

## Decision Summary RA24012

This document summarizes my reasons for issuing Approval RA24012 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24012. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On March 18, 2024, Both's Custom Works Ltd. (Both's) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on March 21, 2024. On April 17, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing the permitted number of chicken broilers from 140,000 to 200,000
- Constructing two chicken broiler barns – 128 m x 20.11 m (each)

The application also notified the NRCB of the proposed construction of a service room, that connects the barns. 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 is part of the CFO but does not need to be permitted under the Act.

#### a. Location

The existing CFO is located at NE 13-44-27 W4M in Ponoka County, roughly 15 km northwest of Ponoka, AB. The terrain is hummocky. The general slope of the area of the proposed barns is to the south and southeast. The land behind (to the west) the existing and proposed barns slopes to the north and west. The closest waterbody is a slough located approximately 186 m to the west of previously permitted and constructed barns 1 and 2, and approximately 200 m west of the proposed new barns.

#### b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA19032. That permit allowed the construction and operation of a 140,000 chicken broiler CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval RA24012.

### 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 “notification distance”.)

None of the CFO facilities are located within 100 m of a bank of a river, stream, or canal.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the Ponoka News newspaper in circulation in the community affected by the application on April 17, 2024, and
- sending 7 notification letters to people identified by Ponoka County as owning or residing on land within the notification distance.

The full application was also made available for viewing during regular business hours at the NRCB’s office in Red Deer.

### **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 Environment and Protected Areas (EPA) and Alberta Transportation and Economic Corridors (TEC).

I also sent a copy of the application to Apex Utilities Inc. as a utility right of way holder.

Ms. Laura Partridge, a senior water administration officer, responded on behalf of EPA. Ms. Partridge stated that the applicant requires additional water licensing, to support the additional birds. A copy of this response was sent to Both’s. The applicant is reminded that they are required to obtain and hold sufficient water licensing for their operation.

No other responses were received.

### **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 existing CFO is located.

## **5. Municipal Development Plan (MDP) consistency**

I have determined that the proposed expansion is consistent with the land use provisions of Ponoka 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 and in Appendix C, the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around water well setbacks is 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." Ponoka County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Robin Dubitz, a development officer with Ponoka County, provided a written response on behalf of Ponoka County. Ms. Dubitz stated that the application is consistent with Ponoka County's land use provisions of the municipal development plan. Ms. Dubitz also highlighted that the site is located in the Maskwa Creek watershed and emphasized the importance of watershed protection. The application's consistency with the land use provisions of Ponoka County's municipal development plan 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 may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, and surface water systems an approval officer may require groundwater monitoring for the facility. An assessment was made,

and groundwater monitoring is not required for this facility.

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](http://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 9.17.

In this case, the risks posed by Both's existing CFO facilities were assessed in 2019. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2019 risk assessment, a new water well was drilled. For this reason, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that the existing facilities still pose a low potential risk to surface water and ground water.

## 9. Exemptions

I determined that the proposed chicken broiler barns are located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 m water well setback is warranted due to the well's age and construction, as well as the fact that any manure produced will be inside of a barn, with a concrete liner. This adds to the protection of the water well.

## 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. Dubitz also listed the setbacks required by Ponoka County's land use bylaw (LUB) and noted that 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 any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* in respect of the subject of this application. Furthermore, the application meets AOPA's technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<https://www.eab.gov.ab.ca/status.htm>, accessed May 24, 2024).

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 Operational Policy 2016-7: Approvals, part 9.10.9, 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.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, 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 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 9.10.9). In my view, this presumption is not rebutted.

## **11. Terms and conditions**

Approval RA24012 specifies the cumulative permitted livestock capacity as 200,000 chicken broilers and permits the construction of the two chicken broiler barns with attached service rooms.

Approval RA24012 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 RA24012 includes conditions that generally address construction deadlines, document submissions and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated Approval RA19032 with Approval RA24012 (see NRCB Operational Policy 2016-7: Approvals, part 11.5). 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 C discusses which conditions from the historical permits are or are not carried forward into the new approval.

## **12. Conclusion**

Approval RA24012 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24012.

Both's NRCB-issued Approval RA19032 is therefore superseded, and its content consolidated into this Approval RA24012, unless Approval RA24012 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA19032 will remain in effect.

June 10, 2024

(Original signed)

Lynn Stone  
Approval Officer

### **Appendices:**

- A. Consistency with the municipal development plan
- B. Exemptions from water well setbacks
- C. Explanation of conditions in Approval RA24012

## **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.

“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 9.2.7.)

Both’s CFO is located in Ponoka County and is therefore subject to that county’s MDP. Ponoka County adopted the latest revision to this plan in September 2023 under By-Law 6-08-MDP.

Section 2 of the MDP contains eight numbered policies that relate to applications for CFOs under AOPA. These eight policies are discussed below. (Three other MDP policies relate to CFOs below the AOPA permit threshold or to proposed residential developments near existing CFOs.)

Under policy 2.1, the county “encourages” the development of CFOs to add value to crop production and provide “more employment and income per acre of land.” However, policy 2.1 also states that the environment and neighbours’ rights “must be protected.” This policy likely isn’t a “land use provision,” but it provides a general context for interpreting and applying the other policies in section 2.

Policy 2.2 states the county’s “belie[f] that very large CFOs are inappropriate in this part of Alberta, and requests the NRCB not to allow them here.” This policy defines “very large” as “more than ten times” the threshold for approvals in the Part 2 Matters Regulation under AOPA. In this case, a “very large” chicken broiler CFO would have over 600,000 birds. This policy likely isn’t a “land use provision”. Nevertheless, Both’s proposed expansion is for only 200,000 chicken broilers, so the proposed expansion is consistent with this policy.

Policy 2.3 has two parts. The first part lists three setbacks and two exclusion zones for new CFOs. Both’s CFO is an existing CFO; therefore these policies do not apply to this application.

The second part of policy 2.3 calls for “very strict conditions on manure handling and storage” in the Chain Lakes and Maskwa Creek watersheds. This policy likely isn’t a “land use provision” because it calls for discretionary judgements about what conditions are “very strict.”

In addition, this policy may well be precluded from my consideration under section 20(1.1) of AOPA, which precludes an approval officer from considering MDP provisions “respecting tests or conditions related to the construction of or the site for a confined feeding operation or manure storage facility” and regarding the land application of manure. Regardless, the existing CFO

meets AOPA's technical requirements for manure handling and storage and those requirements are arguably "very strict." Therefore, the existing CFO would be consistent with this section if the section applied.

Policy 2.4 calls for the NRCB to "set strict rules for the timely incorporation of manure within a mile of any urban municipality or rural residence." This is a "test or condition" respecting application of manure under section 20(1.1) of AOPA, so I am precluded from considering this policy. At any rate, Both's CFO will be subject to the Standards and Administration Regulation under AOPA. This regulation provides rules for the land application of manure, including timely incorporation in specified circumstances. These rules are arguably "strict," which is consistent with this MDP policy.

Policy 2.5 precludes the siting of CFOs within two miles of "any lake" unless the "regulators" are "convinced" that the CFO's manure management system is "fail-safe", and the CFO poses "no reasonable risk of contamination of the lake." There are no lakes within 2 miles of the existing CFO, and therefore, the existing CFO would be consistent with this section if the section applied.

Policy 2.6 precludes new or expanded CFOs where there is "any risk that runoff will contaminate domestic water supplies." Policy 2.6 likely is not a "land use provision" because it calls for discretionary judgements about acceptable risks. (On its face, "any risk" is a low-risk threshold, but the threshold is presumably more than "minor" or "insignificant."). At any rate, the existing CFO meets AOPA's operational and construction requirements, which are designed to minimize the risks to surface and groundwater.

Policy 2.8 states that "where a *new* CFO is proposed, the MDS should be contained entirely within land owned by the operator of the CFO..." Both's application is for an existing CFO, therefore this section does not apply. Furthermore, this is not a land use provision, but rather a "test or condition" that relates to minimum distance separation (MDS), so I am precluded from considering this policy.

Last, 2.11 states that the county "may develop policies to reduce the nuisance caused by the spreading of manure near residences," including ones that require the immediate incorporation of manure and limits on the timing or rate of manure application. I am unaware of any manure application policies that the county has developed under policy 2.11. At any rate, section 20(1.1) of AOPA precludes me from considering policy 2.11 because it relates to manure application.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of Ponoka County's MDP. As noted above, Ponoka County's response did not raise any concerns with this application, which supports my conclusion.



## APPENDIX B: Exemption from water well setbacks

One of the proposed chicken broiler barns (the northernmost new barn proposed in this application) is to be located less than 100 m from a water well or water wells. (I have confirmed that one water well is located approximately 30 m from it during a site visit.) 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), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF are presumed to be low if the applicant's proposed MSF 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 indoor nature of the MSF

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 9.10.2.

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 30 m north of the closest proposed chicken broiler barn is likely EPA water well ID #2089220. This well is reported to have been installed in 2020 and has a perforated or screened zone from 68.58 m to 79.25 m below ground level across stratigraphy. The well has an above ground casing. This well is used for non-domestic purposes. I note that in my conversations with the applicant, the water well is only used presently for the existing broiler barns. The well's log identifies protective layer or layers from ground surface to 5.18 m below ground level. The well has a bentonite seal from ground surface to 67.06 m below ground level (across the shale and sandstone layers). The well appeared to be in good condition at the time of my site inspection and its casing was protected by adjacent buildings. The well appears to be at the same approximate elevation as the proposed chicken broiler barn.

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.<sup>1</sup>

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<sup>1</sup> A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at [www.nrcb.ca](http://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 RA24012.

Under the regulation, an approval officer may require a groundwater monitoring program of the water well in question. In my view, given meeting AOPA technical requirements, low risk assessment, solid manure characteristics of broiler operations, as well as the fact that any manure produced will be inside of a barn, with a concrete liner, monitoring is not required.

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

## **APPENDIX C: Explanation of conditions in Approval RA24012**

### **a. Construction Deadline**

Both's proposes to complete construction of the proposed new chicken broiler barns and attached service room by December 10, 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 10, 2025 is included as a condition in Approval RA24012.

### **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 RA24012 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken broiler barns 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. Both's to provide documentation, from a qualified third party, to confirm the specifications of the concrete used to construct the manure storage and collection portions of the chicken broiler barns.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before birds or manure are placed in the newly constructed facilities. Approval RA24012 includes a condition stating that Both's shall not place birds or manure in the manure storage or collection portions of the new chicken broiler barns until NRCB personnel have inspected the chicken broiler barns and confirmed in writing that they meet the approval requirements.

The construction conditions in RA19032 have been met. No additional conditions are required to be carried over.