

Decision Summary RA24005

This document summarizes my reasons for issuing Approval RA24005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24005. 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 January 31, 2024, Wilpshaar Dairy Ltd. (Wilpshaar Dairy) submitted a Part 1 application to the NRCB to expand an existing dairy CFO.

The Part 2 application was submitted on March 18, 2024. On March 28, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 250 to 500 milking cows (plus dries and replacements)
- Constructing an expansion to the freestall barn – 88.1 m x 32 m (for total dimensions of 180.8 m x 32 m)
- Constructing a synthetically lined liquid manure storage – 60 m x 60 m x 4.5 m

a. Location

The existing CFO is located at SE 21-41-24 W4M in Lacombe County, roughly 8 km northeast of Clive, Alberta. The terrain is slightly undulating with a general slope to the northeast and southwest. The Chain Lakes (formerly known as Magee Lake) are located approximately 2 km north and northeast of the CFO.

b. Existing permits

The CFO was originally permitted by Approval RA12002, which the NRCB issued on June 8, 2012. The CFO was also issued NRCB Authorizations RA18018 and RA19014. Collectively, these NRCB permits allow Wilpshaar Dairy to construct and operate a dairy CFO with 250 milking cows (plus associated replacements and dries on site). The CFO's existing facilities are included in the appendix to Approval RA24005.

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 (one) 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 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 March 28, 2024, and
- sending 18 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 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 Alberta Agriculture and Irrigation (AGI).

I also sent a copy of the application to Chain Lakes Gas Co-op Ltd. as they are a utility right of way holder.

I did not received responses from any of these organizations.

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 CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO 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 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 D, 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.” 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 Lacombe County. Ms. Noonan stated that the application is consistent with Lacombe County’s land use provisions of the municipal development plan (MDP), and that the County has no issues or concerns with the proposal. The application’s consistency with the land use provisions of Lacombe County’s MDP 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 eight parties. Additionally, the NRCB received one petition for intervention signed by 56 individuals.

Of the eight parties that submitted responses, seven 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).

One of the eight parties does not own or reside on land within the one mile distance for affected persons.

Appendix B sets out my reasons for determining which respondents are directly affected, including the respondents listed in the petition.

The directly affected parties raised concerns regarding:

- odours,
- groundwater quantity and quality,

- surface water quality (protection of Chain Lakes tributaries and wildlife),
- distance to bodies of surface water in the vicinity (Chain Lakes and ponds),
- manure management,
- land base for manure application,
- soil sampling,
- disposal of dead animals,
- road damage, traffic, and speed
- crop diseases,
- need to expand liquid manure storages,
- environmental impact study,
- land and property values, and
- additional neighbours that should be notified.

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 Wilpshaar Dairy's existing CFO facilities were assessed in 2018 and 2019 using the ERST. According to these assessments, 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 the assessments were done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

Additionally, as part of my review of this application, I assessed the risk to the environment posed by the CFO's proposed manure storage facilities and manure collection areas, using the NRCB's ERST to assist in my assessment of risk to surface water and groundwater.

The assessment indicated that the potential risks to surface water and groundwater posed by the proposed facilities were low.

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

I have considered the effects the proposed CFO 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://www.eab.gov.ab.ca/status.htm>, accessed June 5, 2024).

Finally, I considered the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from Lacombe County, submissions of other directly affected parties, and my own observations from site visits.

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). I considered the County's land zoning and response from directly affected parties related to roads and property values (see Appendix C). In my view, this presumption is not rebutted, and I note that Lacombe County's response states that the application is consistent with their MDP.

10. Terms and conditions

Approval RA24005 specifies the cumulative permitted livestock capacity as 500 milking cows (plus dries and replacements) and permits the construction of the expansion to the freestall barn and the new synthetically lined liquid manure storage.

Approval RA24005 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 RA24005 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix D.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval RA24005: Approval RA12002 and Authorizations RA18018 and RA19014 (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 D discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval RA24005 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24005.

Approval RA12002 and Authorizations RA18018 and RA19014 are therefore superseded, and their content consolidated into this Approval RA24005, unless Approval RA24005 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA12002 and Authorizations RA18018 and RA19014 will remain in effect.

June 21, 2024

(Original signed)

Francisco Echegaray P. Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Explanation of conditions in Approval RA24005

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.

“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.)

Wilpshaar Dairy’s CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on April 11, 2024, under Bylaw No. 1238/17. As relevant here:

Section 3.3.1 states that “All lands in the County shall be deemed to be agricultural lands unless otherwise designated by the Municipal Development Plan, an approved statutory or non-statutory plan, the Land Use Bylaw, or provincial legislation.”

This provides insight for the interpretation of the remaining portions of the MDP.

Section 3.9.1 of the county’s MDP states that the “County shall provide input on applications for confined feeding operations to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operations Practices Act*. The County’s support is subject to the following:

- a) no new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:
 - i) a town, village, summer village or hamlet;
 - ii) an area developed or designated for multi-lot residential use; or
 - iii) a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development,except that where provincial regulations require a larger setback distance, that distance shall apply.

Further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other plan approved by Council.”

Wilpshaar Dairy’s application is for the expansion of an existing CFO, not a new one; regardless, the CFO is located outside any of these 1.6 km setbacks.

As for section 3.9.1’s reference to intermunicipal development plans (IDP) or other plans approved by the County’s Council, this CFO is not located within land identified as part an IDP or any other plans.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County's MDP. This conclusion is consistent with the County's written response to the application.

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 (see NRCB Operational Policy 2016-7: Approvals, part 7.2.1.).

Linda and Ian Ainsworth
S½ 22-41-24 W4M

Shirley and George Boyack
SW 27-41-24 W4M

Sam Catellier and Amy Stone
NW 15-41-24 W4M

Loretta and Jason Hullmann
SE 28-41-24 W4M

Garth and Deanne Rowley
E½ and NW 28-41-24 W4M

Bonnie Wildeman
SE 16-41-24 W4M

Russell Wildeman
Wildeman Seed Farms
Wildeman Holdings
N½ 16-41-24 W4M

A person who is not specified in section 5 of the Part 2 Matters Regulation as an affected party can also qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the application. The following individuals that submitted a response to the application may fall under this category.

Courtney Howell

56 individuals who signed a petition (including Garth Rowley, Deanne Rowley, Linda Ainsworth, Ian Ainsworth, Shirley Boyack, George Boyack, Loretta Hullmann, Jason Hullmann, and Sam Catellier).

Under NRCB policy, a person has the burden of demonstrating that they are directly affected by an application. In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 Approvals, part 7.2.1):

1. A plausible chain of causality exists between the proposed project and the effect asserted;
2. The effect would probably occur;
3. The effect could reasonably be expected to impact the party;
4. The effect would not be trivial; and
5. The effect falls within the NRCB regulatory mandate under AOPA.

Using these factors, I conclude that Ms. Howell does not own or reside on land within the affected party radius. Ms. Howell indicated that her parents own land adjacent to the dairy, and they are planning to subdivide the land so she can move there. Ms. Howell's parents are directly affected parties and their concerns include Ms. Howell's concerns.

One petition for intervention was signed by 56 individuals, nine of whom also submitted separate responses and are directly affected as identified above. I treated this petition as a joint application for directly affected party status, as the petition text said:

The friends of Chain Lakes would like to put forth a formal intervention to application RA24005 – Wilpshaar Dairy Ltd. expansion. This intervention is to protect the natural waters of Chain Lakes (formally called Magee Lake) as the Confined Feeding Operation (CFO) will be transporting and spreading liquified manure within ½ mile of these lake shores. For the protection of the waterway and its wildlife the following people would like to put their names forward to intervene.

According to NRCB Operational Policy 2016-7: Approvals, part 7.6, if one or more, but not all, signers of the petition qualify as a directly affected party (DAP), an approval officer will generally consider the concerns listed in the petition as coming from the DAPs listed on that petition. To that end, I attempted to ascertain whether any of the signatories were DAPs by virtue of where they own land or reside. The great majority of the individuals that signed the petition included just a phone number. Where there was an address, it was generally in one of the towns nearby (Clive, Lacombe, Tees). A few of the petitioners included a rural address (RR mailing reference), but not a legal land location. Due to the vague contact information provided in the petition, it is difficult to determine if the individual petitioners automatically qualify for directly affected party (DAP) status.

At any rate, nine of the petitioners (Garth Rowley, Deanne Rowley, Linda Ainsworth, Ian Ainsworth, Shirley Boyack, George Boyack, Loretta Hullmann, Jason Hullmann, and Sam Catellier) also submitted individual responses to the application separately from the petition, and those individuals qualify as directly affected parties as they own or reside on land within the notification distance.

Ms. Howell's and the petitioners' concerns include pollution to surface and groundwater of the area, water quality of Chain Lakes from manure application, protection of water ways and wildlife of Chain Lakes, groundwater quantity for a future home, and land values.

I concluded that most likely all of the individuals who signed the petition are located outside of the notification distance (e.g. in the towns), or did not provide enough information for me to ascertain their location. Further, the text of the petition did not, in my view, establish a sufficient chain of causality between the effects they asserted and the proposed CFO. This is partly due to the distance from the proposed CFO expansion, which also lessens the probability of the effects occurring and the reasonable expectation of impact upon these individuals.

As such, Ms. Howell and the 56 petitioners (except for the nine that are otherwise DAPs) will not be considered directly affected parties in my review of this application.

I would like to note that most of the concerns raised by these individuals are also the concerns raised by the directly affected parties. Those concerns are discussed in Appendix C, below.

APPENDIX C: Concerns raised by directly affected parties

The directly affected parties (DAPs) raised the following concerns which are listed and summarized below, together with my analysis and conclusions, as well as parts of the applicant's response:

- 1. Increase in odours** – Many of the individuals expressed concern about a potential increase in odours, the impact on air quality and their quality of life due to odours. One respondent was concerned about the air pollution effect on their health.

Approval officer's conclusions:

AOPA's minimum distance separation (MDS) is a means for mitigating odours and other nuisance impacts from CFO facilities. Wilpshaar Dairy's proposed CFO expansion is located outside of the required MDS from other existing residences. The closest neighbouring residence is located more than 850 m away from the nearest CFO facility. This distance exceeds the required 487 m MDS to that residence. It is presumed that nuisance effects from the CFO facilities are acceptable if the MDS has been met.

Nuisance and other impacts outside of the MDS for a CFO are typically not considered when making a decision, unless there is a direct and adverse impact greater than what may be normally expected, which can be directly linked to the CFO. These effects would be considered in the analysis on 'effects on the community' in an approval officer's decision. In this case, the land zoning within one mile of the operation is 'Agriculture'.

Although I do not consider nuisance concerns as 'trivial' in nature, I presume the impacts of the proposed CFO expansion as acceptable, because of the land zoning and MDS requirements as laid out in AOPA have been met.

It is reasonable to expect that there will be some odour emissions and other potential nuisances when the CFO is expanded.

Based on my experience, and from previous responses by Alberta Health Services to similar health related concerns, general air quality is addressed and mitigated by the minimum distance separation (MDS), guidelines, and industry best practices.

Often, any issues that arise relating to the operation of a CFO, and other disagreements, can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether the operation is complying with AOPA, they may contact the NRCB through its toll-free reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.

- 2. Groundwater quality** - Several individuals raised concerns of contamination of the aquifer due to the waste (mainly liquid waste) from the CFO's manure storage facilities and manure application and its health effects. Some of the respondents questioned whether a base line and ongoing testing will be implemented (nitrogen).

Approval officer's conclusions

As noted in the decision summary above, and documented in Technical Document RA24005, the existing and proposed CFO facilities meet all AOPA technical

requirements. Several of these requirements are designed to prevent or minimize manure leakage from CFO facilities and thus to prevent manure from reaching and contaminating groundwater.

As noted in section 8 of this decision summary, I assessed the CFO's existing and proposed facilities, using the NRCB's environmental risk screening tool (ERST), in order to determine the level of risk they pose to groundwater. The ERST suggested that the CFO's existing and proposed facilities pose a low potential risk to groundwater. I determined that groundwater monitoring is not required.

Regulations under AOPA set nutrient application limits to prevent the soils from being overloaded with nitrogen and minimize the potential for groundwater to be impacted by manure. The Standards and Administration Regulation under AOPA also requires operators to test soils on farmland to which manure is applied for salts and nitrogen at least every three years, and to make these records available for inspection by the NRCB.

As noted in section 6 of this decision summary, and further documented in Technical Document RA24005, the CFO meets all AOPA technical requirements, including: setbacks from springs, common bodies of water, and water wells; having sufficient means to control surface runoff of manure; nutrient management requirements regarding the land application of manure; and groundwater protection requirements for the floors and liners of manure storage facilities.

- 3. Groundwater supply** - the potential impact on groundwater quantity was a significant concern for most of the parties. Parties expressed concern that the CFO would remove water from the same aquifer that wells in the surrounding community also use, with the consequence of depleting the aquifer, especially in the last drought years.

Approval officer's conclusions

Alberta 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 reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (This declaration is on page 4 and 5 of 29 of Technical Document RA24005.)

The monitoring of groundwater levels and usage is regulated by Alberta Environment and Protected Areas under the *Water Act*.

The applicant is reminded that they need to obtain all applicable licences and permits. A copy of this decision will also be forwarded to EPA for its information.

- 4. Surface water** - The NRCB received several concerns related to the impact of the CFO into the quality of the surface water, runoff and leaching from the facilities and manure spreading. Many of the respondents indicated that there are many bodies of water (Chain Lake, tributary streams to the lake, ponds, and drainage ditches) in the near vicinity. The individuals were concerned that the bodies of water will be contaminated by nutrients and pathogens, which can affect wildlife, animal, and people's health. They indicated that the CFO is located on higher grounds that eventually drains into Chain

Lake. People questioned whether base line testing of the water is necessary. A few people indicated that the application wrongly indicated distances to some bodies of water.

Approval officer's conclusions

AOPA and its regulations contain several requirements to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating surface water. One of these requirements is the setbacks from common bodies of water set out in section 7(1)(c) of the Standards and Administration Regulation, which prohibits the construction of a manure storage facility or manure collection area less than 30 m from a common body of water.

The applicant failed to include some information in the application, regarding the distance to all of the bodies of water in the vicinity. To verify these distances, I conducted site visits to identify the bodies of water and measured the distance to the proposed barn expansion and liquid manure storage.

During my site visits, I did not note any common bodies of water within 30 m of the proposed CFO facilities. The Chain Lakes (formerly known as Magee Lake) are located approximately 2 km north and northeast of the CFO. I also verified these distances by reviewing available air photos. The CFO meets all of these AOPA setbacks requirements.

As noted in section 8 of this decision summary, I assessed the CFO's existing and proposed facilities, using the NRCB's ERST, in order to determine the level of risk they pose to surface water. According to the ERST, the CFO's existing and proposed facilities pose a low potential risk to surface water. I determined that monitoring is not required.

Alberta Agriculture and Irrigation monitors livestock diseases within the province and is able to address animal disease concerns should they arise.

As noted in section 6 of this decision summary, and further documented in Technical Document RA24005, the CFO meets all AOPA technical requirements, including: setbacks from springs, common bodies of water, and water wells; having sufficient means to control surface runoff of manure; nutrient management requirements regarding the land application of manure; and groundwater protection requirements for the floors and liners of manure storage facilities.

Because the CFO meets or exceeds these requirements, I concluded that the level of risk to surface water posed by the proposed CFO facilities is acceptable.

Sections 24(9) and (10) of the Standards and Administration Regulation, define the setbacks for manure application from a common body of water and water wells, as well as setbacks based on the slope of the terrain to common bodies of water. The operator is responsible to follow these requirements.

Incidences of non-compliance can be reported to the NRCB's 24 hour a day toll-free reporting line 1-866-383-6722 NRCB inspectors follow up on all complaints.

- 5. Manure application and land base for manure application (soil sampling)**– a few of the respondents raised concerns regarding manure spreading, including odour during

manure application, impact of runoff from manure application into surface water which provides habitat for waterfowl, and runoff concerns. The respondents asked whether the applicant has enough land base for manure spreading, if Wilpshaar must own the land for manure application, and if soil samplings are available or will be required.

Approval officer's conclusion:

Manure application is regulated under sections 24 and 25 of the Standards and Administration Regulation.

Under section 24(3)(d) of the regulation, one option for manure application is for a permit applicant to satisfy an approval officer that they have access to sufficient land base to apply their manure for the first year following the granting of the application. AOPA does not require that an applicant must own the land for manure application; however, under NRCB practice the applicant must provide land use agreements signed by the landowners.

For this proposal, 464 hectares of land in the black soil zone are required for manure spreading. Wilpshaar Dairy has secured 576 hectares of land for manure spreading. Therefore, the application meets the land base requirement in section 24(3)(d) of the 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 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.

The Standards and Administration Regulation has other requirements to protect the soil, groundwater, and surface water from excessive application of manure (sections 25 and 28). These include soil testing requirements, soil salinity limits, nitrate-nitrogen limits, setbacks based on the slope of the terrain to common bodies of water, and setbacks to water wells and residences. Under the regulation, the operator must also keep manure spreading and soil sampling records for five years and provide those records to the NRCB upon request.

Sections 24(9) and (10) of the Standards and Administration Regulation, define the setbacks for manure application from a common body of water, as well as setbacks based on the slope of the terrain to common bodies of water. The operator is responsible to follow these requirements.

When followed, all of these AOPA requirements will provide protection to neighbours from manure runoff, nutrient leaching, and nuisances from manure spreading. It will also minimize impacts of manure spreading on runoff and waterfowl habitat.

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.

- 6. Dead animal disposal (predators)** – A few of the individuals raised concerns about the disposal of dead animals and the resulting potential increase in the number of predators attracted to the area, and its effect in natural habitat of wildlife. They indicated that the applicant does not follow the requirements of locating the dead 100 m from the boundary of a landowner and 400 m from another livestock facility.

Applicant's response:

The applicant stated the following

... "Currently we compost them in the solid manure pit on the yard."...

Approval officer's conclusions

AOPA does not require approval officers to assess or consider dead animal disposal when considering CFO applications. Dead animal disposal is regulated by the *Animal Health Act* enforced by the Animal Health and Assurance Division of Alberta Agriculture, and Irrigation (AGI). Because AGI has expertise in this area, the NRCB defers to this greater expertise and refers related concerns to AGI.

In its response to concerns, Wilpshaar stated that they compost the dead in the solid manure pile. Composting of dead animals is a permitted disposal method under the *Animal Health Act*, provided the operator follows the composting requirements under the Act. The operator is responsible to follow these requirements.

- 7. Road use, safety and traffic (dust)** – Most of the parties were concerned about traffic and speed on the county road, and the damage to it from big equipment, as well as the additional cost to repair them and dust control.

Approval officer's conclusions

The NRCB does not have direct responsibility for regulating road use or maintenance. Section 18 of the *Municipal Government Act* gives counties "direction, control and management" of all roads within their borders. Because of this it would be impractical and inefficient for the NRCB to attempt to manage road use through AOPA permits (see Operational Policy 2016-7 Approvals, part 9.13). This would include speed, safety, and dust control.

In addition, municipalities own the roads within their jurisdiction, have the knowledge and expertise to determine what is required in road use agreements, and have the jurisdiction to implement and enforce road use restrictions and road use agreements.

- 8. Property values** – A few of the parties indicated that the CFO will reduce the value of their farm 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* at 5, and *Pigs R Us Inc. RFR 2017-11/BA17002* at 6.

As explained in Appendix A above, Wilpshaar’s application is consistent with the land use provisions of the county’s MDP and with zoning for the area, which suggest that the proposed CFO expansion is an appropriate land use in the area.

- 9. Notification of neighbours** – One of the respondents included a list with additional neighbours that they felt should also be notified of the application.

Approval officer’s conclusion:

As stated in section 2 of this decision summary, under section 19 of AOPA and section 5 of the Part 2 Matters Regulation, the NRCB notified persons who own or reside on land within the notification distance of the CFO (in this case the distance is one mile from the CFO), by sending 18 notification letters to people identified by Lacombe County as owning or residing on land within the notification distance. Some of the individuals on the respondent’s list received a notification letter.

Additionally, the full application was made available by posting it on the NRCB website, public advertisement in the Lacombe Express and available for viewing during regular business hours at the NRCB’s Red Deer Office.

- 10. Expand liquid manure storage** – A couple of the respondents raised concerns about the size of the existing liquid manure storage and whether it needs to be increased to avoid further overflows.

Approval officer’s conclusion

The application includes a proposed synthetically lined liquid manure storage (60 m x 60 m x 4.5 m). As indicated in page 19 of 29 of Technical Document RA24005, the proposed liquid manure storage will provide a capacity of 8,292 m³. The total capacity of all the liquid manure storages on site will be 16,608 m³, which exceeds the minimum 9-month storage requirement of 13,500 m³ for 500 milking cows (plus dries and replacements).

- 11. Corn crops not treated with fungicide** – One of the individuals raised a concern about an increase in the disease bank in the area (Fusarium Head Blight) by not treating the corn. As the dairy is increasing in size, this respondent felt the applicant would probably increase the corn production affecting the respondent barley seeds.

Approval officer’s conclusions

AOPA does not require approval officers to assess or consider plant pests or diseases when considering CFO applications or what crops an applicant should produce.

All landowners or occupants of land are responsible for controlling pests, and plant diseases under the *Agricultural Pests Act* of Alberta.

- 12. Environmental impact study** – Respondents questioned if an environmental and ecological study has been completed to see how the proposed changes to this land will

impact the environment.

Approval officer's conclusion:

AOPA does not require that applicants must complete an environmental/ecological study as part of their application. The application must meet all AOPA requirement, including technical requirements set out in the regulations.

As indicated in section 6 of this Decision Summary RA24005, the application meets all relevant AOPA requirements.

- 13. Manure management and past non-compliance** – A few of the respondents indicated some past non-compliance concerns related to manure management, such as runoff from manure application into neighboring properties or ditches, manure overflowing from the liquid manure storage, and manure leaking from a hose that was pumping manure from the liquid manure storage.

Approval officer's conclusion:

The NRCB's database has no records of non-compliance or complaints regarding this operation since it was permitted in 2012.

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.

APPENDIX D: Explanation of conditions in Approval RA24005

Approval RA24005 includes several conditions, discussed below, and carries forward a number of conditions from Approval RA12002 and Authorizations RA18018 and RA19014. Construction conditions from historical Approval RA12002 and Authorizations RA18018 and RA19014 that have been met are identified in the appendix to Approval RA24005.

1. New conditions in Approval RA24005

a. Construction Deadline

Wilpshaar Dairy proposes to complete construction of the proposed expansion to the freestall barn and the new synthetically lined liquid manure storage by November 2025. It is my opinion that a longer construction deadline is more reasonable for the proposed scope of work. The deadline of November 30, 2027, is included as a condition in Approval RA24005.

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 RA24005 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the expansion to the freestall barn to meet the specification for category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” Wilpshaar Dairy shall provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.
- b. a completion report, stamped by a professional engineer, certifying that the manure storage and collection portions of the synthetically lined liquid manure storage:
 - has been constructed in accordance with the proposed design including the size, depth and dimensions;
 - is constructed in the approved location;
 - has the same liner material as what has been proposed;
 - has a liner installed in accordance with the liner manufacturer's requirements, including under membrane surface preparation and proper sealing at all seams.

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 RA24005 includes conditions stating that Wilpshaar Dairy shall not place livestock or manure in the manure storage or collection portions of the expanded freestall barn or manure in the new synthetically lined liquid manure storage until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.