

## Decision Summary RA24038

This document summarizes my reasons for issuing Authorization RA24038 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24038. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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 authorization. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On August 29, 2024, Joel Lozeau (Lozeau) submitted a Part 1 application to the NRCB to construct a manure storage facility (MSF) and additional manure collection areas (MCA) at an existing sheep CFO.

The Part 2 application was submitted on August 29, 2024. On September 4, 2024, I deemed the application complete.

The proposed construction involves:

- Expanding Pen 1 – 120 m x 20 m (addition) (existing portion is 76 m x 43 m)
- Constructing Pens 4, 5, 6 – 200 m x 43 m each
- Constructing a lamb building – 70 m x 40 m
- Constructing a catch basin – 180 m x 55 m x 0.5 m deep

#### a. Location

The existing CFO is located at N½ 23-45-27 W4M in the County of Wetaskiwin, roughly 6 km southeast of Falun, Alberta. The terrain is relatively flat, with an overall slope to the southwest. The land is interconnected with seasonal drainage pathways, but the nearest seasonal drainage is 149 m to the south.

#### b. Existing permits

The CFO is already permitted under Registration RA23033.

### 2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- 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

- any other municipality whose boundary is within a notification distance. In this case, the notification distance is ½ mile (805 m) from the CFO

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 County of Wetaskiwin, which is the municipality where the CFO is located.

### **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.

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 Apex Utilities Inc. as they are a utility right of way holder.

I did not receive any responses to the application.

### **4. Municipal Development Plan (MDP) consistency**

I have determined that the proposed construction 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.)

### **5. AOPA requirements**

With respect to the technical requirements set out in the regulations, the proposed construction:

- 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 groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements.

### **6. Responses from municipality**

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.

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 facilities are located within its boundaries.

Ms. Amber Tripp, the acting 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 County of Wetaskiwin's land use provisions of the municipal development plan. The application's consistency with the County of Wetaskiwin's municipal development plan is addressed in Appendix A, attached.

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.

## **7. Environmental risk of facilities**

New MSF/MCAs 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 systems an approval officer may require monitoring for the facility. A determination was made that monitoring is not required and the engineering and soil investigation information provided in the file supports the presumption that risks to groundwater and surface water are low.

When reviewing a new authorization 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](http://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 Lozeau's existing CFO facilities were assessed in 2023 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

## **8. Terms and conditions**

Authorization RA24038 permits the construction of additional pens 4, 5, 6, lamb building, and the catch basin as well as the expansion of pen 1.

Authorization RA24038 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization RA24038 includes conditions that generally address construction deadlines and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

## **9. Conclusion**

Authorization RA24038 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24038.

Authorization RA24038 must be read in conjunction with previously issued Registration RA23033 which remains in effect.

November 6, 2024

(Original signed)

Nathan Shirley  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA24038

## 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.)

Lozeau’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 conforms to 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. Lozeau’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”. Lozeau’s application is for additional facilities at an existing CFO, it is not located within any of the setbacks stated in 11.6.3, and therefore, this objective does not apply.

Objective 11.6.5 refers to CFOs within the setbacks in 11.6.3 that are “not in operation for a period of ten (10) years or more”, in which case the County considers these operations to be “without proper authorization to resume operation or expand”. This is not a valid land use provision and therefore, I won’t consider it. Regardless, the application is at an existing CFO.

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 CFO's. 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. Nevertheless, the County has made no such request for this application.

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 the above reasons, I consider the application to be consistent with the land use provisions of the County of Wetaskiwin's MDP. The County's response to the application confirms this conclusion.

## **APPENDIX B: Explanation of conditions in Authorization RA24038**

Authorization RA24038 includes several conditions, discussed below:

### **a. Groundwater protection requirements**

Lozeau proposes to construct the new pens, lamb building, and catch basin with a minimum 2.2 metre naturally occurring protective layer. Section 9 of AOPA's Standards and Administration Regulation specifies a maximum hydraulic conductivity for this type of protective layer in order to minimize leakage.

Lozeau measured the hydraulic conductivity of the protective layer by installing a monitoring well (or water table well) at the time of borehole drilling. This approach provides an adequate representation of the protective layers proposed to be used to protect the groundwater resource.

The regulations provide that the actual hydraulic conductivity of a 2 metre thick naturally occurring protective layer must not be more than  $1 \times 10^{-6}$  cm/sec for the pens and lamb building and 5 metre thick naturally occurring protective layer of not more than  $1 \times 10^{-6}$  cm/sec for the catch basin.

In this case, the in-situ measurement was  $4.1 \times 10^{-7}$  cm/sec. This value is below the maximum value in the regulations. Therefore, the proposed naturally occurring protective layer meets the hydraulic conductivity requirement in the regulations.

### **b. Construction Deadline**

Lozeau did not include a date to complete construction of the proposed new facilities by. The NRCB typically grants up to 3 years to complete construction so therefore a deadline of December 1, 2027, is included as a condition in Authorization RA24038.

### **c. 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. Authorization RA24038 includes conditions stating that Lozeau shall not place livestock or manure in the manure storage or collection portions of the new facilities until NRCB personnel have inspected each facility and confirmed in writing that they meet the authorization requirements.