

Decision Summary RA24037

This document summarizes my reasons for issuing Authorization RA24037 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24037. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On August 28, 2024, Herco Wilpshaar on behalf of Wilpshaar Dairy Ltd. (Wilpshaar Dairy), submitted a Part 1 application to the NRCB to modify a manure storage facility at an existing dairy CFO.

The Part 2 application was submitted on August 28, 2024. On August 30, 2024, I deemed the application complete.

Wilpshaar Dairy received an approval on June 21, 2024, that permitted the expansion of the existing free-stall barn, a synthetically lined liquid manure storage, and to increase milking cow numbers. When I called to schedule a site visit, the applicant informed me that they had already converted the sawdust storage room into the sand bedding recycling room. This requires a permit under AOPA because it changes the purpose of this room to store manure and manure contaminated bedding. The construction was unauthorized, so I involved the NRCB compliance division that followed up and issued an AOPA warning.

The application involves:

- Converting the sawdust storage room into a sand bedding recycling room within the existing dairy barn/parlour – 4.5 m x 3 m x 2 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 is already permitted under Approval RA24005.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization

application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- the municipality where the CFO is located or is to be located
- 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 municipality entitled to divert water from that body within 10 miles downstream
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is one mile (1609 m) from the CFO

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.

3. Notice to other persons or organizations

Under NRCB policy, 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.

No responses were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction 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.)

5. AOPA requirements

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

- 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 groundwater protection requirements for the design of floors and liners of manure storage facilities

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements. There is a water well within 100 m of the existing dairy barn/parlour where the proposed conversion of the sawdust storage room into a sand bedding recycling room is located, but an exemption for the water well was already granted in 2018.

6. Responses from municipality

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.

Municipalities that are affected parties are identified by the Act as "directly affected." Lacombe County is an affected party (and directly affected) because the existing CFO 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 does not have any objections to the application. The application's consistency with Lacombe County's MDP is addressed in Appendix A, attached.

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

7. Environmental risk of facilities

New manure storage facilities (MSF) which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, porous subsurface materials, or surface water systems an approval officer may require groundwater monitoring for the facility. An assessment was made, and groundwater monitoring is not required for this facility.

When reviewing a new authorization 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 2012, 2018, 2019, and June of 2024 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

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

8. Terms and conditions

Authorization RA24037 permits the conversion of the sawdust room into a sand bedding recycling room.

Authorization RA24037 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization RA24037 includes conditions that generally address document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA24037 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24037.

Authorization RA24037 must be read in conjunction with previously issued Approval RA24005 which remains in effect.

October 16, 2024

(Original signed)

Kailee Davis
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA24037

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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 22(2.1) 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 June 13, 2024, under Bylaw No. 1238/17.

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 modification of an existing CFO facility, not a new one; regardless, the CFO is located outside any of these 1.6 km setbacks. Additionally, in their response, the County noted that the CFO is not located within any area structure plans.

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 of an IDP.

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: Explanation of conditions in Authorization RA24037

Authorization RA24037 includes several conditions, discussed below:

a. 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, Authorization RA24037 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the sand bedding recycling room to meet the specification for category B (liquid manure – shallow pits) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas”.
- b. Wilpshaar Dairy to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the sand bedding recycling room.

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. Authorization RA24037 includes a condition stating that Wilpshaar Dairy shall not place manure in the manure storage or collection portions of the sand bedding recycling room until NRCB personnel have inspected the sand bedding recycling room and confirmed in writing that it meets the authorization requirements.