

Decision Summary RA21026

This document summarizes my reasons for issuing Authorization RA21026 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21026. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 11, 2021, Rocky Road Chicken Farm Ltd. (Rocky Road) submitted a Part 1 application to the NRCB to construct a small barn (broiler barn) (46.3 m x 20.7 m) at an existing chicken broiler CFO.

The Part 2 application was submitted on June 8, 2021. On June 9, 2021, I deemed the application complete.

The proposed barn will accommodate new chicken industry livestock density requirements.

a. Location

The existing CFO is located at NW 25-39-28 W4M in Lacombe County, roughly 6 kilometres northwest of Blackfalds, Alberta. The terrain is level.

b. Existing permits

The CFO is already permitted under Registration RA09019A which allows a poultry CFO with 50,000 chicken broilers. The CFO's permitted facilities are listed in an appendix of Registration RA09019A.

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

A copy of the application was sent to Lacombe County, 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.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS) and Alberta Environment and Parks (AEP).

I received responses from AHS and AEP.

Mr. Quentin Schatz, an AHS environmental health officer/executive officer, indicated that AHS has no concerns with this application.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that no additional water licensing is required at this time; however, the water licence requires a name change amendment under the *Water Act*.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of Lacombe County'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 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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 9, the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around the proposed construction within the 100 metre setback from an existing water well is discussed in the following parts of this decision summary.

6. Responses from the 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." Lacombe County is an affected party (and directly affected) because the proposed facility is located within its boundaries.

Ms. Allison Noonan, planning services administrative assistant with Lacombe County, provided a written response on behalf of the county. Ms. Noonan stated that the application is consistent

with Lacombe County's municipal development plan (MDP). The application's consistency with Lacombe County's MDP is addressed in Appendix A, attached.

Ms. Noonan also indicated that the application meets the setbacks required by Lacombe County's land use bylaw (LUB).

7. Environmental risk of facilities

New manure storage or manure collection facilities (MSF/MCA) which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require monitoring for the facility. In this case a determination was made and monitoring is not required.

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, 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 8.13.

In this case, the risks posed by Rocky Road's existing CFO facilities were assessed in 2009. The assessment indicated that the potential risk to groundwater was low.

Since the 2009 risk assessment, the NRCB has developed a new version of the ERST mentioned above. For these reasons, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that the existing CFO facilities pose a low risk to surface and groundwater.

8. Exemptions

I determined that the proposed barn is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 metre water well is warranted due to the construction and location of the water well from the proposed barn.

9. Terms and conditions

Authorization RA21026 permits the construction of the new barn.

Authorization RA21026 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 RA21026 includes conditions that generally address a construction deadline, document submission and a construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

10. Conclusion

Authorization RA21026 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21026.

Authorization RA21026 must be read in conjunction with NRCB previously issued Registration RA09019A which remains in effect.

July 16, 2021

(Original Signed)
Francisco Echegaray, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemption from water well setbacks
- C. Explanation of conditions in Authorization RA21026

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization 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.

Rocky Road’s CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on April 8, 2021, under Bylaw 1238/17. As relevant here:

Section 3.3.1 states that “All lands in the County shall be deemed to be agricultural lands unless otherwise designated by the Municipal Development Plan, an approved statutory or non-statutory plan, the Land Use Bylaw, or provincial legislation.”

I consider this section to be a procedural in nature and not a valid land use provision. However, it does provide insight for the interpretation of the remaining portions of the MDP and land use bylaw (LUB).

Section 3.9.1 of the county’s MDP states that the “County shall provide input on applications for confined feeding operations to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operations Practices Act*. The county’s support is subject to the following:

a) No new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:

- i) a town, village, summer village or hamlet;
- ii) an area developed or designated for multi-lot residential use; or
- iii) a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development,

except that where provincial regulations require a larger setback distance, that distance shall apply.

Further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other local plan approved by Council.”

Rocky Road’s application is for the construction of a new broiler barn at an existing CFO; regardless the CFO is located outside any of these 1.6 km setbacks.

As for section 3.9.1’s reference to intermunicipal development plans (IDP) or other plans approved by the county’s council, this CFO is not located within land identified as part an IDP or any other plans.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County’s MDP. This conclusion is consistent with the county’s written response to the application.

In my view, under sections 1.3.4 and 3.3, the MDP clearly intends to incorporate Lacombe County's LUB #1237/17 (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3). Accordingly, I considered the LUB.

Under that bylaw, the subject land is currently zoned as Agricultural "A" District. CFOs are not listed as either a permitted or discretionary use within that zoning category. However, section 3.2(2)(j) of the LUB states that CFOs do not require a development permit. I interpret this provision as meaning either that the county intended CFOs to have the same effective status as listed permitted uses, or that the county simply does not intend to address CFOs in its LUB (given that the NRCB's permitting role since AOPA came into effect in 2002). Under either interpretation, the proposed CFO does not conflict with the LUB.

APPENDIX B: Exemption from water well setbacks

Water Well Considerations

The proposed barn is to be located less than 100 m from a water well. During a site visit I have confirmed that one water well is located approximately 5 m from the proposed barn. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation (SAR)*. Section 7(2) 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), or if required by an approval officer a groundwater monitoring program is implemented.

Under the regulation, one basis for granting an exemption is if the approval officer implements a groundwater monitoring program of the water well in question.

One basis for granting an exemption is if the “aquifer into which the well is drilled is not likely to be contaminated” by the proposed MSF or MCA.

Section 7(2) of the SAR states that the 100 m setback to a water well does not apply if the MCA) is not likely to contaminate the aquifer into which the water well is drilled and if required by an approval officer, 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 MCA
- d. Whether the well is up- or down-gradient from the 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.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 5 m W of the proposed barn is likely AEP water well ID #294085. This well is reported to have been installed in 2000 and has a perforated or screened zone from 36.6 m to 48.8 m below ground level across stratigraphy. The well has an above ground casing. This well is used for non-domestic purposes. The well’s log identifies protective layer or layers from ground surface to 7.3 m below ground level. The well has a bentonite seal from ground surface to 24.4 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 cross-gradient of the CFO and MCF.

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 RA21026.

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

APPENDIX C: Explanation of conditions in Authorization RA21026

Authorization RA21026 includes several conditions, discussed below:

a. Construction Deadline

Rocky Road proposes to complete construction of the new barn by November 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Authorization RA21026.

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, Authorization RA21026 includes a condition requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the barn 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.” Rocky Road shall provide evidence or written confirmation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the barn.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization RA21026 includes a condition stating that Rocky Road shall not place livestock or manure in the manure storage or collection portions of the new barn until NRCB personnel have inspected it and confirmed in writing that it meets the authorization requirements.