



Decision Summary RA24006

This document summarizes my reasons for issuing Approval RA24006 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24006. 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 February 9, 2024, Hutterian Brethren of Silver Creek operating as Silver Creek Farming Co. Ltd. (Silver Creek Colony) submitted a Part 1 application to the NRCB to expand an existing multi-species CFO.

The Part 2 application was submitted on March 19, 2024. On May 16, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 12,000 to 35,000 chicken layers
- Decreasing livestock numbers from 20,000 to zero turkey toms
- Constructing a new layer barn – 121.9 m x 30.5 m (400 ft. x 100 ft.)

In the last couple of years, Silver Creek Colony has modified their existing poultry operation by increasing their chicken broilers from 80,000 to 210,000 birds and decreasing their turkey toms from 20,000 to zero. Additionally, Silver Creek Colony converted their three existing turkey barns into broiler barns, by placing concrete on the approved clay floors. These changes do not require an application as Silver Creek Colony changed livestock type, within the same category, without increasing their annual manure production or odour production (see NRCB Operational Policy 2016-7: Approvals, part 5.8).

a. Location

The existing CFO is located at N½ 22-44-22 W4M in the County of Wetaskiwin, roughly 23 km east of Maskwacis, Alberta, adjacent to secondary highway 611. The topography of the site is level to undulating with a general slope to the northwest and northeast.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA11009. That permit allowed the construction and operation of a multi-species CFO with 80,000 chicken broilers, 20,000 turkey toms and 12,000 chicken layers. The CFO's existing permitted facilities are listed in the appendix to Approval RA24006.

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 1 (one) 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 County of Wetaskiwin, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in the Pipestone Flyer newspaper in circulation in the community affected by the application on May 16, 2024, and
- sending 8 notification letters to people identified by the County of Wetaskiwin as owning or residing on land within the notification distance.

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

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 & Economic Corridors (TEC).

I also sent a copy of the application to Battle River Gas Co-op Ltd., Battle River Power Coop, and Lynx Energy ULC as they are right of way holders.

I only received a response from EPA.

Ms. Laura Partridge, a senior water administration officer with EPA, indicated that additional licensing is required under the *Water Act*, and an application has been received and is being processed.

I did not receive responses from any of the other 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 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 the County of Wetaskiwin'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 nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of that residence have signed a written waiver of the MDS requirement to their residence
- 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 of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10 and in Appendix B, the application meets all relevant AOPA requirements.

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

Ms. Amber Tripp, the acting development officer with the County of Wetaskiwin, provided a written response on behalf of the County. Ms. Tripp stated that the application is consistent with the County of Wetaskiwin's land use provisions of the municipal development plan (MDP). The application's consistency with the land use provisions of the County of Wetaskiwin's MDP is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received a response from one individual.

The NRCB received a submission from Mr. Jeremy Pluim after the submission deadline in the notice. I considered whether there were exceptional circumstances that warranted considering the submission, nonetheless. In this case, I could not identify exceptional circumstances for the lateness of the submission, so I did not consider and address the submission in the approval decision.

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Janice and Brent Simmons. See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.

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. 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, 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, 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 9.17.

In this case, the risks posed by Silver Creek Colony's existing CFO facilities were assessed in 2011. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2011 risk assessment, the NRCB has updated the ERST. For these reasons, I reassessed the risks posed by the CFO's existing facilities.

For the sake of efficiency, I first assessed the CFO's existing broiler barn 5 using the ERST. This barn appears to be the CFO's highest risk facility because it is located the closest to a water well. The assessment found that this facility poses a low potential risk to groundwater and surface water. Because this is the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

My reassessment found that the potential risks to surface water and groundwater of the existing CFO facilities were low.

9. 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. Tripp also indicated that the application meets the setbacks required by the County of Wetaskiwin's land use bylaw (LUB).

I have considered the effects the proposed 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. I received a response from EPA indicating that Silver Creek Colony has applied for a water licence. Furthermore, the application meets AOPA's 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 July 5, 2024).

Finally, I considered the effects of the proposed 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 the County of Wetaskiwin, and my own observations from site visits.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, 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 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). I considered the County's land zoning, and in my view, this presumption is not rebutted, and I note that the County of Wetaskiwin's response states that the application is consistent with their MDP.

10. Terms and conditions

Approval RA24006 specifies the cumulative permitted livestock capacity as 210,000 chicken broilers and 35,000 chicken layers and permits the construction of the new layer barn.

Approval RA24006 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 RA24006 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 B.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval RA24006: Approval RA11009 (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 B discusses which conditions from the historical permit are or are not carried forward into the new approval.

11. Conclusion

Approval RA24006 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24006.

Approval RA11009 is therefore superseded, and its content consolidated into this Approval RA24006, unless Approval RA24006 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA11009 will remain in effect.

July 15, 2024

(Original signed)

Francisco Echegaray, P. Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA24006

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.

“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.)

Silver Creek Colony’s CFO is 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 11.6.1 supports CFOs at “appropriate locations.”

Objective 11.6.2 references the requirements of AOPA in determining Minimum Distance Separation for CFOs.

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. Silver Creek Colony’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 objective 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.” As noted in section 8 of the decision summary, the CFO’s proposed facility poses a low potential risk to both groundwater and surface water, which arguably may “result in improved manure management and/or mitigation of negative impacts on surrounding land uses and the environment”. However, this policy likely isn’t a “land use provision” because it calls for discretionary judgements about what applications the County will support.

In addition, this policy may well be precluded from my consideration under section 20(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.

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”.

AOPA determines which above-threshold operations have “authorization” to operate. AOPA sets out the conditions for a CFO operating and obtaining a permit, including a few circumstances where the NRCB can cancel a permit. An MDP policy that purports to override AOPA’s regulation on that point cannot be a valid land use provision; and therefore, I am precluded from considering this provision.

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 CFOs. The permitting of residences is within the municipality’s jurisdiction.

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. This is likely not a land use provision and the NRCB Board has guided approval officers to disregard requests for environmental impact assessments for being a “test or condition” (RFR 2008-02 Hutterian Brethren of Silver Springs, at page 4). Nevertheless, the County has made no such request for this application. Additionally, the proposed expansion meets AOPA’s environmental protection standards.

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 the County of Wetaskiwin’s MDP. The County’s response to the application confirms this conclusion.

APPENDIX B: Explanation of conditions in Approval RA24006

Approval RA24006 includes several conditions, discussed below, and carries forward a number of conditions from Approval RA11009. Construction conditions from historical Approval RA11009 that have been met are identified in the appendix to Approval RA24006.

1. New conditions in Approval RA24006

a. Construction Deadline

Silver Creek Colony proposes to complete construction of the proposed new layer barn by August 27, 2027. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2027, is included as a condition in Approval RA24006.

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 RA24006 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the new layer 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. Silver Creek Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the new chicken layer barn.

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 livestock or manure are placed in the newly constructed facilities. Approval RA24006 includes a condition stating that Silver Creek Colony shall not place livestock or manure in the manure storage or collection portions of the new layer barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the approval requirements.