

Decision Summary LA24040

This document summarizes my reasons for issuing Approval LA24040 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24040. 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 September 11, 2024, Sunset Feeders Ltd. (Sunset Feeders) submitted a Part 1 application to the NRCB to expand an existing swine CFO.

The Part 2 application was submitted on September 20, 2024. On October 2, 2024, I deemed the application complete.

The proposed expansion involves:

- Adding 75,000 chicken broilers
- Constructing 2 chicken broiler barns – 120 m x 18 m each

The application also included an amendment request by the applicant to modify condition #7 and remove conditions #4 and 8 from Development Permit 14-97. See Appendix B of this document for more details.

Development Permit 14-97 permitted an 8,000 swine feeder CFO with 4 barns. Three of the four barns have been constructed and the construction completion deadline for these facilities has passed. The applicant indicated they have no intention of building the fourth barn. Therefore, this facility is being amended out of this permit and the swine feeder numbers are being reduced from 8,000 to 6,000 (Operational Policy 2015-1: *Construction Deadlines*, part 4).

a. Location

The existing CFO is located at SE 22-10-14 W4M in the Municipal District of Taber (M.D. of Taber), roughly 5.4 km Northeast of the Hamlet of Purple Springs. The terrain is slightly undulating, with a slope towards the centre of the CFO site. The closest water body is an unnamed lake located more than 1 km southwest of the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes the M.D. of Taber Development Permit 14-97, issued May 16, 1997 with 13 conditions after an appeal. This deemed approval allows for the construction and operation of an 8,000 swine feeder CFO. Today, the CFO's deemed permit is valid for 6,000 swine feeders and three hog barns. 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 LA24040.

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 the M.D. of Taber, 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 Taber Times newspaper in circulation in the community affected by the application on October 2, 2024, and
- sending 12 notification letters to people identified by the M.D. of Taber as owning or residing on land within the notification distance.

The full application was made available for viewing in the NRCB's Lethbridge office 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), Alberta Transportation & Economic Corridors (TEC), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to the Forty Mile Gas Coop Ltd. as they are utility right-of-way (ROW) holders on the subject land.

I received responses from Leah Olsen, a development/planning technologist with TEC, George Roth, a water administration technologist with EPA, and Micaela Azzarello, a land administrator

with SMRID.

Leah Olsen stated that a permit from TEC will not be required for the proposed development.

George Roth stated that based on the information in the application, EPA would like to be notified when the applicant has received confirmation from SMRID for an increase in the amount of water required. He also noted that it is the responsibility of Sunset Feeders to ensure they are going to have a suitable amount of water for their needs and should it be determined that additional water will be required, options for obtaining a legal water source for the additional diversion can be discussed with EPA.

Micaela Azzarello stated that the SMRID has no objections to the application. However, she stated that based on the addition of new barns being constructed on the property, it is estimated that the applicant will need 3.0 acres-feet of water for the Water Conveyance Agreement – Agriculture which needs to be purchased from SMRID. The applicant indicated they are currently working with SMRID to increase their water conveyance agreement.

I did not receive any response from ROW 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.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the M.D. of Taber'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." The M.D. of Taber is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Tom Anderson, a development officer with the M.D. of Taber, provided a written response on behalf of the M.D. of Taber. Mr. Anderson stated that the application is consistent with the M.D. of Taber's land use provisions of the municipal development plan and appears to fall outside the confined feeding operation restricted area as defined in the MDP. Mr. Anderson stated that there are no area structure plans and no intermunicipal development plans affecting this application. Mr. Anderson also stated that the zoning of SE 22-10-14 W4 and the surrounding lands within 1.5 miles are zoned "Rural Agricultural". Mr. Anderson also did not have any objections to the modification and removal of conditions from Development Permit 14-97. The application's consistency with the land use provisions of the M.D. of Taber'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."

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

8. Environmental risk of CFO facilities

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 groundwater monitoring for the facility. Based on the information in the application, as well as from a site visit, I did not identify a shallow aquifer, porous subsurface materials, or surface water systems. Therefore, groundwater monitoring is not required for the new broiler barns.

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, 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 Sunset Feeders' existing CFO facilities were assessed in 2009. The assessment was in the context of determining whether leak detection monitoring should continue at the CFO. The assessment indicated that the potential risks to surface water and

groundwater were low, and the monitoring was suspended.

Since the 2009 risk assessment, an updated version of the ERST was developed. For this reason, I reassessed the risks posed by the CFO's existing facilities that have the highest potential to pose a risk to surface water and groundwater. These facilities were the North EMS and South EMS and are the deepest facilities and the closest to the UGR, and hold liquid manure. My reassessment 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 conjunction with 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.

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.

Tom Anderson listed the setbacks required by the M.D. of Taber's land use bylaw (LUB) and noted that it was not possible to determine whether the application meets these setbacks and that they are applicable to the application. While the property line and road setbacks were not identified in Technical Document LA24040, the operator is reminded that the proposed facilities must meet these setbacks when constructed.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concerns 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 a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed November 4, 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 in the environment are acceptable because the application meets all of AOPA's technical requirements. I see nothing in the information before me to suggest that the effects on the environment will be unacceptable and, 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. I encountered no submissions or evidence that effects on the community and economy would be unacceptable. 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 addition, the land around the CFO is zoned Rural Agricultural. In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24040 specifies the cumulative permitted livestock capacity as 75,000 chicken broilers and 6,000 swine feeders and permits the construction of the two broiler barns.

Approval LA24040 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 LA24040 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA24040: Development Permit 14-97 (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 B discusses which conditions from the historical permit are or are not carried forward into the new approval.

11. Conclusion

Approval LA24040 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24040.

Sunset Feeders' deemed permit is therefore superseded, and its content consolidated into this Approval LA24040, unless Approval LA24040 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed permit (as set out in Appendix C) will remain in effect.

November 21, 2024

(Original signed)
Kelsey Peddle
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24040
- 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.

“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” for 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.)

Sunset Feeders’ CFO is located in the M.D. of Taber and is therefore subject to that county’s MDP. The M.D. of Taber adopted the latest revision to this plan on September 28, 2021, under Bylaw No. 1980

As relevant here, policies 5.1.13-5.1.15 of the MDP apply to CFOs.

Policy 5.1.13 states that “[c]onfined feeding operations should be discouraged in the areas shown in Map 2 as “Restricted” and as reviewed by council from time to time.” Sunset Feeders’ CFO is not within any of the “restricted” areas in Map 2 of the MDP. Therefore, the application is consistent with this policy.

Policy 5.1.14 lists four development setbacks in relation to roads and property lines. While the property line and road setbacks were not identified in Technical Document LA24040, the operator is reminded that the proposed facilities must meet these setbacks when constructed.

Policy 5.1.15 lists items for the NRCB to consider in its review process. These items are:

- (a) The proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water supplies;
- (b) The cumulative effect of a new approval on any area near other existing confined feeding operations;
- (c) Environmentally sensitive areas shown in the report, *Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region*;
- (d) Give notice to adjacent land owners even in the case of applications for registration or authorization.

Item (a) refers to the impact of the operation on drinking water supplies. The environmental risk of the existing, highest risk facilities was scored by the NRCB’s ERST and found that these facilities pose a low potential risk to surface water and groundwater. In addition, there are no water wells on the site according to the Alberta Water Well database, the NRCB suspended the requirement for groundwater monitoring in 2010, and the closest body of water is an unnamed lake which is located more than 1 km from the CFO. For these reasons, the CFO is unlikely to

contribute to any contamination of drinking water supplies. Therefore, the application is consistent with this policy.

Item (b) is likely not a “land use provision” because it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects. In a 2011 decision, the NRCB 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, p. 5). Therefore, I do not consider this provision relevant to my MDP consistency determination.

For item (c), Sunset Feeders’ CFO is not within any of the areas designated as of regional, provincial, or national significance in the referenced report. Therefore, the application is consistent with this policy.

Item (d) is likely not a “land use provision” because of its procedural focus and thus I do not consider it relevant to my MDP consistency determination. At any rate, as explained above, the NRCB sent out notification letters to people identified by the M.D. of Taber as owning or residing on land within the notification distance of 1.5 miles. The NRCB also gave notice in the Taber Times and on the NRCB website. The application therefore met the notification requirements of AOPA.

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

APPENDIX B: Explanation of conditions in Approval LA24040

Approval LA24040 includes several conditions, discussed below, and carries forward a number of conditions from Development Permit 14-97 (see sections 2 and 3 of this appendix). Construction conditions from historical Development Permit 14-97 that have been met are identified in the appendix to Approval LA24040.

1. New conditions in Approval LA24040

a. Construction Deadline

Sunset Feeders proposes to complete construction of the first proposed new broiler barn by “mid 2025”, and the second proposed new broiler barn by “over winter of 25/26 or 26/27”. To account for unforeseen delays, it is my opinion that a longer timeframe is appropriate for the proposed construction. Therefore, the deadline of November 30, 2027, is included as a condition in Approval LA24040.

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 LA24040 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the new broiler barns 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. Sunset Feeders to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the broiler barns.

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 LA24040 includes a condition stating that Sunset Feeders shall not place livestock or manure in the manure storage or collection portions of the new broiler barns until NRCB personnel have inspected the broiler barns and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward and modified from Development Permit 14-97

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition(s) #2, 3, 5, 11, and 12 from Development Permit 14-97 should be carried forward and re-numbered to reflect the removal of conditions 1, 6, 9, and 13. Condition #10 requiring fly control will be re-numbered and remain as an operating condition.

As requested by the applicant and granted under section 20(1) of AOPA, conditions #4 and 8 will be removed, and condition #7 from Development Permit 14-97 will be re-numbered and modified to allow for the spreading of manure more than once per year and on Saturdays and Holidays. This is to allow for any unforeseen circumstances that may prevent the spreading of manure only once per year. This will remain as an operating condition to not allow the spreading of manure on Sundays.

3. Conditions not carried forward from Development Permit 14-97

Approval LA24040 includes the terms and conditions in Development Permit 14-97, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #1, 6, 9, and 13 from Development Permit 14-97 should be deleted and therefore are not carried forward to Approval LA24040. As requested by the applicant and granted under section 20(1) of AOPA, conditions #4 and 8 from Development Permit 14-97 will be deleted and not carried forward to Approval LA24040. My reasons for deleting these conditions are informed by NRCB Operational Policy 2016-1: *Amending Municipal Permit Conditions*, as follows:

Condition #1 requiring “[d]ead animals to be removed in prompt and acceptable manner. Designated drop off spot not to be visible by public and run-off to be controlled.” The disposal of dead animals is regulated by Alberta Agriculture and Irrigation (AGI) under the *Animal Health Act, Disposal of Dead Animals Regulation*, and not regulated by the NRCB. Given AGI’s regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and may lead to inconsistency. Therefore, I will not be carrying forward this condition.

Condition #4 states “[g]round water monitoring devices must be installed and monitored by qualified personnel with results given to M.D. of Taber on a yearly basis.” This condition has been requested to be removed by the applicant. The applicant stated that the NRCB suspended this condition more than 10 years ago as it was determined that the facilities (EMS’) were sufficient. A letter issued in 2010 by the NRCB suspended groundwater monitoring requirements following an assessment using the ERST and recommended that this condition be removed. During my site visit, review of information provided as part of this application, and determining the risk to groundwater and surface water using the NRCB’s ERST to be low (section 8, above), I have determined that the applicant’s request to remove this condition is reasonable and I will therefore, not be carrying forward this condition. I will be requiring that the groundwater monitoring devices be decommissioned according to Technical Guideline Agdex 096-50 “Reclamation of Groundwater Monitoring Wells”.

Condition #6 requires “[d]eveloper to provide the M.D. of Taber letters from area farmers willing to accept manure. Land required is 1500 acres dryland or 800 acres irrigated. These letters to be updated on a yearly basis. These letters must specify legal description of land to be spread on.” This condition is redundant as the operator owns all of the land they spread manure on. Further, AOPA requires applicants to submit sufficient land base for the first year after a permit is issued, which the applicant has provided. I will therefore, not be carrying forward this condition.

Condition #8 states “[m]anure spread on land must be incorporated within 24 hours of spreading on land and shanking of manure will be at the discretion of the M.D. of Taber Council.” This condition has been requested to be removed by the applicant. The applicant stated that they hire a third party to directly inject the liquid manure in the ground after they remove crops. Further, the M.D. of Taber did not object to having this condition removed. I have determined this request to be reasonable and will therefore, not be carrying forward this condition.

Conditions #9 states “[a]ll runoff must be contained on developer’s property.” This condition is redundant, as there is no runoff from the hog barns and both EMS’ have sufficient capacity to contain the liquid manure from the swine portion of the CFO. Also, there will be no runoff from the proposed broiler barns. Further, the area of the CFO site is in a low lying area, with the

surrounding land sloping towards the center of the CFO site. This means that yard runoff will flow towards the center of the CFO site, rather than off the site. I will therefore, not be carrying forward this condition.

Condition #13 requires “[p]roper methods be applied to minimize odour whether it be chemical or the latest technology.” I cannot determine the original purpose for the municipality adopting this condition, and in my view, it is vague and would likely be difficult to enforce. Therefore, I will not be carrying forward this condition.

APPENDIX C: Determination of deemed permit status

Sunset Feeders 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. A grandfathering determination is necessary in this case because it is necessary to determine which facilities are grandfathered and, therefore, exempt from having to meet AOPA regulations under section 20(1.2) of AOPA. 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. I also determined the capacity of the CFO that was in place on January 1, 2002.

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 was originally permitted by the M.D. of Taber on April 27, 1997, under development permit #14-97. Subsequent to a subdivision and development appeal board hearing, the MD permit was revised on May 16, 1997. The revised permit allowed the construction and operation of a swine CFO with 8,000 swine feeders and included 13 conditions. This development permit is a deemed (i.e. grandfathered) approval under section 18.1(1)(b) of AOPA. The CFO’s deemed facilities are listed in the Appendix of Approval LA24040.

Notice:

Under section 11 of the Administrative Procedures Regulation, notice of a deemed permit determination is not required if the CFO was constructed pursuant to a development permit issued before January 1, 2002 and if the operator is not claiming a greater capacity than is authorized in the development permit. See also Operational Policy 2023-1: *Grandfathering (Deemed Permit)*, part 5.2.1.

Findings:

Under section 18.1(2)(b), the CFO’s deemed capacity is the capacity stated in the CFO’s development permit. Development Permit 14-97 authorized an 8,000 hog operation with four barns.

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*. As noted during a site visit and discussions with the operator, the CFO facilities have been in continual use since 2002.

However, one of the four barns permitted under Development Permit 14-97 was never constructed, and the applicant has indicated they have no intention of building the fourth barn. Therefore, this facility will be amended out of this permit (Operational Policy 2015-1: *Construction Deadlines*, part 4). Given that the four barns were to be constructed to the same size to house 8,000 swine feeders and one has not been constructed, the CFO has a deemed capacity of 6,000 swine feeders.