

Decision Summary RA22023

This document summarizes my reasons for issuing Approval RA22023 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22023. 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 July 20, 2022, Dan Boese, on behalf of Harold and Valerie Boese (the Boeses), submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on September 22, 2022. On October 4, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing bird numbers from 42,000 to 82,000 chicken broilers
- Constructing broiler barn #3 – 109.7 m x 21.3 m

a. Location

The existing CFO is located at SW 1-44-20 W4M in Camrose County, roughly 2.7 km south of Edberg, Alberta. The terrain is slightly undulating with a general slope to the southwest towards a slough located 210 m from the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. This deemed registration allows for the construction and operation of a 42,000 chicken broiler CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix E attached. The deemed facilities are listed in the appendix to the Approval RA22023.

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 ½ mile. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Camrose County, which is the municipality where the CFO is located. 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 Camrose Booster on October 4, 2022. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. As a courtesy, eight letters were sent to people identified by Camrose County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

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

I also sent a copy of the application to right of ways holder Battle River Gas Co-op Ltd.

I received a response from AEP.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that an application under the *Water Act* has been submitted by the applicant.

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 proposed CFO expansion is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Camrose 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 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 exemptions that are required to address the AOPA requirements around the water well setbacks are 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.” Camrose County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Kim Hunter, a development officer with Camrose County, provided a written response on behalf of the county. Ms. Hunter stated that the application is consistent with Camrose County’s land use provisions of the municipal development plan (MDP). The application’s consistency with Camrose County’s MDP is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received a response from one individual.

The individual that submitted the response owns or resides on land within the ½ 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)

The directly affected party raised concerns regarding odours and the impact on their quality of life. These concerns are addressed in Appendix B.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO’s existing and proposed manure storage facilities and manure collection areas. I used the NRCB’s environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

The assessment found that the existing and proposed facilities pose a low potential risk to groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted.

9. Exemptions

I determined that the proposed broiler barn is located within the required AOPA setback from four water wells. As explained in Appendix C, an exemption to the 100 metre water well setbacks is warranted due to the proposed barn's walls and roof preventing runoff.

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.

Ms. Hunter also listed the setbacks required by Camrose County's land use bylaw (LUB). The application meets these setbacks.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. AEP has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the Water Act in respect of the subject of this application. I received a response from AEP indicating that the Boeses have applied for a water licence. Furthermore, the application meets AOPAs technical requirements.

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 January 6, 2023).

Finally, I considered the effects of the proposed CFO expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from referral agencies and Camrose County, submissions from a directly affected party, and my own observations from a site visit

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

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 and the directly affected party's concerns have been addressed.

I also presumed that the proposed CFO expansion 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, and I note that Camrose County's response states that the application is consistent with their MDP.

11. Terms and conditions

Approval RA22023 specifies the cumulative permitted livestock capacity as 82,000 chicken broilers and permits the construction of the new broiler barn.

Approval RA22023 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 RA22023 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 D.

12. Conclusion

Approval RA22023 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22023.

Boeses' deemed registration is therefore superseded, and consolidated into Approval RA22023, unless Approval RA22023 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed registration will remain in effect.

January 18, 2023

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

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by the directly affected party
- C. Exemptions from water well setbacks
- D. Explanation of conditions in Approval RA22023
- E. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”). “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

The Boeses’ CFO is located in Camrose County and is therefore subject to that county’s MDP. Camrose County adopted the latest revision to this plan on April 12, 2016, under Bylaw 1372. The portions of the MDP relevant to this application are discussed below:

Policy 4.3.7 of the MDP states that applications for new or expanding CFOs shall meet the *Agricultural Operation Practices Act*.

This is not a land use provision. I note that, as discussed elsewhere in this decision summary and in Technical Document RA22023, the application meets all relevant AOPA requirements.

Policy 4.3.8 states that at the discretion of County Council, large CFOs shall be prohibited in the County.

This policy likely is not a “land use provision” because it calls for discretionary judgements (by Council) about the size of the CFO. The MDP does not define what qualifies as a large CFO. Further, section 8.2.5 of the NRCB’s Approvals Policy (Policy 2016-7) prohibits me from considering this policy as part of this MDP consistency determination.

Policy 4.3.9 states that development of new or expanding CFOs shall not be supported within 3,219 m (2 miles) of the City of Camrose, 3,219 m (2 miles) from any recreational lake, or 1,610 m (1 mile) from any other urban municipality or hamlet as outlined in an [intermunicipal development plan] IDP.

The CFO is not located within any of the above stated setbacks and is beyond the extents of the Village of Edberg’s IDPs.

For the above reasons, I have determined that this application is consistent with the land use provisions of Camrose County’s MDP.

APPENDIX B: Concerns raised by directly affected parties

Ms. Margaret Egert (SE 2-44-20 W4M) qualifies for directly affected party status because she submitted a response to the application and she owns or resides on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation. NRCB Operational Policy 2016:7 – Approvals, part 6.2.

The directly affected party (DAP) raised the following concerns which are listed and summarized below, together with my analysis and conclusions:

1. **Increase in odours and nuisances** – The DAP expressed concern about a potential increase in odours, predation and the impact on their quality of life, as her property is located across from the applicant’s yard. The individual indicated that while nobody is living at this property, she keeps it neat, and it is a peaceful spot for relaxing, bird watching and enjoying nature. When the winds come from the east in the summer, specially when the barns are being cleaned, there are strong odours from the barn.

Approval officer’s conclusions:

AOPA’s minimum distance separation (MDS) is a means for mitigating odours and other nuisance impacts from CFO facilities. The Boeses’ proposed CFO expansion is located outside of the required MDS to other existing residences. The closest neighbouring residence is located will be more than 800 m away from the nearest CFO facility. This distance exceeds the required 232 m MDS to that residence. It is presumed that nuisance effects from the CFO facilities are acceptable if the MDS has been met.

Nuisance and other impacts outside of the MDS for a CFO are typically not considered when making a decision, unless there is a direct and adverse impact greater than what may be normally expected, which can be directly linked to the CFO. These effects would be considered in the analysis on ‘effects on the community’ in an approval officer’s decision. In this case, the land zoning within one mile of the operation is ‘Agriculture’. Although I do not consider nuisance concerns as ‘trivial’ in nature, I presume the impacts of the proposed CFO as acceptable, because of the land zoning and MDS requirements as laid out in AOPA have been met.

It is reasonable to expect that there will be some odour emissions and other potential nuisances when the CFO is expanded; however, these should be limited and of short duration.

Operators are expected to control predators and pest at their operation, under the *Agricultural Pests Act* of Alberta.

Often, any 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.

APPENDIX C: Exemptions from water wells setbacks

1. Water Well Considerations

The proposed broiler barn is to be located less than 100 m from water wells. During a site visit, I have confirmed that four water wells are located between 30 m and 40 m from the new barn. 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 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 collection area (MCA), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the applicant's proposed MCA meets AOPA's technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the wells were constructed;
- b. Whether the wells are being properly maintained;
- c. The distance between the wells and the proposed MCA;
- d. Whether the wells are 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.

Water well #1:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 30 m west of the proposed barn is likely AEP water well ID # 1075396. This well is reported to have been installed in 2021 and has a perforated or screened zone from 53 m to 56.5 m below ground level across stratigraphy. The well was installed with an above ground casing. This well is used for non-domestic purposes. The well's log identifies a protective layer from ground surface to 18.2 m below ground level. The well has a bentonite seal. The well appeared to be in good condition at the time of my site inspection. The well is cross-gradient from the MCA.

Water well #2:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 35 m west of the proposed barn is likely AEP water well ID # 1200126. This well is reported to have been installed in 2004 and has a perforated or screened zone from 29 m to 68.6 m below ground level across stratigraphy. The well was installed with an above ground casing. This well is used for non-domestic purposes. The well's log identifies a protective layer from ground surface to 25 m below ground level. The well has a driven seal. The well

appeared to be in good condition at the time of my site inspection. The well is cross-gradient from the MCA.

Water well #3:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 35 m south of the barn is likely AEP water well ID # 137842. This well is reported to have been installed in 1986 and has a perforated or screened zone from 24.4 m to 39.6 m below ground level across stratigraphy. This well is used for non-domestic purposes. The well's log identifies a protective layer from ground surface to 22.3 m below ground level. The well has a driven seal. The well appeared to be in good condition at the time of my site inspection. The well is cross-gradient of the MCA.

Water well #4:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 40 m south of the proposed barn is likely AEP water well ID # 137844. This well is reported to have been installed in 1969. There is no information about the screened zone or the method to seal the annulus. The well was installed with an above ground casing. This well is not currently in use. The well is cross-gradient from the MCA.

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 This tool is useful in gauging the level of protection of groundwater because we use the tool to determine if a water well is going to be impacted when an exemption is considered.

In this case, the results of the water well exemption screening tool suggest that an exemption is likely for all four water wells as seen in Technical Document RA22023.

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for all four water wells from the proposed broiler barn.

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 D: Explanation of conditions in Approval RA22023

Approval RA22023 includes several conditions, discussed below:

a. Construction Deadline

Boese proposes to complete construction of the proposed new broiler barn by September 30, 2023. This time-frame may not be reasonable for the proposed scope of work. Allowing additional construction seasons is more reasonable, therefore a deadline of November 30, 2025 is included as a condition in Approval RA22023.

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, Approval RA22023 includes conditions requiring:

the concrete used to construct the liner of the manure collection and storage portion of the broiler 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.” The Boeses shall provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

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 RA22023 includes a condition stating that the Boeses shall not place livestock or manure in the manure storage or collection portions of the new broiler barn until NRCB personnel have inspected the broiler barn and confirmed in writing that it meets the approval requirements.

APPENDIX E: Determination of deemed permit status

The Boeses claim that their CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO/MSF.

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

The CFO is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

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

I found that the livestock type and capacity of the structures could reliably be determined by viewing historical aerial photos and records of the owner or operator. Accordingly, under section 11(3) of the Administrative Procedures Regulation, I waived the notice that might otherwise be required for determination of a deemed permit.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO’s deemed capacity is its physical capacity to confine livestock on January 1, 2002.

The Boeses claim that the CFO’s physical capacity on January 1, 2002 was 42,000 chicken broilers, and they provided information which demonstrates, that the CFO existed on January 1, 2002. This information includes the barns’ dimensions and housing type with the application.

The facilities shown on aerial photographs indicate that the footprint of the broiler barns # 1 and 2 have remained the same, since before January 1, 2002. I have confirmed this information through a site visit.

To obtain information regarding the average barn area required for a chicken broiler operation, I consulted Technical Guideline Agdex 096-81 – Calculator for Determining Livestock Capacity of Operations as they existed on January 1, 2002. The information reviewed provides a level of consistency showing that the facilities existed with a capacity for at least 37,715 chicken broilers.

Given that management practices differ between operators, higher bird densities than those used for the capacity calculation were not uncommon. I believe the bird numbers provided by

the applicant are reasonable and within the range of what can be accommodated in the grandfathered facilities; and therefore, it is reasonable to conclude that this operation has a deemed AOPA capacity of 42,000 chicken broilers.

Based on these findings, the CFO is considered to have a deemed registration and a deemed capacity of 42,000 chicken broilers.