

Decision Summary LA25003

This document summarizes my reasons for issuing Registration LA25003 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA25003. 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 a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 8, 2025, Marc and Cornelia Hermus (Hermus) submitted a Part 1 application to the NRCB to construct a new goat dairy CFO.

The Part 2 application was submitted on January 16, 2025. On January 29, 2025, I deemed the application complete.

The proposed CFO involves:

- 300 milking goats (plus dries and replacements)
- Constructing a barn (with a natural occurring liner) – 41.1 m x 18.3 m
- Constructing a solid manure storage pad – 12.2 m x 12.2 m

a. Location

The proposed CFO is located at NE 10-18-14 W4M in the County of Newell, roughly five km south of the City of Brooks. The terrain in this area is flat. The closest common body of water is a canal that runs along the east side of the proposed CFO within a distance of approximately 60 m.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration 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 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 ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

The land zoning on which the CFO is located would require a minimum distance separation of 133 metres. Therefore, the notification distance is 804 metres/ 0.5 miles. (The NRCB refers to this distance as the “notification distance”.)

The proposed barn is located within 100 m of a bank of a river, stream or canal. Newell County as well as the Eastern Irrigation District (EID) have both been notified of this application.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Brooks Bulletin newspaper in circulation in the community affected by the application on January 29, 2025, and
- sending 9 notification letters to people identified by the County of Newell as owning or residing on land within the notification distance.

The full application was made available for viewing at the NRCB office in Lethbridge during regular business hours.

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), Alberta Transportation and Economic Corridors (TEC), and the Eastern Irrigation District.

I also sent a copy of the application to Dinosaur Gas Coop Ltd., Atco Gas - Surface Land, and Astara Energy Corp. that are right of way holders on this land.

The NRCB received a written response from Ms. Leah Olson, a development and planning technologist with TEC. In her response, Ms. Olson stated that there are no concerns or requirements with respect to this proposal.

No other responses were received from any persons or other agencies that were notified of this application.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) 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 CFO is consistent with the land use provisions of the County of Newell'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 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 protective layers of manure storage facilities and manure collection areas

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 Newell is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Maria Jackson, a development officer with the County of Newell, provided a written response on behalf of the County of Newell. Ms. Jackson stated that the application is consistent with the County of Newell’s land use provisions of the municipal development plan. The application’s consistency with the land use provisions of the County of Newell’s municipal development plan, is addressed in Appendix A, attached.

Ms. Jackson also listed the setbacks required by the County of Newell’s land use bylaw (LUB) and noted that the application meets these setbacks.

No other responses were received.

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. The information on this file supports the assumption that risks to groundwater and surface water are low and groundwater monitoring is not required.

9. Terms and conditions

Registration LA25003 specifies the cumulative permitted livestock capacity as 300 milking goats (plus dry and replacements) and permits the construction of the barn and manure storage pad.

Registration LA25003 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration LA25003 includes conditions that generally address construction deadlines and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Registration LA25003 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA25003.

March 5, 2025

(original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration LA25003

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration or amendment of a registration 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.)

Hermus’s CFO is located in the County of Newell and is therefore subject to that county’s MDP. the County of Newell adopted the latest revision to this plan in May 2023, under Bylaw #2057-23.

The relevant section in the MDP is 3.5 Protecting Farmland and Stewarding Intensive Development.

Section 3.5 (a) states that “all lands in the County are agricultural unless otherwise designated by the MDP, an approved statutory or non-statutory plan, the LUB or provincial legislation”.

The land on which the new CFO is proposed is zoned agricultural.

Sections 3.5 (b and c) are not directly related to CFO development and speak about the general nature of land use in the County.

Section 3.5 (d) is a statement recognizing that agricultural operations create dust, noise, odor and additional traffic related to their operation and is a normal and acceptable practice in an agricultural community.

I don’t consider this as a land use provision but rather as a recognition of effects of agricultural operations, not specifically CFOs, on surrounding lands. Therefore, I cannot consider this section in my analysis.

Sections 3.5 (e, f, and g) also do not relate to CFOs and are therefore irrelevant to my consistency determination.

Section 3.5 (h) states that new or expanding CFOs shall not be permitted within the CFO Restricted Areas as shown on the CFO Exclusion Area Maps in Section 6. This section also notes that the CFO Exclusion areas are based on the rationale of safe-guarding growth in and around urban and residential areas and protecting areas of environmental and cultural significance.

The proposed CFO is not in the CFO Exclusion Area. This application therefore meets this section.

Section 3.5 (i) speaks about existing CFOs. Because this CFO is a new CFO, this section is not relevant to my consistency determination.

Section 3.5 (j) encourages the NRCB to consider:

i: the firm enforcement of AOPA to protect open bodies of water, irrigation canals, water wells, and drinking water supplies from contamination and

ii: The inclusion of conditions in their decisions requiring applicants of new CFOs to enter into municipal road use agreements with the County, where applicable, to mitigate wear and tear on County roads.

The proposed CFO meets all setbacks to water wells, surface water bodies, and liner requirements as laid out in AOPA and its regulations.

The NRCB has no jurisdiction over road use and road maintenance which is solely the responsibility of the county as stated in a 2020 decision, where the Board clearly stated that “municipalities own the roads within their jurisdictions...” (Hutterian Brethren of Murray Lake, RFR 2020-09, p. 4). Therefore, I do not consider this section to be a land use provision that should be considered in my consistency determination.

Section 3.5 (k) is not related to CFOs.

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

APPENDIX B: Explanation of conditions in Registration LA25003

a. Construction deadline

Hermus proposes to complete construction of the proposed new barn and manure storage pad by December 2026. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2026, is included as a condition in Registration LA25003.

b. Post-construction inspection and review

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. Registration LA25003 includes a condition stating that Hermus shall not place livestock or manure in the manure storage or collection portions of the new barn nor placing manure on the manure storage pad until NRCB personnel have inspected the barn and manure storage pad and confirmed in writing that they meet the registration requirements.