

## Decision Summary RA21018

This document summarizes my reasons for issuing Authorization RA21018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21018. 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 March 29, 2021, Jos and Dorthy Peters submitted a Part 1 application to the NRCB to permit a previously constructed addition to the pole shed (24.4 m x 15.9 m), which will house young stock at an existing goat dairy CFO.

As the new young stock facility is already constructed, the facility is considered to be unauthorized construction; and therefore, the NRCB's compliance division was made aware and involved in ensuring the CFO is in compliance.

The Part 2 application was submitted on July 20, 2021. On September 30, 2021, I deemed the application complete.

#### a. Location

The CFO is located at SW 32-47-26 W4M in Wetaskiwin County, roughly 19 km west of Millet, Alberta. The terrain in the area is undulating with a general slope to the south and southwest, away from a wetland located approximately 150 m northeast of the CFO.

#### b. Existing permits

The CFO is already permitted under Registration RA16006XA.

### 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 0.5 mile(s) (805 m) from the CFO

A copy of the application was sent to Wetaskiwin 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), Alberta Environment and Parks (AEP), and Alberta Agriculture and Forestry (AF).

Mr. Gordon Watt, an AHS environmental health officer/executive officer, indicated that AHS has no concerns with this application and included comments under the *Public Health Act* that the applicant must follow.

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

I have determined that the construction is consistent with the land use provisions of Wetaskiwin 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 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 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 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." Wetaskiwin County is an affected party (and directly affected) because the facility is located within its boundaries.

Mr. Jarvis Grant, a development officer with Wetaskiwin County, provided a written response on behalf of Wetaskiwin County. As noted in section 2, Wetaskiwin County is a directly affected party.

In his response, Mr. Grant indicated that there are no issues or concerns with the proposal. The application's consistency with the county's municipal development plan (MDP) is addressed in Appendix A, attached.

Mr. Grant also noted that the application meets the setbacks required by Wetaskiwin County's land use bylaw (LUB).

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

New CFO facilities 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 surface and/or groundwater 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, 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 8.13.

In this case, the risks posed by Jos and Dorothy Peters' 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.

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 RA21018 permits the use of the expansion to the pole shed to house young stock.

Authorization RA21018 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.

The addition to the pole shed is already constructed, and the NRCB compliance division has allowed Jos and Dorothy Peters to place animals and manure on the unauthorized facility while they obtain an NRCB permit. There are no construction conditions included in the authorization.

## **9. Conclusion**

Authorization RA21018 is issued for the reasons provided above, in the attached appendix, and in Technical Document RA21018.

Authorization RA21018 must be read in conjunction with Jos and Dorthy Peters' Registration RA16006XA which remains in effect.

November 5, 2021

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

### **Appendix:**

A. Consistency with the municipal development plan

## 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.

Conversely, “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 8.2.5.)

Jos and Dorthy Peters’ CFO is located in Wetaskiwin County and is therefore subject to that county’s MDP. Wetaskiwin County adopted the latest revision to this plan in 2020 under Bylaw 2020/58.

As relevant here, Objective 1.4 of the MDP aims to “minimiz[e] ... land use conflict” between CFOs and “surrounding land uses.” Following this statement, the MDP notes that, while CFOs are under provincial jurisdiction, it is the county’s intent to “minimiz[e]” the “negative effect” of CFOs. The MDP also reports the county’s view that, the *Municipal Government Act* “requires” the county to identify where new CFOs may be located.

These statements are likely not “land use provisions” by themselves, but they provide context for considering five policies listed under Objective 1.4.

The first of five policies in Objective 1.4 states that the “minimum distance setback of Alberta Agriculture Code of Practice, as amended, should be maintained.” It is unclear whether this policy was meant to apply to only new or expanding CFOs and/or to CFOs that are now permitted by the NRCB rather than the county.

In addition:

- the code of practice referenced in this policy was effectively replaced by AOPA, for NRCB-permitted CFOs. Thus, the reference to the Code’s MDS provisions “as amended” likely now refers to the MDS requirements in the Standards and Administration Regulation under AOPA.
- NRCB policy is clear that approval officers should not consider MDP provisions that are based on or modify the MDS requirement under AOPA. See NRCB Operational Policy 2016-7: *Approvals*, part. 8.2.5.

At any rate, as noted in section 5 above, the CFO meets the MDS requirements under AOPA to all surrounding residences.

The second policy in objective 1.4 does not apply to this application as it relates to “intensive livestock operations” that are still permitted by the county.

The third policy lists setbacks for new CFOs. As this application is for an authorization of an existing CFO, this policy does not apply, regardless, the CFO meets the specified 2.4 km setback to urban developments, schools and hospitals, the 1.6 km setback to specified lakes and the AOPA setback (30 m) to non-specified lakes, wetlands and water courses (common bodies of water).

Neither of the two remaining three policies under Objective 1.4 apply to this application as 1.4.4 and 1.4.5 relate to the siting of new residences in the county and those near the Millet-Wetaskiwin Acreage Study Area. This application is for the construction of a CFO facility, not a residence and these sections are not applicable to this application.

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