

Decision Summary RA23018

This document summarizes my reasons for issuing Registration RA23018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23018. 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 a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On May 30, 2023, Henk and Lizette Schrijver (Schrijver) submitted a Part 1 application to the NRCB to construct a new beef confined feeding operation (CFO).

The Part 2 application was submitted on August 22, 2023. Included was a reduction in livestock from the original proposed number of 900 head to 500 head (250 calves and 250 feeders). On August 31, 2023, I deemed the application complete.

The proposed CFO involves:

- Permitting livestock capacity – 250 beef calves
- Permitting livestock capacity – 250 beef feeders
- Constructing a new heifer shed – 122 m x 20 m
- Constructing a new livestock pen – 122 m x 36.5 m
- Constructing a new catch basin – 30 m x 26 m x 2 m deep (aboveground)

a. Location

The proposed CFO is located at NW 9-47-27 W4M in the County of Wetaskiwin, roughly 5.5 km west from the community of Pipestone. The terrain is mainly flat crop and pastureland, and generally slopes to the south/southeast. The nearest major surface water body is Pigeon Lake, approximately 2500 m west/southwest from the CFO. There are nine residences within the notification radius, with the nearest residence located approximately 307 m north of the CFO.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration 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 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 the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

The land use zoning for the land on which the CFO is located would require a minimum distance separation of 216 metres. Therefore, the notification distance is 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to the County of Wetaskiwin, which is the municipality where the CFO is to be located.

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 Pipestone Flyer on August 31, 2023. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. Nine notification letters were sent to people identified by the County of Wetaskiwin as owning or residing on land within the affected party radius.

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 Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Imperial Oil Resources Ltd., Battle River Coop, West Wetaskiwin Rural Electrification Association Ltd., Atco Gas and Pipelines Ltd., Integrity Land Inc. agent for Evolve Exploration Ltd., and Harvard Resources Inc., as they are utility right of way holders on the subject land.

Ms. Christina Stewart, a surface land analyst with Imperial Oil Resources Ltd., responded to the notice indicating they have no concerns with the application.

Mr. Gordon Watt, a public health inspector with AHS, responded to the application with general guidelines relating to water well protection and nuisance mitigation.

No responses were received from the other organizations.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of the County of Wetaskiwin’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 proposed CFO:

- 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 8 and Appendix C, the application meets all relevant AOPA requirements.

6. 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.” The County of Wetaskiwin is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. Jarvis Grant, a development officer with the County of Wetaskiwin, provided a written response on behalf of the County of Wetaskiwin. Mr. Grant stated that the application is consistent with the County of Wetaskiwin’s land use provisions of the municipal development plan. The application’s consistency with the County of Wetaskiwin’s municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, an owner or occupant of land within the notification distance may request to be considered “directly affected.”

Of the four parties who submitted responses, two own or reside on land within the 0.5 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 7.2.2)

The directly affected parties raised concerns regarding access to sufficient water, decrease in property value and nuisances such as increased noise and odour. These concerns are addressed in Appendix B.

Two of the respondents do not own or reside on land within the 0.5 mile notification distance for affected persons. By operation of section 21 of AOPA, these respondents are not considered affected persons and therefore cannot apply for directly affected party status.

7. 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 groundwater monitoring for a facility. In this case a determination

was made that groundwater monitoring is not necessary.

8. Terms and conditions

Registration RA23018 specifies the cumulative permitted livestock capacity as 250 beef calves and 250 beef feeders, and permits the construction of the heifer shed, livestock pen, and catch basin.

Registration RA23018 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration RA23018 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

9. Conclusion

Registration RA23018 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23018.

January 23, 2024

(Original signed)
Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Registration RA23018

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration or amendment of a registration 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” 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 9.2.7)

Schrijver’s CFO will be located in the County of Wetaskiwin and is therefore subject to that county’s MDP. The County of Wetaskiwin 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 five areas in which the county prohibits new or expanded CFOs within specified distances of the areas listed in the objective. Schrijver’s 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”. Schrijver’s CFO is a new CFO and is therefore not expanding or upgrading. In addition, the 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 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, this is a new CFO 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, and the provision does not apply to CFO's. 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, and the application meets the technical requirements in AOPA's regulations. 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.

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

APPENDIX B: Concerns raised by directly affected parties

Submitted responses:

- Brad Harden, SE-16-47-27 W4
- Garth, Tammy, Ben and Nikea Moodie, SE-17-27-47 W4

Section 21 of AOPA limits these directly affected parties to making submissions respecting whether the application meets the requirements of the regulations. The directly affected parties raised the following concerns:

1. **Water well supply** – The respondents expressed concern regarding water usage and access to sufficient water for the proposed CFO.

Approval officer's conclusion:

Alberta Environment and Protected Areas (EPA) is responsible for licensing the use of groundwater and surface water in the province. The water licensing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licensing declarations listed in the Part 2 application form. (This declaration is on page 4 of the technical document).

The monitoring of groundwater and surface water levels and usage is regulated by EPA under the *Water Act*. It is the responsibility of the applicant to ensure they have access to sufficient licensed water. The Schrijver's have been reminded that they are responsible for ensuring they have proper licensing under the *Water Act* for the proposed CFO.

Additionally, upon speaking with Ms. Partridge, a senior water administration officer with the EPA, she indicated that a water license exists for the proposed CFO location and that this license will be transferred over to the Schrijver's following the land title change.

A copy of this decision will also be forwarded to EPA for its information.

2. **Increase in odour and noise** - The respondent expressed concerns regarding a potential increase in odour and noise due to the proximity of the CFO to their family farm.

Approval officer's conclusion:

AOPA's minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Schrijver's proposed CFO is located outside of the required MDS from other existing residences.

The residence owned by this directly affected party is located approximately 1.23 km away from the location of the CFO, which is more than five times as far as the required 216 m MDS to residences on Category 1 land zoning (agricultural land).

Notwithstanding the CFO's distance to its nearest neighbours, it is reasonable to expect that there will be some odour emissions, as well as other potential nuisance impacts from the CFO.

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.

- 3. Property value** – The respondent expressed concern regarding a potential decrease in property value due to the proposed CFO.

Approval officer's conclusion:

The NRCB's board has consistently stated that concerns regarding effects on 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..." Zealand Farms, RFR 2011-02, p.5; see also, e.g., Pigs R Us Inc., RFR 2017-11, p. 6 (stating that effects on land values are "not a relevant Board consideration when the development is consistent with the MDP's land use provisions.").

APPENDIX C: Explanation of conditions in Registration RA23018

Registration RA23018 includes several conditions, discussed below:

a. Construction Deadline

Schrijver proposes to complete construction of the proposed new heifer shed, pen, catch basin and conveyance ditch by December 2024. It is my opinion that a longer construction deadline is more reasonable for the proposed scope of work; allowing for three full construction seasons allows for unexpected contractor or supply delays. Therefore, the deadline of November 30, 2026, is included as a condition in Registration RA23018.

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, Registration RA23018 includes conditions requiring:

- a. Schrijver to provide an engineer's completion report certifying the catch basin's location and dimensions, including elevations above grade and side slopes, as well as an engineer's completion report certifying that the catch basin was constructed with the same liner material as that used for hydraulic conductivity testing.
- b. Schrijver to provide an engineer's completion report certifying that the pen was constructed with the same liner material as that used for hydraulic conductivity testing and that the pen was constructed according to the proposed procedures and design specifications, including size and location.
- c. The concrete used to construct the liner of the manure collection and storage portion of the heifer shed 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." Schrijver is to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the heifer shed.

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. Registration RA23018 includes a condition stating that Schrijver shall not place livestock or manure in the manure storage or collection portions of the new heifer shed or pen, or allow manure impacted runoff into the catch basin until NRCB personnel have inspected the heifer shed, pen and catch basin, and confirmed, in writing, that they meet the registration requirements.