

Decision Summary RA22030

This document summarizes my reasons for issuing Authorization RA22030 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22030. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On December 6, 2022, Jos and Dorthy Peters submitted a Part 1 application to the NRCB to permit an unauthorized manure storage facility (MSF)/manure collection area (MCA) at an existing goat dairy CFO. The MSF/MCA consists of a tarp shed (19.8 m x 9.1 m) which will house young stock goats.

As the new young stock facility was previously constructed, the facility has been considered unauthorized construction. The NRCB's compliance division was made aware and has been involved in ensuring the CFO is in compliance.

The Part 2 application was submitted February 22, 2023. On February 28, 2023, I deemed the application complete.

a. Location

The CFO is located at SW 32-47-26 W4M in Wetaskiwin County, roughly 19 km west of Millet, Alberta. The terrain where the tarp shed is located is undulating with a general slope to the north and northeast, toward a wetland located approximately 130 m northeast of the CFO.

b. Existing permits

The CFO is already permitted under Registration RA16006XB, which allows for the operation of an 800 milking goat dairy (plus replacement animals) and permits a goat barn and pole shed for housing livestock.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are "affected" by an authorization application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- the municipality where the CFO is located or is to be located
- in the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a municipality entitled to divert water from that body within 10 miles downstream

- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 0.5 mile(s) (805 m) from the CFO

A copy of the application was sent to Wetaskiwin County, which is the municipality where the CFO is located. There are no rivers, streams or canals within 100m of the facility.

3. Notice to other persons or organizations

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

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), Alberta Environment and Protected Areas (EPA), and Alberta Agriculture and Irrigation (AGI).

Ms. Laura Partridge, an EPA senior water administration officer, responded to the notice indicating an absence of *Water Act* licensing at the CFO, and included a step-by-step process reminding the permit holders they must obtain a water license under the *Water Act* for their operation. The applicant was reminded that follow up with the EPA regarding this matter is required, and that it is their responsibility to ensure they have access to sufficient licensed water.

No other responses were received.

4. Municipal Development Plan (MDP) consistency

I have determined that the construction is consistent with the land use provisions of Wetaskiwin County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the construction:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA groundwater protection requirements for the design of floors and protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements.

6. Responses from municipality

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as “directly affected.” Wetaskiwin County is an affected party (and directly affected) because the facility is located within its boundaries.

Mr. Jarvis Grant, a development officer with Wetaskiwin County, provided a written response on behalf of Wetaskiwin County. In his response, Mr. Grant indicated that there are no issues or concerns with the proposal. The application’s consistency with the county’s municipal development plan (MDP) is addressed in Appendix A, attached.

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

7. Environmental risk of facilities

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

When reviewing a new authorization application at an existing CFO, NRCB approval officers assess the CFO’s existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB’s environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, which can fall within either a low, moderate, or high-risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Jos and Dorthy Peters’ existing CFO facilities were assessed in 2016 and 2021 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since those assessments were done. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

8. Terms and conditions

Authorization RA22030 permits the use of the already constructed tarp shed to house livestock.

Authorization RA22030 contains terms that the NRCB generally includes in all AOPA authorizations, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

9. Conclusion

Authorization RA22030 is issued for the reasons provided above, in the attached appendix, and in Technical Document RA22030.

Authorization RA22030 must be read in conjunction with Registration RA16006XB which remains in effect.

May 2, 2023

(Original signed)
Sarah Neff, BSc., BEH(AD)
Approval Officer

Appendices:

A. Consistency with the municipal development plan

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization or amendment of an authorization if the approval officer holds the opinion that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

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

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 22(2.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”). “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Jos and Dorthy Peters’ CFO is located in Wetaskiwin County and is therefore subject to that county’s MDP. Wetaskiwin County adopted the latest revision to this plan on April 11, 2023, under Bylaw 2023/05.

As relevant here, section 11.6 of the MDP aims to “support” CFOs while “minimizing conflicts with surrounding land uses and negative impacts on the environment through land stewardship best practices.” Additionally, the MDP notes that, while CFOs are under provincial jurisdiction, it is the county’s intent to “restrict new or expanded CFOs only in those locations where they are incompatible with neighbouring land uses or negatively impact sensitive environmental features”. The MDP also reports the county’s view that, the *Municipal Government Act* “requires” the county to identify where new CFOs may be located.

Objective 11.6.3 states 5 areas in which the county prohibits new or expanded CFOs within specified distances of the areas listed in the objective. Peters’ CFO is located outside all the specified setbacks, and therefore, the application is consistent with this objective.

Objective 11.6.4 states that, notwithstanding 11.6.3, the county will support expanding or upgrading existing CFOs where “upgrades in technology and/or practices result in improved manure management and/or mitigation of negative impacts on surrounding land uses and the environment”. Peters’ CFO is not within any of the setbacks stated in 11.6.3 and therefore, this objective does not apply.

Objective 11.6.5 refers to CFOs within the setbacks in 11.6.3 that are “not in operation for a period of ten (10) years or more”, in which case the county considers these to operations to be “without proper authorization to resume operation or expand”. This is not a land use provision and therefore, I won’t consider it; regardless, I am not aware of a 10-year gap in operation and as such, objective 11.6.5 does not apply to this application.

Objective 11.6.6 states the county’s support for “new residences where the residence is associated with a CFO within the Minimum Distance Separation of an existing CFO”. I interpret this to be a requirement as relating to the development of residences near CFO’s. The

permitting of residences is within the municipality's jurisdiction. Therefore, this objective is outside of my land use provision consistency determination.

Objective 11.6.7 states that the county requires CFO proponents to "demonstrate that their development will not result in environmental impacts from their proposed operation" and *may* recommend to the NRCB that an "Environmental Impact Assessment" be submitted along with the application. These are likely not land use provisions. Nevertheless, the county has made no such request for this application.

Objective 11.6.8 states that the county "requests" the NRCB to include conditions in their decisions requiring CFO proponents to "enter into agreements with the county, which may include dust control, road use and off-site levies". The NRCB does not have direct responsibility for regulating road use. Section 18 of the *Municipal Government Act* gives counties "direction, control and management" of all roads within their borders. In addition, municipalities have the knowledge, expertise and jurisdiction to implement and enforce road use agreements. Nevertheless, the county has made no such request for this application.

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