

Decision Summary RA24028

This document summarizes my reasons for issuing Approval RA24028 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24028. 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 May 31, 2024, Anthony Reimer on behalf of Reimer Agriculture Ltd. (Reimer) submitted a Part 1 application to the NRCB to change livestock type from chicken broiler breeders to chicken broilers, to expand livestock numbers, and to modify an existing manure collection area (MCA).

The Part 2 application was submitted on June 11, 2024. On June 27, 2024, I deemed the application complete.

The proposed expansion involves:

- Change permitted livestock type from chicken broiler breeders to chicken broilers
- Decrease the permitted number of chicken broiler breeders from 31,500 to zero
- Increase the permitted number of chicken broilers from zero to 110,000
- Replace a portion of the concrete liner in existing poultry barn (Barn 18) – 115.8 m x 5.5 m (380 ft. x 18 ft.)

The other existing permitted broiler breeder barns at the CFO will be converted and used for broilers only. No construction is proposed for these barns.

a. Location

The existing CFO is located at SE 36-44-23 W4M in the County of Wetaskiwin, roughly 17 km east of Maskwacis, Alberta. The terrain is generally flat, and the CFO site drains naturally toward the east. The Battle River is located in the northwest corner of the quarter section approximately 187 metres from the CFO.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA16033, which superseded NRCB-issued Approval RA12038 and Authorization RA11017, and County of Wetaskiwin Development Permit 01/172. That permit allows for the construction and operation of a 31,500 chicken broiler breeders CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval RA24028.

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 ½ mile. (The NRCB refers to this distance as the “notification distance”.)

A copy of the application was sent to the County of Wetaskiwin, 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 Pipestone Flyer newspaper in circulation in the community affected by the application on June 27, 2024, and
- sending 12 notification letters to people identified by the County of Wetaskiwin as owning or residing on land within the notification distance.

The full application was made available for viewing in the NRCB’s Red Deer 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.

A referral letter and a copy of the complete application was emailed to Alberta Environment and Protected Areas (EPA).

I also sent a copy of the application to Battle River Gas Co-op Ltd., and Battle River Power Coop as they are right of way holders.

I did not receive any 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 existing CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed conversion and expansion is consistent with the land use provisions of the County of Wetaskiwin'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 conversion and expansion:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- 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 liners 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 exemption that is required to address the AOPA requirements around setbacks to water wells 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 Wetaskiwin is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Amber Tripp, a development officer with the County of Wetaskiwin provided a written response on behalf of the County of Wetaskiwin. Ms. Tripp stated that the application is consistent with the land use provisions of the County of Wetaskiwin's municipal development plan (MDP). The application's consistency with the land use provisions of the County of Wetaskiwin's MDP is addressed in Appendix A, attached.

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

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (see NRCB Operational Policy 2016-7: Approvals, part 7.2.1). Clarence and Marie Ibach provided an MDS waiver and are a directly affected party.

8. Environmental risk of CFO facilities

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, 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 Reimer's existing CFO facilities were assessed in 2016 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

9. Exemptions

I determined that the proposed new concrete liner in barn 18 is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 m water well setback is warranted due to water well construction, maintenance, and usage.

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.

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

I have considered the effects the proposed conversion and expansion 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 AOPA's technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed August 13, 2024).

Finally, I considered the effects of the proposed conversion and expansion on the environment, the economy, the community, and the appropriate use of land. In doing so, I had before me information in the application, views from the County of Wetaskiwin, and my own observations from site visits.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, I presumed that the effects on the environment are acceptable because 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 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 expansion is an appropriate use of land because the application is consistent with the land use provisions of the MDP (see NRCB Operational Policy 2016-7: Approvals, part 9.10.9). In my view, this presumption is not rebutted, and I note that the County of Wetaskiwin's response states that the application is consistent with their MDP.

11. Terms and conditions

Approval RA24028 specifies the cumulative permitted livestock capacity as 110,000 chicken broilers and permits the replacement of the concrete liner in the existing poultry barn (barn 18).

Approval RA24028 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 RA24028 includes conditions that generally address construction deadline, monitoring, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval RA24028: Approval RA16033 (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 C discusses which conditions from the historical permits are or are not carried forward into the new approval.

12. Conclusion

Approval RA24028 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24028.

Approval RA16033 is therefore superseded, and its content consolidated into this Approval RA24028, unless Approval RA24028 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA16033 will remain in effect.

September 3, 2024

(Original signed)

Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemption from well setbacks
- C. Explanation of conditions in Approval RA24028

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.)

Reimer’s CFO is located in the County of Wetaskiwin and is therefore subject to that county’s MDP. The County of Wetaskiwin adopted the latest revision to this plan on April 11, 2023, under Bylaw 2023/05.

As relevant here, section 11.6 of the MDP aims to “support” CFOs while “minimizing conflicts with surrounding land uses and negative impacts on the environment through land stewardship best practices.” Additionally, the MDP notes that, while CFOs are under provincial jurisdiction, it is the County’s intent to “restrict new or expanded CFOs only in those locations where they are incompatible with neighbouring land uses or negatively impact sensitive environmental features”. The MDP also reports the County’s view that, the Municipal Government Act “requires” the County to identify where new CFOs may be located.

Objective 11.6.1 supports CFOs at “appropriate locations.”

Objective 11.6.2 references the requirements of AOPA in determining Minimum Distance Separation for CFOs.

Objective 11.6.3 states 5 areas in which the County prohibits new or expanded CFOs within specified distances of the areas listed in the objective. Reimer’s CFO is located outside all the specified setbacks, and therefore, the application is consistent with this objective.

Objective 11.6.4 states that, notwithstanding objective 11.6.3, the County will support expanding or upgrading existing CFOs where “upgrades in technology and/or practices result in improved manure management and/or mitigation of negative impacts on surrounding land uses and the environment.” As noted in section 8 of the decision summary, the CFO’s proposed facility poses a low potential risk to both groundwater and surface water, which arguably may “result in improved manure management and/or mitigation of negative impacts on surrounding land uses and the environment”. However, this policy likely isn’t a “land use provision” because it calls for discretionary judgements about what applications the County will support.

In addition, this policy may well be precluded from my consideration under section 20(1) of AOPA, which precludes an approval officer from considering MDP provisions “respecting tests

or conditions related to the construction of or the site for a confined feeding operation or manure storage facility” and regarding the land application of manure.

Objective 11.6.5 refers to CFOs within the setbacks in 11.6.3 that are “not in operation for a period of ten years or more”, in which case the County considers these operations to be “without proper authorization to resume operation or expand”.

AOPA determines which above-threshold operations have “authorization” to operate. AOPA sets out the conditions for a CFO operating and obtaining a permit, including a few circumstances where the NRCB can cancel a permit. An MDP policy that purports to override AOPA’s regulation on that point cannot be a valid land use provision; and therefore, I am precluded from considering this provision. Regardless, Reimer’s CFO is currently in operation.

Objective 11.6.6 states the County’s support for “new residences where the residence is associated with a CFO within the Minimum Distance Separation of an existing CFO”. I interpret this to be a requirement as relating to the development of residences near CFOs. The permitting of residences is within the municipality’s jurisdiction.

Objective 11.6.7 states that the County requires CFO proponents to “demonstrate that their development will not result in environmental impacts from their proposed operation” and may recommend to the NRCB that an “Environmental Impact Assessment” be submitted along with the application. This is likely not a land use provision and the NRCB Board has guided approval officers to disregard requests for environmental impact assessments for being a “test or condition” (RFR 2008-02 Hutterian Brethren of Silver Springs, at page 4). Nevertheless, the County has made no such request for this application. Additionally, the proposed conversion and expansion meets AOPA’s environmental protection standards.

Objective 11.6.8 states that the County “requests” the NRCB to include conditions in their decisions requiring CFO proponents to “enter into agreements with the County, which may include dust control, road use, and off-site levies...”. The NRCB does not have direct responsibility for regulating road use. Section 18 of the Municipal Government Act gives counties “direction, control and management” of all roads within their borders. In addition, municipalities have the knowledge, expertise, and jurisdiction to implement and enforce road use agreements. Nevertheless, the County has made no such request for this application.

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

APPENDIX B: Exemption from well setbacks

1. Water Well Considerations

The proposed concrete liner modification in barn 18 is to be located less than 100 m from a water well. I have confirmed that one water well is located approximately 90 m from it during a site visit and through aerial photography. This is in conflict with the section 7(1)(b) of the Standards and Administration Regulation (SAR) under AOPA.

Section 7(2), however, allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the poultry barn (barn 18), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the applicant's proposed MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers 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 risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 9.10.2.

Well 40162:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 90 m north of barn 18 is likely EPA water well ID # 40162. This well is reported to have been installed in 2002 and has a perforated or screened zone from 42.7 m to 61.0 m below ground level across stratigraphy. The well has above ground casing and is used for non-domestic purposes. I note that in my conversations with the applicant, the water well is only used presently to provide water for the CFO. The well's log identifies protective layers from ground surface to 16.8 m below ground level. The well has a bentonite seal from 6.1 m to 32.9 m below ground level. 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 on approximately the same elevation as barn 18 as there is little topographic relief at the CFO.

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 well.¹

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA24028.

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

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for barn 18.

APPENDIX C: Explanation of conditions in Approval RA24028

Approval RA24028 includes several conditions, discussed below, and carries forward one condition from NRCB Approval RA16033 (see section 2 of this appendix). Construction conditions from historical RA16033 that have been met are identified in the appendix to Approval RA24028.

1. New conditions in Approval RA24028

a. Construction Deadline

Reimer proposes to complete construction of the proposed concrete liner by the end of May 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of May 31, 2025, is included as a condition in Approval RA24028.

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 RA24028 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portions of barn 18 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. Reimer to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of barn 18.

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 RA24028 includes a condition stating that Reimer shall not place livestock or manure on the manure storage or collection portions of the new liner in barn 18 until NRCB personnel have inspected the new liner and confirmed in writing that it meets the approval requirements.

2. Conditions carried forward from Approval RA16033

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition 4 from Approval RA16033 should be carried forward:

4. Water well monitoring and protection

As noted in Decision Summary RA24028 and Technical Document RA24028, the Water Well Exemption Screening Tool scores indicated an exemption is likely. However, due to the distance of the water well to the CFO facilities and the proposed new liner in barn 18, a condition will be included in Approval RA24028 requiring Reimer to continue conducting water quality tests for chlorides and nitrates (routine water testing) annually, on water well ID #40162, unless directed in writing by the NRCB.

3. Conditions not carried forward from Approval RA16033

Approval RA24028 includes the terms and conditions in RA16033, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition 5 from Approval RA16033 should be deleted and therefore is not carried forward to Approval RA24028:

5. No manure shall be spread on frozen or snow-covered ground.

My reasoning for removing this condition is to avoid redundancy, as the requirements for manure spreading, including spreading on frozen and snow-covered ground, are included in section 24(6) of the Standards and Administration Regulation (SAR) under AOPA.