



Decision Summary LA22044

This document summarizes my reasons for issuing Approval LA22044 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22044. 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 October 17, 2022, Trail Acres Inc. (Trail Acres) submitted a Part 1 application to the NRCB to increase poultry broiler numbers to a total of 60,000 and to construct a broiler barn (14.0 m x 76.2 m) at an existing poultry CFO.

The Part 2 application was submitted on October 26, 2022. On November 2, 2022, I deemed the application complete.

a. Location

The existing CFO is located at NW 34-9-16 W4M in the Municipal District (M.D.) of Taber, roughly 1.5 km east of the Town of Taber, Alberta. The terrain of the CFO site is mostly flat, sloping gently to the west. Taber Lake is slightly over 1 km to the north of the CFO site.

b. Existing permits

To date, the NRCB has issued Authorization LA14001 to Trail Acres while municipal permit #51-01 is also still in effect. Collectively, these NRCB permits allow Trail Acres to construct and operate a 50,000 chicken broilers CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA22044.

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 the M.D. of Taber, which is the municipality where the CFO is located.

A copy of the application was also sent to the Town of Taber, when it came to my attention that the location of the CFO falls within the plan area for the intermunicipal development plan between the M.D. of Taber and the Town of Taber (following Board Decision 2022-02 Double H Feeders at p 7).

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Taber Times on November 2, 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, 17 letters were sent to people identified by the M.D. of Taber 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), Alberta Environment and Protected Areas (EPA), Alberta Transportation and Economic Corridors (TRAN), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Canadian Western Natural Gas Company Ltd. (Atco Gas) as a right-of-way holder at the land location.

I received responses from EPA, TRAN, and the SMRID. All comments relating to the application were forwarded to the applicant. Water allocation is the responsibility of the operator and Trail Acres is reminded that sufficient water allocation must be in place prior to populating the new barn.

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.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) and Intermunicipal Development Plan (IDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the M.D. of Taber's municipal development plan and the intermunicipal development plan which exists between the M.D. of Taber and the Town of Taber. (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 water wells, 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 10 and Appendix B, the application meets all relevant AOPA requirements.

7. Responses from municipalities 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.” The M.D. of Taber is an affected party (and directly affected) because the proposed expansion is located within its boundaries. The Town of Taber is presumed to be directly affected as it is a party to the intermunicipal development plan which the CFO falls within (following Board reasoning in RFR 2022-01 Double H Feeders at pp 1-2).

Ms. Jill Speer, a Planning and Development Officer with the M.D. of Taber, provided a written response on behalf of the M.D. of Taber. Ms. Speer stated that the application is not consistent with the M.D. of Taber’s land use provisions of the municipal development plan because it falls within the area restricted from confined feeding operations. In my interpretation of the MDP, the restriction is for new CFO’s. As the CFO already exists and is proposing to expand, the MDP restriction does not apply. My reasoning and the application’s consistency with the M.D. of Taber’s municipal development plan is addressed in Appendix A, attached.

The CFO is located within the area covered by the IDP between the M.D. of Taber and the Town of Taber, because of this I also notified the town on December 19, 2022. I received no response from the Town of Taber.

Apart from municipalities, any member of the public may request to be considered “directly affected.” No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. 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 Trail Acres's existing CFO facilities were assessed in 2014. The assessment indicated that the potential risks to surface water and groundwater were low. Since the 2014 risk assessment, circumstances have not changed at the CFO so in my view the past assessment is still valid.

9. Other factors

Because the approval application is consistent with the applicable 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. Speer indicated the application appears to meet the setbacks required by the M.D. of Taber's land use bylaw (LUB).

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments.

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

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

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the applicable land use provisions, then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

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

10. Terms and conditions

Approval LA22044 specifies the cumulative permitted livestock capacity as 60,000 poultry broilers and permits the construction of the proposed broiler barn.

Approval LA22044 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 LA22044 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Authorization LA14001 and Municipal Permit #51-01 with Approval LA22044: (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 B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA22044 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22044.

Trail Acres's deemed approval, including municipal development permit #51-01, and NRCB-issued Authorization LA14001 are therefore superseded, and their content consolidated into this Approval LA22044, unless Approval LA22044 is held invalid following a review and decision by the NRCB's board members or by a court, in which case municipal permit #51-01 and Authorization LA14001 will remain in effect.

January 25, 2023

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with land use provisions
- B. Explanation of conditions in Approval LA22044

APPENDIX A: Consistency with land use provisions

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).

However, in Board Decision 2022-02 Double H Feeders Ltd., the NRCB Board directed approval officers away from a narrow reading of section 20 of AOPA. An approval officer should determine an application’s consistency with not just the MDP, but also the IDP (if one applies). Given changes to the hierarchy of statutory plans under the *Municipal Government Act*, the Board suggested that ignoring an applicable IDP could lead to absurd outcomes in the event of a conflict between an MDP and an IDP.

In this case, though the land use provisions of the MDP of the M.D. of Taber are vague, the application is consistent in light of the IDP between the M.D. and the Town of Taber. My explanation for these conclusions follows.

In general, “land use provisions” cover 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 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 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.)

Trail Acres CFO is located in the M.D. of Taber and is therefore subject to that county’s MDP. The M.D. of Taber adopted the latest revision to this plan on September 28, 2021 under Bylaw #1980. The CFO is also subject to the Intermunicipal Development Plan which exists between the Town of Taber and the M.D., where the plan area boundary includes the NW 34-9-16 W4M. This plan was last revised in March 2021 (see the Oldman River Regional Services Commission website for the latest version).

Municipal Development Plan

Sections 5.1.13 – 5.1.15 of the MDP provide policies “related to confined feeding operations.” The stated purposes of these policies include providing the NRCB with “requirements that the council of the M.D. of Taber wish to have considered when applications for CFOs are evaluated for approval....”

The text in sections 5.1.13-5.1.15 is not clear as to whether these policies were intended to apply to applications for both new CFOs and for expansions of existing CFOs, or just to new CFOs.

Each of the applicable sections are discussed below.

Section 5.1.13

This section states that “CFOs” should be “discouraged” in the areas shown in Map 2 as “restricted”. This exclusion zone is a land use provision. Trail Acres CFO is located within the CFO restricted zone, which is what the M.D. of Taber’s response advised. The provision asks that “CFO’s” be restricted without indicating whether “CFOs” includes existing CFOs that wish to expand. It is vague and unclear. In the case of this application LA22044, the IDP provides a clearer direction (see below).

I note that a previous application under AOPA (LA21047) in this same restricted zone was denied for being inconsistent with the MDP. I observe that, in that case, the application was for a new CFO, not an expansion of an existing one; and in that case, the IDP with the Town of Taber did not apply.

Sections 5.1.14(a)-(d)

These sections list setbacks for CFOs from roads and property lines. Trail Acres CFO is not within any of these setbacks.

Section 5.1.15

Under this section, the Municipal District requests that the NRCB consider the four following items:

- a. the proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water supplies;
- b. the cumulative effect of a new approval on any area near other existing confined feeding operations;
- c. environmentally sensitive areas shown in the report, M.D. of Taber Environmentally Sensitive Areas in the Oldman River Region;
- d. give[ing] notice to adjacent landowners even in the case of applications for registration or authorization.

Neither (a) or (b) are likely “land use provisions,” as they call for site-specific judgements about the acceptability of an individual operation in light of certain criteria (“proximity,” magnitude and nature of cumulative effect, effect on environmentally sensitive areas). As such, these two MDP policies are not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.).

At any rate, Trail Acre’s CFO meets requirements related to item (a), which refers to the impact of the operation on drinking water supplies. Several of the requirements under AOPA and its regulations are designed to prevent or minimize leakage from CFO facilities and thus to prevent manure from reaching and contaminating surface water and groundwater. Because the application meets these requirements, this expansion would not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

Subsection (b) refers to cumulative effects of CFOs. AOPA does not expressly require 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.)

The CFO is not located in an environmentally sensitive area as indicated in item 5.1.15(c) above.

Policy 5.1.15(d) is a procedural requirement so it is likely not a "land use provision." Therefore it is not relevant to my MDP consistency determination. At any rate, as explained above, in addition to notifying the M.D. of Taber, Town of Taber, and several referral agencies, the NRCB also published official notice of the application in the Taber Times, and sent courtesy letters to landowners and residents within the radius as identified in the AOPA. The notification requirements under AOPA have therefore been met.

For these reasons, I conclude that it is unclear whether the proposed construction is consistent with the land use provisions of the Municipal District of Taber's MDP, and in particular section 5.1.13 and Map 2. The M.D. has provided no direction on whether expansions to existing CFOs are counted as "CFOs" for the purpose of the restricted area.

However, in this case, the assessment of consistency does not end with the MDP. This is because the CFO is located within the plan area boundary of the IDP between the M.D. of Taber and the Town of Taber. The NRCB Board, in Decision 2022-02 Double H Feeders at pp 6-7, held that in the case of a conflict between an MDP and an applicable IDP, the IDP prevails.

Intermunicipal Development Plan

In my view, the IDP clarifies the extent of the restriction on CFOs in section 5.1.13 of the M.D. of Taber's MDP – at least where that zone falls within IDP plan boundaries.

Section 3.3.5 of the IDP states:

"It is the desire of the M.D. and the Town to minimize potential conflict between residential uses and confined feeding operations (CFOs) within the IDP Area. The Town of Taber supports the M.D. of Taber's Municipal Development Plan policy that "confined feeding operations should be discouraged in the areas shown on Map 12 as "Restricted" and as reviewed by council from time to time" (refer to Map 12 in Appendix A for illustration of CFO Restricted Area). The Natural Resources Conservation Board should consider this position in its evaluation of applications for new CFOs and, as such, not issue permits for new CFOs within the IDP Area [underlining added]."

This paragraph is more of a statement deferring to the M.D. of Taber's MDP rather than representing a different provision. I do point out the IDP only applies to new CFO's not being permitted within the restricted area. This suggests that, within the IDP plan area at least, the CFO exclusion zone only restricts new CFOs, not expansion of existing CFOs.

Section 3.3.6 states:

"In regard to manure application on lands in the CFO Restricted Area, the standards and procedures as outlined in the Agricultural Operation Practices Act, Standards and Administration Regulation shall be applied."

Section 3.3.7 states:

“The Town agrees that it will notify and consult with the M.D. prior to engaging the Natural Resources Conservation Board or other provincial authorities should problems or complaints arise regarding a CFO operator’s practices.”

These paragraphs relate to CFO operations but not to the permitting of facilities. As such they are not provisions I need to consider in my consistency determination.

For these reasons, the application is consistent with the land use provisions of the IDP.

APPENDIX B: Explanation of conditions in Approval LA22044

Approval LA22044 includes several conditions, discussed below. I also have determined some conditions from municipal permit #51-01 should be removed pursuant to section 23 of AOPA (see section 2 below). Construction conditions from municipal permit #51-01 and Authorization LA14001 that have been met are identified in the appendix to Approval LA22044.

1. New conditions in Approval LA22044

a. Construction Deadline

Trail Acres proposes to complete construction of the proposed new broiler barn by November 30, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2025 is included as a condition in Approval LA22044.

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 LA22044 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the barn to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Trail Acres to provide documentation 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 LA22044 includes a condition stating that Trail Acres shall not place livestock or manure in the manure storage or collection portions of the new barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the approval requirements.

2. Conditions not carried forward from municipal permit #51-01

Approval LA22044 includes the terms and five conditions in municipal permit #51-01, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions #1, #2, #4, and #5 from municipal permit #51-01 should be deleted and therefore are not carried forward to Approval LA22044. My reasons for deleting these conditions:

Condition #1 - *“Permit is for 50,000 birds maximum at any one time.”*

As Approval LA22044 permits expansion of the CFO to 60,000 broilers this condition is no longer relevant and has not been carried forward.

Condition #2 - *“Fly control program to be implemented to the satisfaction of M.D. of Taber Council.”*

This condition does not provide sufficient detail or direction and is unenforceable. Due to the passage of time, the municipality also no longer holds jurisdiction over the regulation of CFO’s as that responsibility has been transferred to the NRCB. As such this condition is no longer relevant or enforceable and has not been carried forward. At any rate, under section 20(2) of the Standards and Administration Regulation under AOPA, an approval officer or inspector or the Board has authority to require a specific fly control program if it is deemed to be necessary in the future.

Condition #4 - *“Dead birds to be disposed of using methods common in poultry operations and to the satisfaction of the M.D. of Taber.”*

The disposal of dead animals is directly regulated by Alberta Agriculture and Irrigation under the *Animal Health Act* (Disposal of Dead Animals Regulation). Concurrent oversight of dead animal disposal under AOPA would be inefficient and might lead to inconsistent approaches. (In addition, the requirements in these regulations arguably provide an appropriate benchmark for defining “acceptable” disposal practices.)

This condition has none of the prescribed regulatory distance setbacks, terms, or definition, as provided in the *Animal Health Act*, it is arguably less stringent than existing regulations. For these reasons, and pursuant to the NRCB policies referenced above, this condition will not be carried forward.

Condition #5 - *“Manure management program to be implemented and to be followed as agreed upon.”*

AOPA requires all operators to manage manure according to its rules and regulations. As such, for the new application Trail Acres has provided sufficient manure spreading lands to meet AOPA requirements. As such, this condition will not be carried forward.