that generally address construction deadlines, document submission 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 permit with Approval RA23031: Approval RA18038 (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.

Therefore, in addition to containing the new terms and conditions summarised above, Approval RA23031 includes all existing terms and conditions from Approval RA18038. Construction conditions that have been met are identified and included in an appendix to Approval RA23031.

12. Conclusion

Approval RA23031 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23031.

Approval RA18038 is therefore superseded, and its content consolidated into this Approval RA23031, unless Approval RA23031 is held invalid following a review and decision by the NRCB's Board members or by a court, in which case Approval RA18038 will remain in effect.

May 31, 2024

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- 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 RA23031

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.

Stonybrook Farms’ CFO is located in Lacombe County and is therefore subject to that county’s MDP. The County adopted the latest revision to this plan on July 6, 2017 (updated on April 11, 2024), under Bylaw No. 1238/17.

Section 3.9 of the MDP relates to CFOs. Under section 3.9.1.(a), the MDP prohibits “new” CFOs within 1.6 km (one mile) from several areas listed in that section. Stonybrook Farms’ application is not for a new CFO, and therefore it is not subject to these setbacks. Irrespective, the CFO is outside these 1.6 km setbacks.

Additionally, section 3.9.1. states that “further restrictions on that development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other plan approved by Council.” However, no other intermunicipal or local plan applies to Stonybrook Farms’ CFO.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County’s MDP that I may consider.

APPENDIX B: Determining directly affected party status

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 "notification distance," as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

- Joan Olafson
NW 10-41-27 W4M

- Chris and Roberta Dyck
SE 10-41-27 W4M

See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.

APPENDIX C: Concerns raised by directly affected individuals

The directly affected parties raised the following concerns:

Groundwater usage and licensing – concern over the volume of water required to operate the dairy and other CFOs in the area.

Approval officer's conclusion:

Environment and Protected Areas (EPA) is responsible for licensing the use of groundwater and surface water in the province. The water licensing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when receiving AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form.

Stonybrook Farms chose the declaration indicating that it is applying for the water licence at the same time as this NRCB application. The public notice for this application was completed as a joint notice and includes the application for water licensing. At the end of the public notice period the applicant requested to de-link their AOPA and *Water Act* applications. As the linkage process is voluntary, Stonybrook Farms may withdraw their request to link the AOPA/ *Water Act* applications at any time (see NRCB Operational Policy 2016-7: *Approvals*, part 8.15.). By de-linking their applications Stonybrook Farms is acknowledging that its receipt of an AOPA approval will not improve or influence its ability to obtain a water licence, and that any construction it conducts under an AOPA approval is at its own risk if EPA denies a water licence application. As a part of completing a joint notice this statement of concern was sent to EPA for their consideration in their water licence application process. The applicant is reminded that it is their responsibility to secure adequate licensed water for their needs.

Increased traffic including traffic noise, dust, and road wear and tear – concern was raised about traffic in the area and the associated effects.

Approval officer's conclusion:

The County has jurisdiction of local roads and did not raise concerns regarding this matter. The NRCB does not require applicants to enter into road use agreements with counties or municipalities. However, the County presumably may require an agreement on their own.

Manure application – concern was raised over the access to enough manure spreading lands and potential negative effects of spreading.

Approval officer's conclusion:

The land application of manure is addressed in sections 24 of the Standards and Administration Regulation. Section 24 requires manure to be incorporated within 48 hours of application when it is applied to cultivated land, or by surface application on forages, or on no-till cropland (this requires increased setbacks from neighbouring residences).

AOPA has requirements to protect the soil, groundwater, and surface water from excessive application of manure nutrients. These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, and setbacks from water bodies, water wells, and residences. Operators are required to keep manure spreading and soils sampling records and must provide them to the NRCB upon request.

The applicant has provided adequate land base in the black soil zone for manure application. This meets the AOPA requirement for land base.

Complaints about CFO related issues can be reported to the NRCB's 24 hours reporting line (1-866-383-6722) and will be followed up on by an NRCB inspector.

Animal welfare – Concern was raised regarding animal welfare and ongoing animal health.

Approval officer's conclusion:

The respondent was concerned about animal welfare and ongoing inspections regarding this, as well as intensive agricultural practices in general. These concerns are outside the scope of AOPA as AOPA does not regulate animal welfare standards. Requirements for animal welfare are set by various livestock boards and they can be contacted for any further information regarding these requirements.

It is expected that, through a good neighbour relationship, a respectful relationship can be established between the parties. The NRCB encourages neighbours to communicate with each other to address questions or concerns they may have.

High density of CFOs (cumulative effects) and continued expansion of these CFOs – The effects of the continued expansion of the several CFOs in the area and cumulative effects this has on the environment and people was raised.

Approval officer's conclusion:

AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area, and the NRCB's Board members have directed approval officers to ignore cumulative effects in their permitting decisions. For example, in a 2011 decision, the Board stated that consideration of cumulative effects is "not within the Board's regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment." (Zealand Farms, RFR 2011-02 at 5.)

APPENDIX D: Exemption from well setbacks

1. Water Well Considerations

The proposed heifer barn is to be located less than 100 m from a water well. I have confirmed that one water well is located approximately 8 m north of the proposed barn during a site visit and using Google Earth. This is in conflict with the 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. Whether the well is being properly maintained
- c. Whether the well is up- or down-gradient from the MSF and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

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 immediately adjacent on the north side of the proposed heifer barn is EPA water well ID 2089711. This well is reported to have been installed in 2023 and has a perforated or screened zone from 36.58 m to 48.77 m below ground level across shale and sandstone stratigraphy. The well was completed with an above ground casing. I note that in my conversations with the applicant, the water well was drilled for this proposed application and will be only used for non-domestic purposes. The well's log identifies protective layer or layers from ground surface to 12.8 m below ground level. The well has a bentonite seal from ground surface to 35.36 m below ground level (across the various bedrock layers). The well appeared to be in good condition at the time of my site inspection as it was recently installed. The facilities proposed are both concrete liners adding increased protection and are operating as solid manure systems as opposed to liquid manure systems.

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

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA23031.

Under the regulation, an approval officer may require a groundwater monitoring program of the water well in question. In my view, given that the heifer barn meets AOPA technical requirements, that the well scored low risk, and the completion details of the well, monitoring is not required.

APPENDIX E: Explanation of conditions in Approval RA23031

Approval RA23031 includes several conditions, discussed below, and carries forward a number of conditions from previously issued permits. Construction conditions from historical permits that have been met are identified in the appendix to Approval RA23031.

Approval RA23031 includes several conditions, discussed below:

1. New conditions in Approval RA23031

a. Construction Deadline

Stonybrook Farms proposes to complete construction of the proposed new heifer barn and solid manure storage pad by September 30, 2024. In my opinion, a construction deadline that allows for more than one construction season is more practical. Therefore, the deadline of December 1, 2026 is included as a condition in Approval RA23031.

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 RA23031 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the heifer barn and solid manure storage pad to meet the specifications, respectively, for category D (solid manure – dry) and category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Stonybrook Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the heifer barn and solid manure storage pad.

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 RA23031 includes a condition stating that Stonybrook Farms shall not place livestock or manure in the manure storage or collection portions of the new facilities until NRCB personnel have inspected each facility and confirmed in writing that each meets the approval requirements.