

Decision Summary RA22002

This document summarizes my reasons for denying the application for Approval RA22002 under the *Agricultural Operation Practices Act (AOPA)*. The application and a detailed technical review of it are in Technical Document RA22002. 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 January 11, 2022, Rylan Penner, and R&T Penner Farms Ltd., submitted a Part 1 application to the NRCB to expand an existing broiler chicken CFO.

The Part 2 application was submitted on January 13, 2022. On January 18, 2022, I deemed the application complete.

The proposed expansion involves an increase from 50,000 to 75,000 broiler chickens and the construction of a new barn (96.3 m x 15.2 m).

a. Location

The CFO is located at SW 28-45-20 W4M in Camrose County, roughly two kilometers (or 1.2 miles) west of Dried Meat Lake. The site of the CFO slopes gently to the west. The nearest water body down gradient of the CFO is a slough located approximately 114 m to the west.

b. Existing permit

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. That deemed permit includes Camrose County development permit 99-105, issued October 15, 1999. This deemed registration allows for the construction and operation of a 50,000 broiler chicken CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix A, attached. The deemed facilities are listed Technical Document RA22002.

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 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

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

A copy of the application was not forwarded to additional municipalities as none have boundaries within the affected party radius. Also, the CFO is located more than 100 m from the bank of a river, stream, or canal.

The NRCB gave notice of the application by public advertisement in the Camrose Booster on January 18, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, nine letters were sent to people identified by Camrose County as owning or residing on land within the affected party radius.

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.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), and Alberta Environment and Parks (AEP). I also sent a copy of the application to Battle River Natural Gas Coop Ltd. as they have a utility right of way on the land.

Mr. Gregory Ward, a public health inspector/executive officer with AHS, stated in his response that AHS has no objections to the proposed barn. His response included comments related to the Nuisance and General Sanitation Regulations. It also recommended that water wells used for human consumption be tested regularly for microbiological parameters.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated in her response that if the operation’s water requirements were greater than what is currently licensed, additional licensing would be required.

The responses from AHS and AEP were forwarded to the Mr. Penner of R&T Penner Farms Ltd. for his information.

No response was received from the Battle River Natural Gas Coop Ltd.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO expansion is inconsistent with policy 4.3.9, a land use provision, of Camrose County’s municipal development plan. Policy 4.3.9 of the MDP effectively states that development of new or expanding CFOs shall not be supported within 3,219 m (two miles) of Dried Meat Lake. This CFO is located approximately 1.2 miles west of this lake.

In accordance with AOPA Section 20(1)(a), because the MDP land use provisions are not met, I am required to deny the application. (See Appendix B for a more detailed discussion of the county's planning requirements.)

5. AOPA requirements

Despite being inconsistent with the county's MDP, I nevertheless reviewed the application to determine if it was consistent with respect to the technical requirements set out in the regulations. The proposed CFO expansion:

- 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 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

I also determined that the proposed barn is located within the required AOPA setback from an existing water well. However, as explained in part eight and in Appendix C, this facility would warrant an exemption from the 100 metre water well setback.

If the NRCB's Board chooses to overturn this decision, following a review hearing, I have provided recommendations on conditions and permit consolidation that may be considered if a permit were to be granted. (See Appendix D.)

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. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." Camrose County is an affected party (and directly affected) because the proposed CFO expansion is located within its boundaries.

Ms. Kim Hunter, a development officer with Camrose County, provided a written response on behalf of the county. Ms. Hunter stated that the application is not consistent with the land use provisions of the county's municipal development plan as it is located within a two mile exclusion zone for Dried Meat Lake. The application's inconsistency with Camrose County's municipal development plan is addressed in Appendix B, attached.

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

7. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool

provides for a numeric scoring of risks, which can fall within 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.)

For the sake of efficiency, I first assessed the CFO's existing manure storage pad using the ERST. This appeared to be the CFO's highest risk facility, as it lacks a constructed manure storage liner and lacks roof cover. The assessment found that the pad poses a low potential risk to groundwater and surface water. Because this is the CFO's highest risk facility, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

I also assessed the risk posed by the proposed barn using the ERST. It also poses a low potential risk to surface water and groundwater.

8. Exemption

I determined that the proposed barn is located within the required AOPA setback from an existing water well. As explained in Appendix C, an exemption to the 100 m water well setback would be warranted if a permit were issued.

9. Other factors

Under section 20(1)(a) of AOPA, I am obliged to deny the application. Regardless, to assist the Board in the event of a review, and if the Board considers issuing a permit, I considered the following factors that are identified under section 20(1)(b).

If the application met AOPA's technical requirements, AOPA would require me to consider matters that a development officer would in the case of the application for a municipal development permit. 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. Hunter listed the setbacks required by Camrose County's land use bylaw (LUB) of 10 m to all property lines and 40 m to the road way property line. After reviewing the site plans included with the application, I have determined that the proposed barn meets these setbacks.

AOPA would also require me to consider the effects a CFO expansion would have on natural resources administered by provincial departments. To this end I referred the application to AEP and received feedback that is discussed in part three above. Aside from the county's response which indicated that the application was inconsistent with the municipal development plan, no concerns were expressed in response to this application. Accordingly, there were no concerns beyond AOPA's mandate to forward to applicable agencies (AHS or AEP) for their information and action.

The AEP representative who I have corresponded with for this application did not make me aware of any statements of concerns for this CFO that were submitted under section 109 of the *Water Act* in respect of the subject of this application. I am not aware of any written decisions

before the Environmental Appeals Board (<http://www.eab.gov.ab.ca/status.htm>, accessed, February 17, 2022).

Finally, I would need to consider the effects of the proposed CFO expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

The proposed CFO expansion would be presumed to have an acceptable effect on the community, economy, and be an appropriate use of land if it were consistent with the land use provisions of the municipal development plan (see NRCB Operational Policy 2016-7: Approvals, part 8.7.3). As that is not the case, these presumptions would not apply.

10. Conclusion

Application RA22002 is denied for the reasons provided above and in Appendix B. If after a Board review this decision be overturned, I have included conditions and permitting actions that should be considered. Those conditions and permitting actions are discussed in Appendix D.

March 1, 2022

(Original Signed)
Jeff Froese
Approval Officer

Appendices:

- A. Determination of deemed permit status
- B. Inconsistency with the municipal development plan
- C. Exemptions from water well setback
- D. Recommended conditions and permitting actions

APPENDIX A: Determination of deemed permit status

Rylan Penner, and R&T Penner Farms Ltd., claim that their CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO.

The investigation was to determine the capacity of the CFO that was in place on January 1, 2002.

The CFO was originally permitted by Camrose County on October 15, 1999 under development permit 99-105. This permit allowed for the expansion to an existing “broiler” CFO. The permit did not specify the permitted facilities and did not state the CFO’s livestock capacity.

To determine whether the CFO holds a deemed permit and, if so, its deemed capacity, I must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics; and
- b. How each of those facilities was being used on January 1, 2002.

I found that the livestock type could reasonably be determined by viewing historical aerial photos and available records. Despite this, the records available to me provided clarity to the livestock category (poultry) at the CFO, but not the livestock type (what kind of poultry). For this reason, I provided notice to those parties who would be entitled to notice if this were an application for a new CFO with the claimed livestock type and capacity (in accordance with section 11(2) of the Administrative Procedures Regulation). In this case, that included land owners and occupants (as identified by Camrose County) within 0.5 miles of the CFO.

The NRCB published notice of the deemed permit determination as part of the notice for the proposed CFO expansion application, in the Camrose Booster on January 18, 2022.

I did not receive any submissions relating to the deemed permit determination.

Prior to the application being deemed complete on January 18, 2022, a representative of Camrose County provided me with a copy of the application for development permit 99-105 and documents related to the review of that application. The application form specified the expansion included adding one 316 foot x 50 foot broiler barn. The application stated how manure would be stockpiled east of the barn and included other matters related to how the farm’s manure would be managed. The application review documents provided by Camrose County included a calculation of minimum distance separation and included multiple references to broiler chickens.

The documents from Camrose Country support the applicant’s claimed barn two and manure storage pad as manure collection areas and manure storage facilities. It also helps to confirm that the CFO did exist on January 1, 2002 as a 50,000 broiler chicken CFO as claimed.

An air photo from Vaultus, dated between 1999 and 2003, confirms the presence of barn one and the manure storage pad. I note how the manure storage pad was located east of barn one and in the same approximate area as what I observed it to be in while I was onsite. Despite not

including barn two, it is possible that the Vaultus image was from before the second barn was constructed. At any rate, the municipal permit for the second barn was issued before January 1, 2002.

Aerial images from Google Earth, dated October 2008 and July 2021, confirm that the manure pad's location and dimensions have remained approximately the same through the years. Those images also confirm that barn one has not changed dimensions and that barn two was constructed and has not changed dimensions.

Based on these findings, the CFO's claimed capacity of 50,000 broiler chickens is reasonable. The CFO is considered to have a deemed registration and a deemed capacity of 50,000 broiler chickens.

APPENDIX B: Inconsistency 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.

Conversely, “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 8.2.5.)

Rylan Penner’s CFO is located in Camrose County and is therefore subject to that county’s MDP. Camrose County adopted the latest revision to this plan on April 12, 2016, under Bylaw #1372. As relevant here:

Policy 4.3.7 of the MDP states that “Applications for new or expanding CFO shall meet the Agricultural Operations Practices Act.”

This is not a land use provision. I note that, as discussed elsewhere in this decision summary, this application meets all relevant AOPA requirements with exception to the setback to an existing water well and an inconsistency with a MDP policy (discussed below). As discussed previously and in the following appendix, an exemption to the water well setback requirement is warranted.

Policy 4.3.8 states “At the discretion of County Council, large CFO’s shall be prohibited in the County.”

This policy likely is not a “land use provision” because it calls for discretionary judgements about the size of the CFO. In addition there is no definition as to what “large” means when considering confined feeding operations.

Policy 4.3.9 states that development of new or expanding CFOs shall not be supported within 3,219 m (two miles) of the City of Camrose, 3,219 m (two miles) from any recreational lake (defined in the MDP as Miquelon Lake, Little Beaver Lake, Bittern Lake, Red Deer Lake, Buffalo Lake, and Dried Meat Lake) or 1,610 m (one mile) from any other urban municipality or hamlet as outlined in an [intermunicipal development plan] IDP.

This CFO is located approximately two kilometers or 1.2 miles from Dried Meat Lake (measured from a scaled 2021 image from Google Earth). Since the CFO is proposing to expand, the application is therefore inconsistent with this policy. This CFO is not located within any of the other setbacks in this policy of the MDP.

As noted above in part six above, Ms. Hunter of Camrose County confirmed that the CFO is located within the MDP setback to Dried Meat Lake.

Since this application is not consistent with the county's MDP land use provisions, under section 20(1)(a) of AOPA, I must deny the application.

APPENDIX C: Exemption from water well setback

In the application, the proposed barn is to be located less than 100 m from three existing water wells. I have confirmed that one water well is located approximately 99 m from the barn. Two other water wells are located approximately 101 m and 104 m from it during a site inspection and by review of a scaled air photo. The well within 100 m of the barn 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 manure storage facility (MSF)/manure collection area (MCA), 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
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the new water well located approximately 99 m north of the proposed barn is likely AEP water well ID #295018.

Water well 295018 is reported to have been installed in 2000 and has a perforated or screened zone from 22.3 m to 23.8 m below ground level across gravel. This well has an above ground casing and is reported to be used for non-domestic purposes. The well's log identifies protective layers of till and clay from ground surface to 10.4 m below ground level. The well has a bentonite seal from ground surface to 22.3 m below ground level across the till and clay layers. The well appeared to be in good condition. The well is likely cross gradient of the proposed barn.

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

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

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA22002.

I am of the opinion that the type of manure at this CFO, along with how it is collected and stored, and due to the proposed concrete liner for the new barn do not warrant additional actions being taken in this case.

Based on the above, I would grant an exemption to the 100 m water well setback requirement for the proposed barn, if a permit to construct the barn were to be issued.

APPENDIX D: Recommended conditions and permitting actions

If following a Board review hearing this decision is overturned, I recommend that the following be considered for the proposed development.

- A construction completion condition should be included that grants the permit holder three construction seasons to complete the proposed construction.
- A condition requiring Mr. Rylan Penner to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the new barn.
- A condition requiring an inspection of the new barn to occur before livestock or manure are placed in it.
- I also recommend that the deemed registration, including Camrose County issued development permit 99-105, be consolidated into the new permit and that any outstanding and relevant conditions from the deemed permit be carried forward into the new permit.