

the standard

Environmental Standards for Alberta's Livestock Industry

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Municipalities and the *Agricultural Operation Practices Act (AOPA)*

“The purpose of AOPA is to ensure that the province's livestock industry can grow to meet the opportunities presented by local and world markets in an environmentally sustainable manner.”

Background

In January 2002, the province assumed responsibility for issuing permits for confined feeding operations (CFOs) and for setting and enforcing **manure*** management standards under the *Agricultural Operation Practices Act (AOPA)*.

AOPA and its associated regulations establish a province-wide permit process and compliance program that CFOs, cow/calf operations and custom manure applicators must follow. The legislation also contains environmental standards aimed at protecting the air, water and soil. AOPA was amended in June 2004, and the regulations were updated effective October 1, 2006, to clarify the original intent of the legislation.

Introduction

Alberta Agriculture and Rural Development (ARD) is responsible for developing and updating AOPA and the associated regulations. The Natural Resources Conservation Board (NRCB) is responsible for administering the regulations under AOPA. The NRCB reports to the Minister of Sustainable Resource Development.

AOPA includes several provisions that affect rural municipalities. Municipal authorities need to be aware of their role in the permit process and how they can work with the NRCB to represent the interests of their communities.

This publication outlines:

1. the definition of a confined feeding operation (CFO)
2. how existing permits are handled
3. how municipal development plans relate to AOPA
4. how municipalities can work with the NRCB
5. the role of municipalities in complaints handled by the NRCB

1. Definition of a CFO and directly related structures

What is a CFO?

A **confined feeding operation*** (CFO) means fenced or enclosed land or buildings where livestock are confined for the purpose of growing, sustaining, finishing or breeding by means other than grazing and any other building or structure directly related to that purpose.



What does a CFO not include?

The definition of a CFO does not include residences, grazing livestock operations, seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks or exhibition grounds.

Ancillary structures

Ancillary structures such as feed mills and offices **used solely for the operation of the CFO** do not require a municipal development permit. For an ancillary structure to be considered part of a CFO, the owner or operator must identify the structure when applying to the NRCB for a permit or if an operator is not applying for a permit, he or she must submit a notice to the NRCB before constructing the facility. A CFO operator must obtain gas and electrical permits from the municipality, if it is accredited under the *Safety Codes Act*, or from the province or a contract agency.

Municipal jurisdiction

Municipalities continue to have jurisdiction with respect to other structures not specifically approved by the NRCB.

The NRCB will consider a setback request by the municipality or Alberta Transportation regarding the siting of any structure on a CFO.

2. Municipal development permits and CFOs

Transfer of responsibility

As a result of amendments to AOPA in June 2004, all existing municipal development permits, or permits issued by a health authority, are now considered permits under AOPA. The NRCB is responsible for enforcing the conditions that a municipality may have attached to its development permits.

Grandfathered operations

The June 2004 amendments to AOPA specify that CFOs constructed **before** January 2002 **without** municipal permits are considered to have permits under AOPA. Owners and operators must follow the AOPA

requirements for manure management.

CFOs constructed **before and after** January 2002 **with** municipal permits are also considered to have permits under AOPA. Owners and operators are required to follow the conditions in the permit. If the permit is silent in the area of manure management, the owner or operator must follow the AOPA manure management requirements.

Capacity

If a CFO does not have an existing permit then it is the capacity of the facilities (fenced or enclosed land or buildings) at the CFO as of January 1, 2002, that determines the number of animals that can be confined at the operation.

If a CFO with an existing permit has not yet constructed sufficient facilities to accommodate the number of animals stated in the permit and the conditions allowing the construction are still valid, then the facilities may still be built. However, the owner or operator is advised to contact the NRCB or an Alberta Agriculture CFO extension office before any construction.

The NRCB issues three kinds of permits. The type of permit depends on the nature of the activity and the number of animals, animal species and changes in the number of animals:

1. **Registrations** are permits for smaller operations.
2. **Approvals** are permits for larger operations.
3. **Authorizations** are permits for manure storage facilities or manure collection areas.

3. Municipal development plans

AOPA requires NRCB approval officers to consider the land use provisions of municipal development plans and/or land use bylaws when they process permit applications for CFOs and manure storage facilities.

If requested to do so by a directly affected party, the NRCB Board may review the decision of an NRCB approval officer. During a review, a panel of the NRCB Board can, if warranted, override the land use provisions in municipal development plans.

Municipalities are encouraged to prepare and review the land use provisions in their municipal development plans. Municipal development plans should describe the areas and locations where CFOs are not considered a suitable land use.

Reviewing/revising land use bylaws

Municipalities should ensure that their municipal development plans and land use bylaws do not contain provisions that are inconsistent with AOPA.

Impact on municipal development permits

Municipal development permits are no longer required for CFOs that have an NRCB permit or are applying for an NRCB permit (*Municipal Government Act* Section 618.1).

AOPA does not prevent municipalities from regulating animal operations not listed in the legislation or CFOs that fall below the registration threshold. The livestock categories and the minimum size of the operation are outlined in the Matters Regulation, Schedule 2.

Matters Regulation, Schedule 2

Category of Livestock	Type of Livestock	Number of Animals (Registrations)	Number of Animals (Approvals)
Beef	Cows/finishers (900+ lbs)	150-349	350+
	Feeders (450-900 lbs)	200-499	500+
	Feeder calves (<550 lbs)	360-899	900+
Dairy ^{1, 2}	Lactating cows ³ (count lactating cows only - associated dries, heifers and calves are not counted)	50-199	200+
Swine	Farrow to finish ⁴	30-249	250+
	Farrow to wean ⁴	50-999	1000+
	Farrow only ⁴	60-1249	1250+
	Feeders/boars	500-3299	3300+
	Roasters	500-5999	6000+
	Weaners	500-8999	9000+
Poultry	Chicken-breeders	1000-15999	16000+
	Chicken-layer (includes associated pullets)	5000-29999	30000+
	Chicken-pullets/broilers	2000-59999	60000+
	Turkeys-toms/breeders	1000-29999	30000+
	Turkey-hens (light)	1000-29999	30000+
	Turkey-broiler	1000-29999	30000+
	Ducks	1000-29999	30000+
	Geese	1000-29999	30000+
Horses	Pregnant Mare Urine (PMU)	100-399	400+
	Feeders>750 lbs	100-299	300+
	Foals<750 lbs	350-999	1000+
	Mules	100-299	300+
	Donkeys	150-449	500+
Sheep	Ewes/rams	300-1999	2000+
	Ewes with lambs	200-1999	2000+
	Lambs	1000-4999	5000+
	Feeders	500-2499	2500+
Goats	Meat/milk	200-1999	2000+
	Nannies/billies	400-2999	3000+
	Feeders	500-4999	5000+
Bison	Bison	150-349	350+
Cervid	Elk	150-399	400+
	Deer	200-999	1000+
Wild Boar	Feeders	100-299	300+
	Sow (farrowing)	50-99	100+

¹ When dairy replacement heifers are housed away from the dairy, treat as Beef - feeders.

² When dairy calves are housed away from the dairy, treat as Beef - feeder calves.

³ Dairy count includes lactating cows only.

⁴ Swine count includes sows only.

4. Working with the NRCB

Approval officer considerations regarding permits

An approval officer must consider whether an application for a permit:

- meets the requirements of the *Agricultural Operation Practices Act* (AOPA) and regulations, and
- is consistent with the land use provisions in the municipal development plan.

An approval officer must deny an application if:

- the technical requirements of the regulations are not met and the approval officer does not accept a suitable variance, or
- the application is inconsistent with land use provisions contained within the municipal development plan.

Directly affected parties

Any county, municipal district, village, hamlet, town or city within specified distances from the boundary of the land on which the CFO is located (or is to be located) is considered a directly affected party. The distances outlined in AOPA are as follows:

Distance of affected party from the boundary of the land on which the CFO is or is to be located	Total proposed animal units
0.5 miles	500 or fewer
1 mile	501-1,000
1.5 miles	1,001-5,000
2 miles	5,001-10,000
3 miles	10,000-20,000
4 miles	20,001 or more

Notification to municipalities for permit applications

When the NRCB receives a completed Part 1 of an application, the document is date-stamped, and a notice is sent to the affected municipality(s). Part 1 only includes the applicant's name, land location and their intention to construct or expand. When Part 2 of the application is considered complete it is provided to the municipality for review and response.

AOPA stipulates that a municipality has 15 working days to provide comments about an application. The approval officer may extend the comment period for municipalities that make a written request, when circumstances are warranted.

Notification for amendments to permits

AOPA allows permits to be amended. The permit holder or an approval officer can initiate the amendments.

Amendments initiated by a permit holder are processed in a manner similar to an application for a new permit. However, notification to the directly affected municipalities is not required if the proposed amendment is related to a minor alteration to an existing building or structure at a CFO or manure storage facility that will result in minimal change to the risk (if any) to the environment, and a minimal change to a disturbance (if any).

Amendments initiated by an NRCB approval officer also do not require notification of the amendments to the municipality prior to issuing the amended permit.

In all cases the approval officer must provide a written copy of the decision to the municipality. At that point a municipality may apply to the Board for a review of the amendment.

Minimum distance separation

The regulations require the NRCB to base its calculation of the minimum distance separation between a CFO or manure storage facility and neighbouring residences as of the date that Part 1 of the permit application is filed with the NRCB. NRCB approval officers consider four categories of land zoning and residential types in the calculation of the minimum distance separation:

- Category 1 - residences on land zoned for agricultural purposes (e.g., farmstead, acreage residences),

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AOPA versus municipal development plans – which one prevails?

AOPA is provincial legislation; therefore, it prevails over a municipal development plan or a land-use bylaw adopted under the requirements of the *Municipal Government Act* (Section 13). In addition, NRCB permits prevail over land-use bylaws and subdivision decisions (*Municipal Government Act*, Section 619).





- Category 2 - residences on land zoned for non-agricultural purposes (e.g., country residential, rural commercial businesses),
- Category 3 - residences on land zoned for high use recreational or commercial purposes, and
- Category 4 - residences on land zoned for large scale country residential, rural hamlet, village, town or city.

The minimum distance separation is set for each category ranging from the shortest distance for Category 1 to the longest distance for Category 4.

The regulations include a few exceptions that allow a CFO or manure storage to be constructed within the minimum distance separation from a residence. AOPA allows a CFO or manure storage to be constructed within the minimum distance separation from a residence if:

- the owner waives the requirements in writing,
- the owner or operator of the CFO owns or controls the residence,
- an existing CFO is upgrading their operation and is not increasing manure production
- the residence is constructed on the neighbouring lands after Part 1 of the application for a permit is received by the NRCB, or
- the residence was constructed within the minimum distance separation of an existing CFO after the owner or operator of the CFO submitted the initial application or started construction.

Municipal responses to the NRCB

Municipal submissions to the NRCB in response to an application should include a statement indicating whether the proposal is or is not consistent with the land use provisions in the municipal development plan. If the proposal is not consistent with the provisions, the response should explain:

- the inconsistencies,
- the relevant land use policies and their rationale,
- the possible consequences of issuing a permit, and
- any other issues the municipality believes should be considered when arriving at a decision.

Municipalities can also provide comments if they do not have land use plans.

If a municipality does not consider a standard specified in the AOPA regulations to be adequate for a specific application, it can outline its concerns to the NRCB. Comments should include a proposed alternative and rationale for the alternative.

If a permit condition requires municipal implementation, the NRCB may include a condition requiring an agreement between the applicant and the municipality (e.g., required construction of an approach).

NRCB policy

If a permit holder applies to change conditions on an existing permit issued by a municipality, the NRCB policy requires approval officers to contact the municipality for background information on the conditions before making a decision on any application to amend a permit.

The NRCB requires the approval officer to provide the municipality with a copy of the amended permit. If the municipality disagrees with the amendment, it may apply to the NRCB Board for a review of the approval officer's decision within 10 working days of receiving a copy of the decision.

Application for Board review of approval officer decisions

As a directly affected party, a municipality can apply to the NRCB Board for a review of an approval officer's decision. The application for a review must be received within 10 working days from the date the municipality received the approval officer's written decision.

The application for Board review must be in writing and must contain:

- a clear and concise statement of the facts relevant to the application,
- the grounds on which the application for review is made,
- a brief explanation of the nature of the problem that has resulted or will result from the approval officer's decision,
- a brief description of the remedy sought,
- the municipality's name, address and telephone number and if available, fax number and e-mail address,
- if the municipality has a representative, the representative's name, address and telephone number and if available, fax number and e-mail address.

Review process

A municipality may submit an application for a Board review of an approval officer's decision. The Board meets within 10 working days of the filing deadline and makes its decision in consideration of all filed requests simultaneously. The NRCB Board may:

- dismiss the request for review if, in the opinion of the Board, the issues raised in the request for review were adequately dealt with by the approval officer or the issues raised are of little merit, or
- schedule a review.

If the Board decides to hold a review, the municipality:

● **must be:**

- given a reasonable opportunity to review information relevant to the review, and
- given a reasonable opportunity to furnish evidence and written submissions relevant to the review, and

● **may be:**

- given the opportunity to mediate concerns with the applicant, or
- required to make inquiries and investigations, and prepare studies and reports.

5. Municipal role in handling complaints

Municipalities may receive complaints about confined feeding operations and manure application from their ratepayers. Complaints related to a CFO or manure related issues should be forwarded to the NRCB to investigate and respond. The NRCB is responsible for enforcing the Act and regulations. The NRCB has a toll-free, 24-hour response line that concerned residents may call to express their concerns (see contact information at the end of this publication).

The NRCB values municipal input when responding to complaints. NRCB inspectors may contact the municipality to clarify the intent of the original municipal development permit and any background concerning municipal conditions. The NRCB makes it a practice to periodically update municipalities on compliance activities within their boundaries. The NRCB also sends municipalities courtesy copies of enforcement orders issued to CFOs in their district.



***Note:** Terms used in this publication have been simplified to make it easier to read. Complete definitions are found in Section 1 of the legislation.

For example: the term **manure** includes the livestock excreta, straw, other bedding material, litter, soil, wash water and feed in the manure. Composted manure has the same requirements as manure.

For more information, contact:

(Dial 310-0000 to be connected toll-free)

Alberta Agriculture and Forestry

www.agriculture.alberta.ca/aopa

Lethbridge: (403) 381-5885

Red Deer: (403) 755-1475

Morinville: (780) 939-1218

Ag-Info Centre: 310 FARM (3276)

Publications: (780) 427-0391

Natural Resources Conservation Board

www.nrcb.ca

Lethbridge: (403) 381-5166

Red Deer: (403) 340-5241

Morinville: (780) 939-1212

Fairview: (780) 835-7111

Response line: 1-866-383-6722