



Decision Summary RA24035

This document summarizes my reasons for issuing Approval RA24035 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24035. 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 August 2, 2024, the Hutterian Brethren Church of Red Willow, operating as RW Colony Farming Co. Ltd. (Red Willow Colony), submitted a Part 1 application to the NRCB to convert livestock category and expand its livestock capacity at an existing multi-species CFO.

The Part 2 application was submitted on August 7, 2024. On August 22, 2024, I deemed the application complete.

The proposal involves:

- Changing livestock category from sheep (lambs) to poultry (chicken layers). This involves an increase in the existing chicken layer numbers from 9,000 to 37,000
- Converting the existing sheep barn into a layer barn – 121.9 m x 24.4 m
- Constructing a manure storage shed attached to the layer barn – 18 m x 10 m
- Decommissioning the existing sheep catch basin and sheep pens

The application also notified the NRCB of the proposed construction of an egg packing room and cooler attached to the layer barn (24 m x 18 m). This facility is an “ancillary structure,” under section 1(1)(a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure is part of the CFO but does not need to be permitted under the Act.

a. Location

The existing CFO is located at NE and S½ 24-40-18 W4M, NE 13 -40-18 W4M and SW 19-40-17 W4M in the County of Stettler, roughly 6 km east of the Hamlet of Red Willow, AB. The terrain is level with a general slope to the north, west and southwest towards Red Willow Creek located approximately 120 m from the existing sheep barn that will be converted into a layer barn.

b. Existing permits

To date, the CFO has been permitted under Approvals RA11031 and RA11031A, and Authorizations RA12037, RA13016 and RA18008A. Collectively, these NRCB permits allow Red Willow Colony to construct and operate a multi-species CFO consisting of 120 dairy cows (plus associated dries and replacements), 400 beef feeders, 100,000 turkey toms, 600 turkey broilers, 800 ducks, 300 geese, 1,400 lambs and 9,000 chicken layers. The CFO’s deemed and NRCB-

permitted facilities are listed in the appendix to Approval RA24035.

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 County of Stettler, 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 Stettler Independent newspaper in circulation in the community affected by the application on August 22, 2024, and
- sending 24 notification letters to people identified by the County of Stettler as owning or residing on land within the notification distance.

The full application was made available for viewing at 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 Ember Resources Inc., Paintearth Gas Co-op Ltd., and Obsidian Energy as they are right of way/easement holders on the legal land location where the construction will take place.

No responses were received.

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 located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO conversion is consistent with the land use provisions of the County of Stettler'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 conversion:

- 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 County of Stettler is an affected party (and directly affected) because the proposed construction is located within its boundaries.

Mr. Rich Fitzgerald, a GIS coordinator/development officer, with the County of Stettler provided a written response. Mr. Fitzgerald stated that the application is consistent with the County's land use provisions of the municipal development plan (MDP).

The application's consistency with the land use provisions of the County of Stettler's MDP 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, porous subsurface materials, or surface water system an approval officer may require groundwater monitoring for the facility. An assessment was made, and groundwater monitoring is not required for these 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 Red Willow Colony's existing CFO facilities were assessed in 2009, 2010, 2011, 2012, 2013, and 2018 using the ERST. According to those assessments, 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 the assessments were done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

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.

Mr. Fitzgerald stated that the application meets the setbacks required by the County of Stettler's land use bylaw.

I have considered the effects the proposed construction 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 under 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 September 25, 2024).

Finally, I considered the effects of the proposed construction 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 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 CFO conversion 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.

10. Terms and conditions

Approval RA24035 specifies the cumulative permitted livestock capacity as:

- 100,000 turkey toms,
- 400 beef feeders,
- 120 dairy cows (plus dries and replacements),
- 37,000 chicken layers,
- 600 turkey broilers,
- 800 ducks,
- 300 geese

and permits the conversion of the existing sheep barn into a layer barn, the construction of the manure storage shed, as well as the decommissioning of the existing sheep catch basin and pens.

Approval RA24035 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 RA24035 includes conditions that generally address construction deadlines, document submission, decommissioning, 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 permits with Approval RA24035: Approvals RA11031 and RA11031A, and Authorizations RA12037, RA13016 and RA18008A (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 permits are or are not carried forward into the new approval.

11. Conclusion

Approval RA24035 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24035.

Approvals RA11031 and RA11031A, and Authorizations RA12037, RA13016, and RA18008A are therefore superseded, and their content consolidated into this Approval RA24035, unless Approval RA24035 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approvals RA11031 and RA11031A and Authorizations RA12037, RA13016, and RA18008A will remain in effect.

October 25, 2024

(Original signed)

Francisco Echegaray, P. Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA24035

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.)

Red Willow Colony’s CFO is located in the County of Stettler and is therefore subject to that county’s MDP. The County of Stettler adopted the latest revision to this plan on August 9, 2023, under Bylaw 1704-23.

Subsection 4.15(a) states that “the County supports any application for CFO development and/or expansion if it complies with the AOPA regulations...”. While I am of the opinion that this subsection is not a land use provision, it still provides an insight into the interpretation of the remaining portions of the MDP.

Section 4.15(b), (c), and (g) are all procedural in nature. As such, they are not “land use provisions,” and therefore they are not applicable to my MDP consistency determination.

Subsection 4.15(d) states that the CFO site “must be located” in the Agricultural District under the County’s land use bylaw, otherwise the County will ask the NRCB to include a condition in the permit requiring the applicant to obtain rezoning from the County.

The CFO is located within the Agricultural District and is therefore consistent with this policy.

Subsection 4.15(e) states that the “proposed location of any CFO structures must comply with the minimum front, side and rear yard setback requirements for farm buildings as described in the Land Use Bylaw.” The existing manure collection areas and manure storage facility meet the setback requirements in the County’s land use bylaw.

Section 4.15(f) states, “If the County deems that the approval of the proposed or expanded CFO by the NRCB would result in increased traffic that may impact County roads or residences along those roads, or if the County deems that the access roads do not comply with the County’s minimum road specifications to safely carry the expected traffic (e.g. road width), the County will request that the NRCB impose a condition on the permit to require that the applicant enters into a road use agreement with the County and/or upgrades the affected roads at no cost to the County.”

NRCB policy is not to use AOPA permit conditions to require applicants to enter into road use agreements (see NRCB Operational Policy 2016-7: Approvals, part 9.13.)

Subsections 4.15(h) and (i) preclude new or expanding CFOs within any exclusion zones identified in an intermunicipal development plan or in any area structure, concept and outline plans listed in those subsections. The County stated that the CFO is not within any of these exclusion zones, area structure plans, or concept plans and is therefore consistent with this policy.

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

APPENDIX B: Explanation of conditions in Approval RA24035

Approval RA24035 includes several conditions, discussed below, and carries forward a number of conditions from Approvals RA11031 and RA11031A, and Authorizations RA12037, RA13016, and RA18008A. Construction conditions from the above-noted historical permits that have been met are identified in the appendix to Approval RA24035.

1. New conditions in Approval RA24035

a. Construction Deadline

Red Willow Colony proposes to complete construction of the proposed conversion of the existing sheep barn to layer barn and the manure storage shed attached to the layer barn by September 2027. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of September 30, 2027 is included as a condition in Approval RA24035.

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 RA24035 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the proposed conversion into a layer barn and manure storage shed 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”; and
- b. Red Willow Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the conversion into a layer barn and manure storage shed.

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 RA24035 includes conditions stating that Red Willow Colony shall not place livestock or manure in the manure storage or collection portions of the converted layer barn or manure placed in the manure storage shed until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.

c. Decommissioning of Facilities

As proposed by Red Willow Colony, a condition will be included in the approval requiring them to decommission the sheep catch basin and sheep pens according to Technical Guideline Agdex 096-90 “Closure of Manure Storage Facilities and Manure Collection Areas”.