



Decision Summary RA24034

This document summarizes my reasons for issuing Approval RA24034 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24034. 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 December 18th, 2023, an NRCB inspector issued Compliance Directive CD 23-10, requiring Harvey (Gus) and Yvonne Garnier (Garnier) to become complaint with AOPA and its regulations by depopulating 4 already constructed (unauthorized) feedlot pens, unless an NRCB permit is obtained.

During a site visit on January 29, 2025, conducted by a member of the NRCB compliance division and myself, we noticed that the unauthorized feedlot pens had not been depopulated prior to receiving an NRCB permit. The NRCB compliance division will continue their involvement to bring the operation in compliance.

On June 26, 2024, Anthony Garnier, acting on behalf of Gus and Yvonne Garnier, submitted a Part 1 application to the NRCB to construct a new beef feeder CFO.

The Part 2 application was submitted on November 8, 2024. On January 7, 2025, I deemed the application complete.

The proposed CFO involves:

- Permit livestock capacity of 1,800 beef feeders
- Permitting the previously constructed (unauthorized) Pen area 1 – 2800 m²
- Permitting the previously constructed (unauthorized) Pen area 2 – 4000 m²
- Permitting the previously constructed (unauthorized) Pen area 3 – 6000 m²
- Permitting the previously constructed (unauthorized) Pen area 4 – 5600 m²
- Constructing catch basin 1 – 27 m x 15 m x 1.5 m deep
- Constructing catch basin 2 – 22 m x 22 m x 1.5 m deep
- Constructing catch basin 3 – 41 m x 17 m x 1.5 m deep
- Constructing catch basin 4 – 50 m x 15 m x 1.5 m deep
- The applicant also requested a variance under section 17 of AOPA of the prohibition against manure storage facilities and manure collection areas less than 100 metres away from water wells. That variance request is discussed in Appendix B and section 9, below.

a. Location

The proposed CFO is located at NE 16-53-3 W4M in the County of Vermilion River, roughly 9

km east of Dewberry, AB. The proposed area of construction is relatively flat; however, the quarter section slopes steeply to the southwest. The nearest surface water body is a slough approximately 65 meters east of pen area 2.

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 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 the County of Vermilion River, which is the municipality where the CFO is to be located. No other municipality has a boundary within 1 mile.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Vermilion Voice newspaper in circulation in the community affected by the application on January 7, 2025, and
- Due to mail delivery delays, as a result of the Canada Post strike, the NRCB instructed the applicant to hand deliver letters to people identified by the County of Vermilion River as owning or residing on land within the notification distance. Anthony Garnier (agent for Gus and Yvonne Garnier), provided written confirmation that on January 10, 2025, he hand delivered the required letters.

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 Transportation & Economic Corridors (TEC).

Ms. Laura Partridge, a senior water administration officer with EPA, responded directly to the applicant notifying them that a water licence under the *Water Act* will be required for the proposed CFO. The applicant is reminded that it is their responsibility to ensure they have

sufficiently licensed water for the proposed CFO.

Ms. Cindy Skjaveland, a property technologist at TEC, responded to the application and stated that a roadside development permit is required for the site, specifically for the ground disturbances for the proposed berm and catch basins. The applicant is reminded that it is their responsibility to ensure they obtain all necessary roadside development permits from TEC for the proposed CFO.

I did not receive any other responses.

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 is consistent with the land use provisions of the County of Vermilion River'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 CFO:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11 and in Appendix C, the application meets all relevant AOPA requirements. The variance that is required to address the AOPA requirements around water well setbacks is discussed in the following parts of this decision summary.

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 County of Vermilion River is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. Roger Garnett, the director of planning and community services with the County of Vermilion River, provided a written response on behalf of the County of Vermilion River. Mr. Garnett stated that the application is consistent with the County of Vermilion River's land use provisions of the municipal development plan. The application's consistency with the land use provisions of the County of Vermilion River's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB did not receive responses from any individuals or other parties.

8. Environmental risk of CFO facilities

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

For the sake of efficiency, I first assessed the CFO's existing (unauthorized) pen area 2 using the ERST. This appears to be the CFO's highest risk facility because it is the closest in proximity to a water well. The assessment found that this facility poses a low potential risk to groundwater and surface water. Because this is the CFO's highest risk facility, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

New CFO facilities which clearly meet or exceed AOPA requirements may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, and surface water systems an approval officer may require groundwater monitoring for the facility. In this case, a determination was made that groundwater monitoring is not necessary because the application meets all relevant AOPA requirements, and the subsurface materials provide adequate groundwater protection.

9. Variances

The applicant applied for a variance of the requirement for a water well to be at least 100 m away from manure storage facilities/manure collection areas. I determined that pen 1 and pen 2, which were constructed without a permit, are located within the required AOPA setback from an existing water well. As explained in Appendix B, I am prepared to issue a variance to the 100 m water well setback due to well construction and maintenance, and the well's location upslope of pens 1 and 2.

10. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (*Grow North*, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

Mr. Roger Garnett also listed the setbacks required by the County of Vermilion River's land use bylaw (LUB) and noted that the application meets these setbacks.

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, and the applicant has been reminded that it is their responsibility to ensure they have received the appropriate water licensing for the proposed CFO.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://eab.gov.ab.ca/status.htm>), accessed February 6, 2025.

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 the County of Vermilion River, and my own observations from a site visit.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, I presumed that the effects in the environment are acceptable because, with the variance, the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, if the application is consistent with the land use provisions of the MDP, then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed CFO is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (see NRCB Operational Policy 2016-7: Approvals, part 9.10.9). In my view, this presumption is not rebutted.

11. Terms and conditions

Approval RA24034 specifies the cumulative permitted livestock capacity as 1,800 beef feeders, permits the construction of catch basins 1–4, and permits the use of the already constructed (unauthorized) pen areas 1–4.

Approval RA24034 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 RA24034 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

12. Conclusion

Approval RA24034 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24034.

February 28, 2025

(Original signed)
Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Variances
- C. Explanation of conditions in Approval RA24034

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.)

Garnier’s CFO is located in the County of Vermilion River and is therefore subject to that county’s MDP. The County of Vermilion River adopted the latest revision to this plan in May 2022, under Bylaw 19-03.

Part 5.9 of the MDP states the goal to conserve agricultural land. This part includes their objectives, which includes “preserving existing productive farmland for agricultural use from incompatible, non-farming-related uses and support the continuation of agricultural operations and agriculture support activities in the County.”

Policies 5.9.2 (b), (c), (d), (e) and (f) of the MDP relate specifically to CFOs.

Policy 5.9.2. (b) of the MDP states that the County’s response to a CFO application will be based on the “technical and locational merits of each application.” As this provision is directed specifically at the County’s response, it likely is not directly relevant to the NRCB’s own “MDP consistency” determination. In addition, the provision is not a “land use provision” because it calls for a discretionary judgment regarding the merits of each application. For these reasons, I conclude that this provision is not relevant to my MDP consistency determination. At any rate, as noted in part 6 above, the application meets the requirements in AOPA’s regulation, so the application is consistent with this MDP policy.

This policy also states that CFOs must “fully satisfy all the requirements and regulations” under AOPA, specifically the minimum distance separation requirements and the land base requirements.” Policy 5.9.2 (c) echoes this policy by stating that “[M]inimum distance separations for CFOs shall conform to standards set out in” AOPA. These two policies are likely not relevant “land use provisions”. At any rate, with a variance, the application meets the MDS and all other AOPA requirements, so it is consistent with these policies.

Policy 5.9.2 (d) states that “[I]n addition to the minimum distance separation requirements provided through regulations adopted under the Agricultural Operation Practices Act, the County’s policy is that confined feeding operations requiring registration or approval and manure storage facilities requiring authorization under that Act must be sustainable within 2.4 km (1.5 miles) of the corporate boundaries of any urban municipality within the County of Vermilion

River or within 0.8 km (0.5 miles) of the Community Areas designated on Map 1, which areas shall be considered an urban fringe when calculating the regulations approved under the Agricultural Operation Practices Act”.

Garnier’s CFO site is outside of all the setbacks stated in the policy, and therefore meets this policy.

Policy 5.9.2 (e) states that “CFO’s will be discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be of concern”. This policy is likely not a “land use provision” because it calls for a discretionary judgment regarding the merits of each application, therefore, it is not relevant to my MDP consistency determination. At any rate, the CFO site is not in an area where slope instability is a concern, and as previously noted in section 8 of this decision summary, the CFO’s proposed facilities pose a low potential risk to groundwater. The application meets the requirements in AOPA’s regulation, so the application is consistent with this MDP policy.

Policy 5.9.2 (f) requires that in addition to meeting the requirements of AOPA and the County’s MDP, the application must meet the County’s Area Structural Plan. The location of where Garnier’s CFO is located is not part of an Area Structural Plan.

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

APPENDIX B: Variances

Existing (unauthorized) pens 1 and 2 are located less than 100 m from a water well. I have confirmed that one water well is located approximately 50 m from pen 1 and 40 m from pen 2 during a site visit and vis aerial imagery. This is in conflict with the section 7(1)(b) of the Standards and Administration Regulation (SAR).

If alerted to this conflict prior to construction, section 7(2) might have allowed me to grant an exemption. In this case, however, the facilities have already been constructed (without a permit) and may cause a risk to the environment. I therefore need to either deny the application or alternatively consider if a variance is warranted under AOPA's section 17(1). For the following reasons, it is my opinion that considering a variance is appropriate in this case.

Approval officers must not grant variances lightly or in the absence of substantive evidence they will produce equivalent levels of protection (see Board Decision 03-04, *AAA Cattle Ltd.* p 24). I will consider whether a variance is warranted to the water well for pens 1 and 2 below.

1. Water Well Considerations

On February 12, 2025, the CFO operator requested a variance to the water well setback requirement on the grounds that the well is completely sealed and free of cracks, is 10 feet higher in elevation than the feedlot pens, and has passed inspections with no concern of groundwater contamination.

I have used the same tools that I would normally use to determine if an exemption is warranted. I consider the water well exemption framework as useful for assessing the degree of protection for the water well in relation to a manure collection area (MCA). In this case, I presume that the risks of direct aquifer contamination from the MCAs are low if the MCAs meet (or otherwise meet) AOPA's technical requirements to control runoff and leakage. However, when determining whether an MCA that otherwise meets AOPA's technical requirements provides the same or greater protection and safety as provided for by the regulations, I also assess whether water wells themselves could act as conduits for aquifer contamination.

One indicator that a variance provides the same or greater protection and safety is if the aquifer into which the well is drilled is not likely to be contaminated by the proposed MCA.

The potential risks of direct aquifer contamination from the MCAs are presumed to be low if the MCAs meet AOPA's technical requirements to control runoff and leakage. Approval officers may also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the protection of the aquifer in relation to the water well:

- a. Whether the well is being properly maintained
- b. How the well was constructed
- c. Whether the well is up- or down-gradient from the MCAs and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

The water well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well in question is likely EPA water well ID #167367. The well was reported to have been drilled in 1992, and there is no available information as to what depth the perforated or screened zone was completed at however, the log indicates a withdrawal depth of 24.99 m in a fractured sandstone. The well has an above ground casing and is used presently for domestic purposes only. The well lithology indicates a predominantly sandy till from 0.3-8.23 m and clay from 8.53-24.99 m below ground level. The well has a driven seal that was placed at a depth of 24.4 m. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the CFO and MCAs.

The NRCB has developed a “water well exemption screening tool,” based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well¹. This tool is useful in gauging the level of protection of groundwater.

The water well exemption screening tool indicates that an exemption is more likely to be granted for the already constructed pen areas 1 and 2. It is my opinion that in this case, the water well provides an equivalent level of protection if an exemption was considered.

Based on the above information it is my assessment that varying the 100 m setback rule for pen areas 1 and 2 would offer the same degree of protection and safety as that provided for by the regulations for the following reasons:

- a. Well construction
- b. Sufficient maintenance of the well
- c. Upgradient nature of the well in relation to the MCAs
- d. The presence of an adequate protective layer underneath the pens

Based on the above, I am prepared to grant a variance to the 100 m water well setback requirement for pen areas 1 and 2.

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

APPENDIX C: Explanation of conditions in Approval RA24034

Approval RA24034 includes several conditions, discussed below:

a. Construction Deadline

Garnier did not include a date to complete construction of the proposed catch basins 1–4. However, due the pens having been constructed without a permit (unauthorized) and without adequate runoff control, I believe a shorter construction timeframe is warranted. Therefore, a deadline of July 1, 2025, is included as a condition in Approval RA24034.

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 RA24034 includes conditions requiring:

- a. a completion report from a qualified third-party, certifying that the manure storage and collection portions of catch basins 1-4, as well as the protective berms (as outlined in Envirowest Engineering document "*Site and Soil Assessment: Proposed Solid Manure Storage and Catch Basin*") have been constructed in accordance with the proposed design. At a minimum, the report must confirm that the facilities were constructed in the approved locations and must confirm the final dimensions of the catch basins including depth and side slopes.

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 RA24034 includes a condition stating that Garnier shall not allow manure contaminated runoff to enter the manure storage or collection portions of the new catch basins 1-4 until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

c. Populating feedlot pens

Due to the ongoing involvement of the NRCB's compliance division regarding feedlot pens 1-4, the co-permit holders shall not repopulate feedlot pens 1-4 above AOPA threshold numbers until catch basins 1-4 and the protective berms have been constructed, and the facilities have been inspected by NRCB personnel and confirmed, in writing, that they meet the approval requirements.