

Decision Summary RA23014

This document summarizes my reasons for issuing Approval RA23014 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23014. 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 April 27, 2023, Zachary Thiessen (Zach Thiessen) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on May 31, 2023. On June 6, 2023, I deemed the application complete.

The proposed CFO expansion involves:

- Increasing the number of chicken broilers from 32,000 to 60,000
- Constructing a new broiler barn - 91.6 m x 18.4 m

The application also notified the NRCB of the proposed construction of a service room attached to the new broiler barn (6.2 m x 4.9 m). This facility is an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

a. Location

The existing CFO is located at NE 19-43-20 W4M in Camrose County, roughly 6 km southeast of Ferintosh, Alberta. The terrain is slightly undulating with a general slope to the south and southwest.

b. Existing permits

To date, the NRCB has issued Registration RA16016. The registration allows the construction and operation of a 32,000 chicken broiler CFO. The CFO’s existing permitted facilities are listed in the appendix to the Approval RA23014.

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 0.5 miles. (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 June 6, 2023. 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, seven courtesy 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 Protected Areas (EPA).

I also sent a copy of the application to Inter Pipelines Ltd., Battle River Gas Co-op Ltd., and Battle River Cooperative Rea Ltd.

I did not receive responses from these organizations.

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 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 that is required to address the AOPA requirement around the 100 m water well setback is discussed in part 9 and Appendix B 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 Camrose County. Ms. Hunter stated that the application is consistent with the land use provisions in Camrose County’s municipal development plan (MDP). The application’s consistency with Camrose County’s MDP is addressed in Appendix A, attached.

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. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require construction supervision or monitoring for the facility. In this case a determination was made, and monitoring is not required.

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, 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 Zach Thiessen's existing CFO facilities were assessed in 2016 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

9. Exemptions

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

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. EPA 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. 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 June 20, 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 Camrose County, and my own observations from a site visit.

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 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.

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 RA23014 specifies the cumulative permitted livestock capacity as 60,000 chicken broilers and permits the construction of the the broiler barn.

Approval RA23014 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 RA23014 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 C.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval RA23014: Registration RA16016 (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.

12. Conclusion

Approval RA23014 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23014.

Registration RA16016 is therefore superseded, and its content consolidated into this Approval RA23014, unless Approval RA23014 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Registration RA16016 will remain in effect.

July 14, 2023

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

Appendices:

- A. Consistency with the municipal development plan
- B. Exemptions from water well setbacks
- C. Explanation of conditions in Approval RA23014

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” 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.)

Zach Thiessen’s 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 RA23014, 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.

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

APPENDIX B: Exemption from a water well setback

1. Water Well Considerations

The proposed broiler barn will be located less than 100 m from a water well. I have confirmed during a site visit that one water well is located approximately 80 m from it. This is in conflict with 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 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 MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/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.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Protected Areas (EPA) water well database, the water well located approximately 80 m north of the proposed broiler barn is likely EPA water well ID #137507. This well is reported to have been installed in 1988. There is no information regarding the well's construction details in the water well drilling report; however, the subsurface lithology of the well shows a 15.2 m layer of clay covering a sandstone layer. This well is used only for domestic purposes. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the CFO and MSF.

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 RA23014.

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

APPENDIX C: Explanation of conditions in Approval RA23014

Approval RA23014 includes several conditions, discussed below. Construction conditions from historical Registration RA16016 that have been met are identified in the appendix to Approval RA23014.

a. Construction Deadline

Zach Thiessen proposes to complete construction of the proposed new broiler barn by December 31, 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 RA23014.

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 RA23014 includes conditions requiring:

- a. 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.” Zach Thiessen 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 RA23014 includes a condition stating that Zach Thiessen shall not place livestock or manure in the manure storage or collection portions of the new broiler barn until NRCB personnel have inspected it and confirmed in writing that it meets the approval requirements.