

Decision Summary RA21043

This document summarizes my reasons for issuing Approval RA21043 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21043. 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 September 13, 2021, Double T Cattle Co. Ltd. (Double T) submitted a Part 1 application to the NRCB to convert a swine CFO into a beef feedlot CFO with 4,500 beef finishers present.

The Part 2 application was submitted on October 14, 2021. On March 2, 2022, I deemed the application complete.

The proposed CFO modifications and expansion include:

- Changing livestock from 700 sows farrow to finish to 4,500 beef finishers
- Constructing a series of concrete lined feedlot pens (four rows of 33 m x 304.9 m and two rows of 33 m x 182.9 m)
- Constructing an irregular shaped synthetically lined catch basin (with an overall dimension of 122.4 m x 109.9 m and a capacity of 9,650 m³ at freeboard)
- Converting the last remaining sow barn (27 m x 40 m) into a livestock processing building (an ancillary structure)

Under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, an ancillary structure will not be used to collect or store manure. An ancillary structure does not need to be permitted under the act, though it forms part of the CFO.

a. Location

The existing CFO is located at NE 15-42-25 W4M in Ponoka County, roughly four kilometers south east of the Town of Ponoka. It is approximately 1,000 m east of Highway 815 and 2.4 km west of the Chain Lakes. The terrain of the proposed feedlot slopes to the east towards the Chain Lakes.

b. Existing permits

As the CFO existed on January 1, 2002, it is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes Ponoka County development permit D-97-09, issued February 28, 1997. The deemed approval allows for the construction and operation of a 300 sow piggery.

On July 7, 2003, the NRCB issued Approval RA02053, which recognized the deemed approval. Collectively, the deemed approval and the NRCB issued approval allow for the construction and operation of a 700 sow (farrow to finish) CFO.

Based on a review of the NRCB file and available historical aerial imagery, between 2002 and 2014 three barns and one earthen liquid manure storage (EMS) existed at the site. Between 2014 and 2015 the EMS was filled in and the two northern barns were destroyed. The southern barn appeared to have been split into two separate roofed portions that are discussed further below.

When I was onsite on December 17, 2021, I observed that the area of the two northern barns was being used as a parking pad. The western portion of the southern barn was converted into a workshop and the east portion was converted into a cold storage for equipment. The cold storage (40 m x 27 m) had multiple overhead doors installed on the north wall and was split into two areas (40 m x 13.5 m each). The concrete floor was removed from the western half but it remained in the eastern half.

Considering how only a small portion of the original CFO's manure storage facilities (MSFs) and manure collection areas (MCAs) remain, the status of the deemed approval and Approval RA20053 are in question. It is worth noting how the land owner has never formally relinquished the CFO permit but the apparent use of the site had changed from its former permitted state.

I investigated if the remaining (13.5 m x 40 m area) concrete lined area was large enough to act as a swine CFO and meet current livestock housing requirements. This area would require a few renovations but could feasibly be used as a solid MSF/MCA without altering the existing floor/liner. I reviewed the 2014 edition of the National Farm Care Council's Code of Practice for the Care and Handling of Pigs states that 0.95 m² is required per one 150 kg feeder pig. Based on this, the remaining MSF/MCA could house 513 feeder pigs.

The minimum livestock capacity threshold under AOPA for swine feeders to require a permit is 500 (registration permit threshold). Accordingly, the property and the remaining "barn" still hold a valid permit under AOPA, but that permit needs to be reduced from 700 swine (farrow to finish) to a 513 feeder pigs only.

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 "affected party radius.")

A copy of the application was sent to Ponoka County, which is where the CFO is located. It was not sent to other municipalities as none are located within 1.5 miles of it. Further the CFO is not located within 100 m of the bank of the river, stream or canal.

The NRCB gave notice of the application by public advertisement in the Ponoka News on March 2, 2022. The full application was made available for viewing on the NRCB website. As a courtesy, one hundred and three letters were sent to people identified by Ponoka 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 ATCO Gas & Pipelines Ltd., and Lynx Energy (formerly CPC Resources ULC) as they hold right of ways within NE 15-42-25 W4M.

Mr. Gordon Watt, an executive officer/public health inspector with AHS, did not raise concerns with this application. He provided comments and statements under the authority of the *Public Health Act*. Those comments related to the protection of water wells (also discussed in Technical Document RA21043 and in Part 6 below), that the solid and liquid wastes have been planned for accordingly, as per applicable provincial legislation. He recommended that any abandoned or unused wells should be decommissioned, and that potential nuisances (e.g. dust, flies, noise, etc.) have been considered (so that appropriate controls/best practices can be implemented) before impacting those surrounding the operation. He stated that deceased livestock, and other solid and/or liquid waste, will need to be compliant with the *Nuisance and General Sanitation Regulations (2003)*.

Ms. Laura Partridge, a senior water administration officer with AEP, did not raise concerns with the application. She did indicate that the existing water license needs to be updated to reflect the current land owner's name. She went on to indicate that the current water license would not provide adequate supply for the amount of proposed livestock; the applicant will need to provide AEP with a groundwater evaluation report.

The responses from AHS and AEP have been forwarded to the applicant for his information and action.

Responses were not received from ATCO Gas & Pipelines Ltd. or Lynx Energy.

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 CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO modification and expansion is consistent with the land use provisions of Ponoka County'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 modification and 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/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11, the application meets all relevant AOPA requirements. The exemption related to water well setbacks is discussed in the following parts of this decision summary.

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." Ponoka County is an affected party (and directly affected) because the CFO is located within its boundaries.

Mr. Peter Hall, the assistant chief administrative officer with Ponoka County, provided a written response on behalf of the county. Mr. Hall stated that the application is consistent with the land use provisions of Ponoka County's municipal development plan. He drew attention to the number of residences and hobby farms in the area, the proximity of the CFO to Chain Lakes, and section 2.5 of the municipal development plan. The application's consistency with Ponoka County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received responses from eleven individuals representing six parties.

All of the people who submitted responses own or reside on land within the 1.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2 and Appendix B.)

The directly affected parties raised concerns regarding effects on surface water and groundwater, health, roads and an adjacent highway, nuisances, property values, and the community. Questions were raised related to manure spreading, AOPA process and requirements, deceased animal disposal, the CFO's history, and if alternatives were considered for manure management. These concerns were forwarded to the applicant and referral agencies if they were beyond AOPA (e.g. health related concerns were forwarded to AHS). The concerns are discussed and addressed in Appendix C.

The NRCB received one of these submissions after the deadline in the notice. I considered whether there were exceptional circumstances that warranted considering the submissions nonetheless. I could not identify exceptional circumstances for the lateness of the submission, so I did not consider or address the late submission in this decision.

8. Environmental risk of CFO 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, 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 the earthen liquid manure storage/lagoon associated with the swine operation was assessed in 2009. The assessment indicated that the potential risks to surface water and groundwater were low. As result of that risk assessment the leakage detection condition, number 5, of Approval RA02053 was suspended. No other facilities were risk screened at that time or since then. Since the previous risk assessment, the majority of the swine facilities, including the EMS have either been closed or converted to non-MSF/MCA uses. As noted in Application RA21043 the remaining half of the sow barn is proposed to be converted into a livestock handling facility. Livestock handling facilities are exempt of AOPA permitting requirements.

I risk screened the proposed pens and catch basin, both pose a low potential risk to surface water and groundwater.

9. Exemptions

I determined that the proposed pens are located within the required AOPA setback from an existing water well. As explained in Appendix D, an exemption to the 100 metre water well setback is warranted.

10. 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. Hall of Ponoka County did not indicate in his response if the proposed pens and catch basin meet the setbacks required by the county's land use bylaw (LUB). I reviewed the LUB and note that the proposed pens and catch basin meet the applicable 40 m road - and 10 m 'other property line' - setbacks.

I corresponded with the Orphan Well Association (OWA) regarding the abandoned pipeline below the proposed feedlot pens. Ms. Sherry Beattie, a surface land support person with the OWA, indicated that the OWA does not have an interest in the pipeline. Despite this, she advised that the proponent would be responsible for any damages to the pipeline. In addition, notification to the regulators must be executed.

I have forwarded a copy of the application, and responses to the application which raised concerns, to AEP. AEP has not raised concerns to me related to the administration of natural resources. AEP has not made me aware of statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application.

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 April 29, 2022).

Finally, I considered the effects of the proposed CFO modifications 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 on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed, see Appendix C for further discussion.

Consistent with NRCB policy (Approvals Policy 8.7.3), 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 because the application meets AOPA requirements and for the reasons in Appendix C.

I also presumed that the proposed CFO modifications is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

11. Terms and conditions

Approval RA21043 specifies the cumulative permitted livestock capacity as 4,500 beef finishers and permits the construction of the feedlot and catch basin.

Approval RA21043 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 RA21043 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix E.

For clarity, and pursuant to NRCB policy, I consolidated the deemed approval, including Ponoka County issued development permit D-97-09, and NRCB issued Approval RA02053 into Approval RA21043 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). 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 E discusses which conditions from the historical permits are or are not carried forward into the new approval.

12. Conclusion

Approval RA21043 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21043.

Double T's deemed approval, including Ponoka County issued development permit D-97-09, and NRCB-issued Approval RA02053 are therefore superseded, and their content consolidated into this Approval RA21043, unless Approval RA21043 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the existing permits will remain in effect (with reductions to permitted livestock capacity as discussed in part 1.b).

May 17, 2022

(original signed)
Jeff Froese
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Exemptions from water well setbacks
- E. Explanation of conditions in Approval RA21043

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for 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” for 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.)

Double T’s CFO is located in Ponoka County and is therefore subject to that county’s MDP. Ponoka County adopted the latest revision to this plan in October 2018, under Bylaw #6-08-MDP.

Section 2 of the MDP contains 11 numbered “policies” relating to CFOs. Of these, policies 2.7, 2.9, 2.10 and 2.11 are not relevant to this application as they apply to matters under the County’s regulatory mandate, not the NRCB’s under the AOPA. The remaining policies in section 2 are discussed below.

Under policy 2.1, the county “encourages” the development of CFOs to add value to crop production and provide “more employment and income per acre of land.” However, the policy also states that the environment and neighbours’ rights “must be protected.” This policy likely isn’t a relevant “land use provision” because it relates broadly to economic development, not CFO siting. Regardless, it provides a general context for interpreting and applying the other policies in section 2.

Policy 2.2 states that it’s the county’s belief that “very large CFOs are inappropriate in this part of Alberta, and requests the NRCB not to allow them here (in Ponoka County).” This policy defines “very large” as “more than ten times” the threshold for approvals in the Part 2 Matters Regulation under AOPA. In this case, the threshold for approvals for a beef finisher CFO is 350 animals, so a “very large” beef finisher feedlot CFO in Ponoka County would have at least 3,500 animals. This application proposes converting the remaining swine barn into a processing barn, an ancillary structure, and permitting a 4,500 head beef finisher feedlot CFO. This would result in a CFO that is “very large” as set out in policy 2.2; the CFO is therefore inconsistent with this policy.

Under section 8.2.4 of the Approval Policy (Operating Policy 2016-7), approval officers are to interpret these types of provisions with “requests” or similar language as mandatory land use restrictions. Despite this, I need to consider whether this is a land use provision or not.

To better understand this policy and the reasons for it I discussed it with the chief administrative officer (CAO) and assistant CAO of Ponoka County on April 13, 2022. I was informed that in 2008 when this policy was drafted as part of the MDP, there were concerns related to a

particular livestock category (not beef). This policy was meant to address that livestock category and not to restrict other livestock categories. The intent of this policy's "request" was to recognize that the county was not the regulating body of CFOs and to signal to the regulator the county's intent for the whole county. The CAO recognized that the size of a CFO is likely not a land use provision.

In my view, a big part of AOPA's vision is to balance the competing interests of CFOs and other development. As noted in the introduction to this appendix, an approval officer may only approve an application for an approval if the approval officer holds the opinion that the application is consistent with the "land use provisions" of the applicable MDP. I recognize that the "request" from the county in policy 2.2 had a different underlying meaning to the county than a plain reading of policy 2.2 has to the NRCB under the Approval Policy. Section 8.2.5 of the Approval Policy indicates that the NRCB considers "evaluations of the merits of individual proposed developments" to not be land use provisions. The specific livestock category discussion with the county is not explicitly reflected in the policy but the discussion did provide me insight to the background context of the policy.

Before 2004, AOPA required applications to be consistent with the MDP. In 2004, the Legislature added the qualifier "land use provisions," which suggests that MDP provisions that are not about land use are not to be considered. It is questionable whether a limitation on the number of livestock is about land use.

In order to determine if Policy 2.2 is a land use provision or not, I also sought guidance from previous Board decisions, in particular Board Decision 2011-03/FA10003 (Grow North). One of the issues discussed there was the question whether a generic setback to residences was too broad to apply to a whole municipality and if it was "in direct conflict with the AOPA objectives that are intended to provide siting criteria across the province".

Section 8.2.5 of the Approval Policy also indicates that the NRCB interprets land use provisions to "not require substantial discretionary, or subjective, evaluations of the merits of individual proposed developments." In my opinion, the presence or absence of CFOs in an area is not discretionary, but the size of one is. I therefore conclude that this policy is not a land use provision.

Policy 2.3 has two parts. The first part states that no *new* CFO shall be established within specified distances to itemised urban developments, watersheds and land within a CFO exclusion zone in an Area Structure Plan (ASP) that has been adopted by bylaw. This CFO is relatively near by the Town of Ponoka and the Chain Lakes, but not located within the two mile setback to the town or the one mile setback to the Chain Lakes. This CFO is also nearby, but not located within the Morningside Area Structure Plan. Regardless, this application to significantly modify an existing CFO, not for the construction of a new one. For this reason, this part of this policy is not applicable to this application.

The second part of policy 2.3 of the MDP calls for "very strict" conditions on manure handling and storage in the Chain Lakes and Maskwa Creek watersheds. This this policy likely is not a "land use provision" because it calls for discretionary judgements about what conditions are "very strict." In addition, section 20(1.1) of AOPA precludes me from considering MDP provisions "respecting tests or conditions related to the construction of or the site for a confined feeding operation or manure storage facility" and regarding the land application of manure. Even if I did consider this provision, the proposed barn addition meets AOPA's technical requirements

for manure handling and storage and, in my opinion, those requirements are considered to be “very strict.”

Policy 2.4 calls for the NRCB to “set strict rules for the timely incorporation of manure within a mile of any urban municipality or rural residence.” Section 20(1.1) of AOPA precludes me from considering this policy because it relates to the land application of manure. The regulations under AOPA regulate the manure application process, including timely incorporation in specified circumstances (see section 24 of the Standards and Administration Regulation which sets out the manure incorporation requirements under AOPA for different cropping methods).

Policy 2.5 precludes the siting of CFOs within two miles of “any lake” unless the “regulators” are “convinced” that the CFO’s manure management system is “fail-safe” and the CFO poses “no reasonable risk of contamination of the lake.” This CFO is located approximately 1.5 miles or 2.4 km from the Chain Lakes as identified in the county’s Land Use Bylaw maps.

Despite the CFO’s location, this policy is likely not a “land use provision” because its “fail-safe” and “reasonable risk” tests call for discretionary, CFO-specific judgements which I am precluded from considering under AOPA’s section 20(1.1).

Policy 2.6 states that CFOs “should not be established or expanded” where there is “any risk that runoff will contaminate domestic water supplies.” This policy likely is not a “land use provision” because it calls for discretionary judgements about acceptable risks. (The policy’s “any risk” test is a low risk threshold, but I read the threshold as more than “minor” or “insignificant.”) The proposed facility meets AOPA’s operational and design requirements, which are designed to minimize the risks to surface water and groundwater. For this reason, this policy is not applicable to this application.

Policy 2.8 applies to new CFOs and uses, but essentially modifies, AOPA’s MDS requirements by measuring the AOPA-derived minimum distance of separation to the edge of an adjacent landowner’s property. This application is not for a new CFO and therefore policy 2.8 is not applicable to this application.

Based on the above, I conclude that the application is consistent with the land use provisions of the Ponoka County’s MDP. The county’s response to the application does not refute this conclusion.

In my view, the text of Ponoka County’s MDP also provides a clear intent to incorporate the land use bylaw (LUB), in sections 1.4, 1.6, 4.10, 10.3, 12.1, 17.5 and in Appendix A. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered Ponoka County’s LUB 7-08-LU. Under that bylaw, the subject land is currently zoned Agricultural (AG). CFOs are listed as a permitted land use within this land use zoning, provided that they hold the required authorization (or permit) under AOPA. As noted in this decision summary, the CFO already holds permits under the AOPA.

APPENDIX B: Determining directly affected party status

The following individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation (see NRCB Operational Policy 2016:7 – Approvals, part 6.2):

Don and Monica Brennan
N1/2 14-42-25 W4M

Douglas Smith and Sandy Wolf
Location not specified in response to application. Despite this, Douglas Smith is identified by Ponoka County as a land owner located within the affected party radius for this application.

Henry and Janine Hollman
SW 28-42-25 W4M

Shane Campbell
SE 10-42-25 W4M

Stanley and Rose Hand
NE 10-42-25 W4M

Sipke and Margreet Dijkstra
NE 22-42-25 W4M

Dennis and Antoinette Rutter (late response)
NW 23-42-25 W4M

APPENDIX C: Concerns raised by directly affected parties

The directly affected parties raised the following concerns related to impacts to surface water, impacts to groundwater, effects on health, manure disposal, community effects, AOPA process and requirements, deceased livestock, nuisances, cumulative effects, errors within the application, technical concerns, and how alternatives should be considered.

As several of the above concerns fall beyond the mandate of AOPA, I forwarded these concerns on to representatives of Alberta Environment and Parks (AEP), Alberta Health Services (AHS), Ponoka County, Alberta Agriculture, Forestry and Rural Economic Development (AFRED) and Alberta Transportation for their information. Where appropriate, I also sought assistance from referral agencies as they provided me with information to help me evaluate the concerns.

I also forwarded the concerns on to the applicant for consideration.

On April 27, 2022 the applicant indicated that he would not be providing a response to the expressed concerns.

Below I summarize the expressed concerns and claimed effects from the directly affected parties.

Claimed effect(s) or concern(s)	Respondent(s)
1. Impacts to surface water: - effect of the feedlot and runoff from it on surrounding land and the Chain Lakes ecosystem and the Battle River - effects of manure impacted runoff on surface water and crops - was the Battle River Watershed Alliance consulted to conduct runoff assessments - the proposed catch basin is located in an area where spring runoff goes to the Chain Lakes	Don and Monica Brennan, Shane Campbell, Stanley and Rose Hand, Sipke and Margreet Dijkstra

Response from referral agency (AEP) and the NRCB's scitech

I forwarded these concerns on to Mr. Nazmus Sakib, a water administration engineer with AEP, and sought input from Dr. Mike Iwanyshyn, the NRCB Manager of the science and technology section.

Mr. Sakib indicated that there are no wetlands within the foot print of the proposed facilities. He indicated that to the west of the former swine facilities there is a wetland area based on the Alberta Merged Wetland Inventory.

Dr. Mike Iwanyshyn indicated that based on topography, the site may be at the local high point between the Chain Lakes and the Battle River. He discussed how there does not appear to be any wetlands within the footprint of the site though there is a drainage/wet area in the proposed CFO footprint with surface drainage towards lower value (classified as D and C) wetland areas on surrounding lands. He went on to state that a full wetland assessment would likely not be warranted and that avoidance of wetlands is preferable. He advised that run-on and runoff controls should be ensured.

Approval Officer's conclusions

I have been at the site in the winter and twice during spring runoff. Based on my site observations, the residence near the proposed feedlot appears to be the local topographic high

point. One of the two wetlands indicated by Mr. Sakib, the one to the west of the proposed feedlot pens, appears to coincide with the former swine earthen liquid manure storage (or EMS/lagoon). The other appears to be to the northwest of the CFO in an area that appears to drain towards the west. The proposed CFO will be located in an area that drains to the northeast away from the wetlands indicated by Mr. Sakib. It should be noted that the application includes run on (berms and ditches) and runoff controls (the catch basin) for the feedlot.

Maps available online from AEP indicate that the closest water bodies are intermittent head waters to the Battle River and the Chain Lakes. They are located in Section 22-42-25 W4, flowing through NW 15-42-25 W4M, more than 500 m northwest of the proposed feedlot and in NW 14-42-25 W4M, more than 500 m to the east and downgradient of the proposed feedlot.

I note how the application proposes to grade the site so that “clean” runoff will be directed around the feedlot and manure impacted runoff from the pens will be directed to the proposed catch basin. Both the proposed pens and catch basin meet AOPA’s requirements. Additionally, the catch basin is more than adequately sized for the area that will be contributing runoff to it. Accordingly, in my view, the CFO will pose a low potential risk to surface water (see the environmental risk screening tool results in Technical Document RA21043). I do not have information before me to refute this conclusion.

AOPA does not expressly require approval officers or applicants to consult watershed groups. I did, however, contact to Mr. Sakib and Dr. Iwanyshyn regarding the concerns. Their considerations on the surface water concerns are noted above.

Claimed effect(s) or concern(s)	Respondent(s)
2. Impacts to groundwater / aquifer: - there are too many other large water consumers in the area, can the aquifer support another one - the proposed CFO will impact the amount of water available and its quality - there should be an assessment prior to development occurring - shouldn't the application for the feedlot be tied to the process for a water license	Don and Monica Brennan, Douglas Smith and Sandy Wolf, Henry and Janine Hollman, Shane Campbell, Stanley and Rose Hand, Sipke and Margreet Dijkstra

Response from referral agency (AEP)

After this application was deemed complete a copy of it was provided to AEP. As noted in Part 3 above, Ms. Laura Partridge, a representative of AEP, indicated that the current water license was not adequate for the proposed livestock. The applicant will need to provide AEP with a groundwater evaluation report and apply for additional water licensing.

I also provided Ms. Partridge a copy of the responses to the application which expressed concerns related to groundwater supply and quality. To date I have not received further correspondence from her on this matter.

Approval Officer’s conclusions

The NRCB’s Approvals Policy (Operating Policy 2016-7, part 8.10) states that approval officers will not consider water supply concerns when reviewing an AOPA application other than ensuring that the applicant signs a *Water Act* declaration in their Part 2 application. AOPA applications include options where, in this case, applicants can either link or delink their *Water Act* and AOPA applications. (*Water Act* applications are administered by AEP.) In this case, the

applicant signed a declaration where they want their AOPA application processed separately from the requirements of licensing under the *Water Act*.

That same part of the Approvals Policy states that water supply related concerns will be forwarded to Alberta Environment and Parks (AEP). As noted above, this has already occurred.

As noted in Technical Document RA21043 the applicant has proposed to utilize a concrete liner for the feedlot pens and a synthetic liner for the catch basin. Both of these liners meet AOPA's protective liner requirements. I risk screened the catch basin and the pens with the environmental risk screening tool (ERST, see Technical Document RA21043). This risk screening tool helps to assess the potential risk to both surface water and groundwater. Both the catch basin and pens pose a low potential risk to groundwater.

AOPA also includes another protection for groundwater. There is a 100 m setback requirement from new manure collection areas and manure storage facilities to water wells. I note how there is one water well located approximately 85 m up gradient of the proposed feedlot pens. The following appendix discusses the setback requirement and the proposed feedlot further.

Claimed effect(s) or concern(s)	Respondent(s)
3. Impacts to health (unspecified)	Don and Monica Brennan

Response from referral agency (AHS)

Mr. Gordon Watt, an executive officer/public health inspector with AHS, provided comments related to the production and handling of manure and the associated impacts on air and water quality.

He indicated that ammonia, hydrogen sulphide (H₂S) and methane are all related odours. He also indicated that odours are very subjective to each person. Without air quality data it is not possible to say, with any degree of certainty, that odours caused by manure generation and application to soil is responsible for any symptoms experienced on neighbouring properties, or that odours came from other CFOs in the area.

He commented that manure handling and application to land posed a larger occupational exposure hazard and that the risks were lowered for with greater distance from the manure.

He indicated that human pathogens associated with manure were inactive after 90 days and the most resilient pathogen, Adenovirus, was inactive after 200 days. He stated that after reviewing the water wells at the application site there was a low risk of microbial contamination.

He stated that AHS was not aware of any instances of chemical contamination of drinking water with animal manure (nitrate and nitrite as chemical parameters of concern) or agricultural operations of (at this) site.

Last, he indicated that the proposed catch basin will help protect nearby surface water bodies at the site and neighbouring lands.

Approval Officer's conclusions

AOPA and its regulations do not specify allowable effects on human health. For this reason, I forwarded these concerns and claimed impacts on to AHS. This was done in accordance with the NRCB's Approvals Policy (Operational Policy 2016-7, part 8.8). I note how the policy goes

on to state that approval officers will not consider the health effects of CFO on their own initiative when reviewing approval applications.

The effects of a CFO on human health are relevant to my consideration of “effects on the community.” As explained in part ten of the decision summary, above, following NRCB policy, I begin with the presumption that the effects of the proposed CFO on the community are acceptable because the application meets the land use provisions of the municipal development plan, and the municipality does not preclude CFOs from this area under its land use bylaw. Given this and the above from AHS, this presumption is not rebutted.

Claimed effect(s) or concern(s)	Respondent(s)
4. Manure disposal, are other CFOs using the same manure spreading lands	Don and Monica Brennan

Approval Officer’s conclusions

Section 24 of the Standards and Administration Regulation (SAR) provides four options for nutrient and manure management. This application opted for the fourth option, where an applicant seeks to satisfy an approval officer that they have access to sufficient land base to apply their manure for the first year following the granting of the application.

For this application 351 hectares of land in the black soil zone is required for manure spreading. The applicant has provided information in their application indicating that they have access to 493.6 hectares of land in the black soil zone for manure spreading. I reviewed air photos of the proposed manure spreading lands and calculated the available area to account for setbacks to bodies of water, residences, and related features that would be challenging for manure spreading. I identified that 415 of the proposed fields are available for manure spreading. Based on this, the application meets the land base requirement in section 24(3) of the regulation.

Other portions of section 24 and section 25 of the SAR includes nutrient loading limits to ensure that the soil is not overloaded with nutrients. Provided that the requirements of these sections are met, the risk of over saturating the land with nitrates and salts are low.

If a person or party has concerns regarding manure collection or storage facilities, spreading or other CFO-related issues, those concerns can be reported to the NRCB’s 24 hour reporting line (1-866-383-6722). The call will be followed up on by an NRCB inspector. Parties can also call any NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

Claimed effect(s) or concern(s)	Respondent(s)
5. Nuisances, effect on quality of life: - the setback distance used to be 792 m and its now 633 m to home and water wells - concerns related to an increase in flies, dust, odours and air quality - not being able to enjoy the outdoors and quiet living - noise from machinery and livestock	Don and Monica Brennan, Douglas Smith and Sandy Wolf, Sipke and Margreet Dijkstra

Approval Officer’s conclusions

I interpret the “setback distance” to be a reference to the minimum distance separation (MDS) requirement of AOPA. MDS is based on the number, category and type of livestock along with

how manure from that livestock is managed. It is measured from the existing or proposed manure collection areas and manure storage facilities, existing and proposed, to surrounding residences. As noted previously, MDS setbacks are larger for residences on land that is more sensitively zoned. For the previously permitted swine livestock (700 sows, farrow to finish) the category one MDS setback was 792 m. By comparison, the Category 1 setback for the proposed 4,500 beef finishers is 633 m.

In the NRCB's Approvals Policy (Operational Policy 2016-7, part 8.8.1) approval officers will presume that if a proposal for a new or expanded manure storage facility or manure collection area meets AOPA's MDS requirements, the nuisance effect on nearby residences is acceptable.

AOPA contains the minimum distance separation (MDS) setback requirement that CFOs are required to meet. MDS setbacks help minimize the nuisance impacts that may be experienced by a CFO's neighbours. The MDS requirement has four categories based on how land is zoned with applicable setbacks for residences on each, residences on more sensitive land uses have larger setback distances:

Category 1 (659 m) applies to residences on land zoned for agricultural purposes (e.g. farmsteads, acreage residences)

Category 2 (878 m) applies to residences on land zoned for non-agricultural purposes

Category 3 (1098 m) applies to residences on land zoned for high use recreational or commercial purposes

Category 4 (1,756 m) applies to residences on land zoned for large-scale country residential, rural hamlet, village, town or city

I reviewed the county's land use bylaw map for the zoning of land within 1,756 m of the CFO. There are parcels of land in SW 22-42-25 W4M and SW 14-42-25 W4M that are on land zoned as country residential hobby farm. There is a property within SW 23-42-25 W4M zoned for watershed protection. Otherwise, the land surrounding the CFO, including the application site, is zoned as agricultural.

Section 706 of the county's land use bylaw states that "the purpose of the country residential hobby farm district is to provide land of low agricultural value for low density rural development and hobby farming." CFOs are not stated as permitted or discretionary land uses in this district and there are restrictions as to the number of livestock (one animal) per hectare.

Section 707 states that the watershed protection district "is to encourage the maintenance of natural vegetation, especially near lake and rivers, by allowing tree-covered land to be subdivided into residential parcels large enough that most of the trees will be retained." Residences and minor agriculture, compatible with the purpose of the district, are permitted and discretionary uses.

By comparison, section 702 of the bylaw states that "the agricultural district provide(s) land where all forms of agriculture can be carried on without interference by other, incompatible land uses..." CFOs are stated as a permitted land use in this district and there is no reference to livestock capacities per parcel.

Based on the above, I am of the opinion that all of the land within 1,756 m of the CFO should be treated as Category 1 for MDS purposes. Accordingly, the MDS setback requirement is met and the nuisance impacts will be minimized.

I realize that some of the neighbours to the CFO may experience some CFO related nuisance impacts from time to time. Many issues that arise relating to the operation of a CFO, and other disagreements, can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether the operation is complying with AOPA, they may contact the NRCB through its toll free reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.

Claimed effect(s) or concern(s)	Respondent(s)
6. AOPA process and requirements: - the stated distances to water bodies is not accurate, it should include water bodies within NW 14 and SE 22 - the depth to water table is not stated in the application; its depth changes with sizable rains - there was no environmental protection plan within the application - who will conduct monitoring of the manure handling system - why are surrounding residences missing from the application - the proposed feedlot is too close to the Town of Ponoka and acreages	Don and Monica Brennan, Shane Campbell, Stanley and Rose Hand, Sipke and Margreet Dijkstra

Approval Officer's conclusions

Based on information supplied by Mr. Sakib and Dr. Iwanyshyn, there are likely wetlands located closer to the CFO than what is stated in the application. Despite this, the proposed facilities meet the required 30 m setback requirement to common water bodies.

A water table's depth will vary seasonally and due to precipitation events. A preliminary version of this Part 2 application included a geotechnical investigation. That investigation indicated that the water table depth ranged from 2.47 m to 2.68 m below existing grade. I have included this geotechnical investigation is part of Technical Document RA21043.

The southwest corner of the catch basin will be the point which will require the most excavation work. Based on information on Page 7 of Technical Document RA21043 this area will be excavated to a depth below ground level of 2.1 m. Based on this, a portion of the catch basin may not meet the one metre water table separation requirement. Accordingly, I am including a condition in the permit to address this.

AOPA does not require environmental protection plans to be submitted as part of Part 1 or 2 applications. The requirements of AOPA are designed to provide protection to surface water, groundwater and soil nutrient loading.

AOPA, as well as the terms and conditions of the permit, are designed to regulate manure handling. The permit will hold conditions related to the construction of the CFO's manure collection areas and manure storage facilities (presumed to be the manure handling system). The NRCB encourages CFO owners and operators to discuss any repair or maintenance work with approval officers or inspectors to determine whether or not the planned work would require a permit.

I reviewed the application and note that certain neighbouring residences, but not all of the surrounding residences are stated. When I reviewed aerial photos and maps from the county, I noted that there are more residences than identified in the application that are located within the 1.5 mile notification radius for this CFO. Despite this, I also reviewed the application to determine if the MDS requirement is met; see above and Technical Document RA21043. The MDS requirement to all surrounding residences are met.

As part of my review of this application I reviewed the applicable planning documents from Ponoka County. As noted in Appendix A, this application meets the applicable land use provisions of Ponoka County’s municipal development plan especially section 2.3 which relates to setbacks to urban developments. Further, it is not located within the Town of Ponoka and County of Ponoka IDP.

Claimed effect(s) or concern(s)	Respondent(s)
7. Deceased livestock, predators will be attracted to the area	Douglas Smith and Sandy Wolf

Response from Alberta Agriculture, Forestry and Rural Economic Development (AFRED)
Mr. Stephan Desilets, the manager of the inspection and investigation section with AFRED, provided the concerned party with links on how to access the legislation which drives how members of the inspection and investigation section of AFRED deal with feedlots and the disposal of dead livestock. He advised that if the concerned party had further questions they can contact the applicant directly.

Approval Officer’s conclusions

The disposal of deceased livestock in Alberta is not within the regulatory mandate of AOPA. Rather, it is regulated by AFRED under the *Animal Health Act*. Given AFRED’s regulatory role, concurrent oversight of dead animal disposal and associated concerns by the NRCB would be inefficient and might lead to inconsistency with AFRED requirements.

Claimed effect(s) or concern(s)	Respondent(s)
8. Cumulative effects, there are too many CFOs in the area	Henry and Janine Hollman, Stanley and Rose Hand, Sipke and Margreet Dijkstra

Approval Officer’s conclusions

AOPA does not expressly authorize approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area. Further, the NRCB’s Board members have directed approval officers not to consider cumulative effects in their permitting decisions. In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

Claimed effect(s) or concern(s)	Respondent(s)
9. Impacts to roads and Highway 815: - an increase in traffic will result in damage to roads - taxes will have to go up to offset road repairs - a private access to Highway 815 should be considered, it would reduce damage to local roads	Don and Monica Brennan, Douglas Smith and Sandy Wolf, Shane Campbell, Stanley and Rose Hand, Sipke and Margreet Dijkstra

Ponoka County and Alberta Transportation have jurisdiction over the gravel roads and Highway 815, respectively, not the NRCB. Both were provided with copies of these concerns.

Ponoka County did not provide a response related to these concerns.

Response from Alberta Transportation

Ann Han, a development and planning technologist with Alberta Transportation, inquired how traffic would access the CFO. I forwarded this question on to the applicant and have not received further correspondence on this matter from the applicant or Alberta Transportation.

Approval Officer's conclusions

Traffic and maintenance requirements on the county roads may have and will change over the years due to changes at this CFO; this will likely change more as the CFO expands into beef. However, the county has jurisdiction over local roads and taxes, and did not raise concerns regarding a potential increase in traffic dust or maintenance costs due to this development.

Claimed effect(s) or concern(s)	Respondent(s)
10. Alternatives should be considered such as a biodigester to reduce the amount of manure for land spreading	Shane Campbell

Approval Officer's conclusions

It is an approval officer's role to decide if proposed facilities meet AOPA requirements or not, not to address merits of alternatives suggested by parties who have expressed concerns. A copy of this concern was forwarded to the applicant for their information and consideration.

Claimed effect(s) or concern(s)	Respondent(s)
11. CFO history: - this is no longer an existing CFO as the existing swine have been gone for years. - the barns were closed previously and the lagoon was also filled in	Don and Monica Brennan, Douglas Smith and Sandy Wolf, Sipke and Margreet Dijkstra

Approval Officer's conclusions

The CFO's history is addressed in Part 1b of this decision summary. The historical operation of a CFO is not an indication of its future operation.

Claimed effect(s) or concern(s)	Respondent(s)
12. The proposed feedlot will affect property values	Douglas Smith and Sandy Wolf, Sipke and Margreet Dijkstra

Approval Officer's conclusions

In several review decisions, the NRCB's board members have consistently stated that concerns regarding effects on land or property values are "not a subject for [the board's] review under AOPA" or for approval officers' consideration of permit applications. According to the board, impacts on property values are a land use issue which is a "planning matter dealt with by municipalities in municipal development plans and land use bylaws." (See, *Board Decision (Pigs R Us) RFR 2017-11/BA17002*, page 6.)

APPENDIX D: Exemption from water and well setback

The application states that proposed feedlot pens are not going to be located within 100 m of a water well. However, during a site inspection I confirmed that one water well is located approximately 85 m from the proposed pens. This 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 to the 100m setback 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 MSF/MCA are presumed to be low if the applicant's proposed MSF/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.

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 85 m west of the proposed pens is likely AEP water well ID 286659. This well is reported to have been installed in 1997 and has a perforated or screened zone from 64.0 m to 82.3 m below ground level across sandstone and shale. The well was constructed with an above ground casing, but that casing is now under a gravelled area (due to vehicle traffic). This well is used for domestic purposes based on information in the AEP water well log. The well's log identifies protective layers from ground surface to 6.1 m of clay and of shale from 12.2 m to 15.2 m and 18.3 m to 33.5 m below ground level. The well has a driven seal at 24.1 m across a shale layer. I was unable to view the well during my site inspection as it was under frozen gravel at the time of my site inspection. The well is up-gradient of the proposed pens.

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 RA21043.

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for the proposed feedlot pens.

Despite this, Approval RA02053 included a condition that required annual water well testing. Considering how the applicant has not requested to relax or omit this condition from the permit this condition will be brought forward to the new permit and amended to reflect current NRCB processes.

APPENDIX E: Explanation of conditions in Approval RA21043

Approval RA21043 includes several conditions, discussed below, and carries forward a number of conditions from the deemed approval and Approval RA02053 (see sections 2 and 3 of this appendix). Construction conditions from historical the previous permits that have been met are identified in the appendix to Approval RA21043.

1. New conditions in Approval RA21043

a. Construction above the water table

Section 9(3) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

The deepest portion of the catch basin, the southwest corner, will be approximately 2.1 m below the ground surface. The water table was observed to range in depth from 2.47 m to 2.68 m beneath the ground surface in the area of the proposed feedlot.

Based on this information, the proposed catch basin does not meet the one metre requirement of section 9(3). However, because the height of the water table can vary over time, the lack of adequate water table separation does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included requiring the permit holder to cease construction and notify the NRCB immediately if the water table is observed to be within one metre of the proposed catch basin’s liner during its construction.

b. Construction Deadline

Double T proposes to complete construction of the proposed new pens and catch basin by December 31, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2025 is included as a condition in Approval RA21043.

c. 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 RA21043 includes conditions requiring:

1. a completion report, signed by a qualified third party, certifying that the synthetically lined liquid manure storage:
 - i. has been constructed in accordance with the proposed design including the horizontal dimensions, vertical dimensions (including portions above and below ground) and inside wall slopes;
 - ii. is constructed in the approved location, and;
 - iii. has the same or equivalent liner as proposed that was installed in accordance with the liner manufacturer’s requirements, including under membrane surface preparation and proper sealing at all seams.
2. the concrete used to construct the liner of the feedlot pens have a minimum 56-day compressive strength of 30 MPa, be sulphate resistant, have 10M rebar every 30 cm on center both ways, and have adequate sealed expansion joints or crack control. The

NRCB needs to receive a completion report from qualified third parties confirming the above.

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. Approval RA21043 includes a condition stating that Double T shall not place livestock or manure in the new pens, or allow manure-impacted runoff into the new catch basin, until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward from Approval RA02053

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions one and four should be modified.

Condition one includes two main parts, the first relates to the general terms and conditions that are now part of the standard terms included in all currently issued AOPA permits. The second is a construction completion deadline, which has already been met (with an NRCB issued extension). The construction completion deadline will be carried forward, but will be identified as an already met condition in this permit's appendix. The remainder of this condition is discussed in part 3 of this appendix, below.

Condition four required groundwater protection, namely testing of the water well closest to the "barn". It required annual testing for bacterial and chemical parameters, and submission of those results to the NRCB on an annual basis.

More recently issued AOPA permits that include similar water well testing requirements are typically flexible and not rigid (the date of sampling can be shifted forward or backward provided that the annual testing requirements remain met). Further, the testing parameters and any related requirements are specified in a water well monitoring statement. To include a similar level of flexibility for the CFO operator and ensure continuity with other currently issued permits seems appropriate in my mind. For this reason, this condition will be carried forward but be reworded to state:

Water quality tests shall be conducted annually on water wells within 100 m of the confined feeding operation's manure collection areas and manure storage facilities. The annual water well test results shall be submitted to the NRCB no later than July 31 of each year unless otherwise directed in writing by the NRCB.

3. Conditions not carried forward from Approval RA02053

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that parts of condition one and condition five should be deleted and therefore is not carried forward to Approval RA21043.

As noted above, parts of condition one are a duplication of the standard terms included in all currently issued AOPA permits. For this reason, I will not be carrying these conditions forwarded as doing so would be redundant.

Condition five relates to a leakage detection system with associated reporting requirements for an earthen liquid manure storage for swine manure that no longer exists.

The permit holder has not applied to have this condition removed. Despite this, I am of the opinion that there is little merit in carrying this condition forward, largely due to the facility no longer exists. Second, this condition was suspended by the NRCB on March 31, 2010 based on results from an environmental risk screening. For these reasons, I will not be carrying this condition forward.