

Decision Summary RA24036

This document summarizes my reasons for issuing Authorization RA24036 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24036. 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 August 15, 2024, Scott Olson on behalf of Garry Olson Farms Ltd. (Olson Farms) submitted a Part 1 application to the NRCB to construct a manure collection area (MCA) at an existing poultry CFO.

The Part 2 application was submitted on August 16, 2024. On August 27, 2024, I deemed the application complete.

The proposed construction involves:

- Constructing a new turkey barn – 94.1 m x 18.3 m (300 ft. x 60 ft.)

The applicant is also proposing to convert 3 of the old barns into storage.

a. Location

The proposed MCA is located at SW 12-44-23 W4M in the County of Wetaskiwin, roughly 16 kilometers west from the Hamlet of Ferintosh. The terrain is relatively flat with a gentle slope to the south. The closest surface water body is a slough approximately 250 metres south of the proposed barn.

b. Existing permits

The CFO is permitted under Deemed (Grandfathered) Permit PR24002.

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 1 mile (1,609 m) from the CFO

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.

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

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

I did not receive any responses to the application.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction 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 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 liners 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.

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 facility is located within its boundaries.

Ms. Amber Tripp, acting development officer with the County of Wetaskiwin, provided a written response on behalf of the County of Wetaskiwin. Ms. Tripp 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.

Ms. Tripp also listed the setbacks required by the County of Wetaskiwin's land use bylaw (LUB) and noted that the application meets these setbacks.

7. Environmental risk of facilities

New MCA 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, porous subsurface materials, or surface water systems, an approval officer may require groundwater monitoring or an exemption. In this case, a determination was made, and groundwater monitoring is not required because the proposed facility is completely enclosed, with a concrete liner that meets AOPA requirements.

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 9.17). The tool provides for a numeric scoring of risks, which can fall within 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.)

For the sake of efficiency, I first assessed the CFO's existing north barn using the ERST. This appears to be the CFO's highest risk facility because it is a pre-existing barn that will continue to be used as a CFO facility and is the closest facility to 2 water wells. The assessment found that this facility poses a low potential risk to groundwater and surface water. Because this is the CFO's highest risk facility, 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 the other facilities, using the ERST, is not necessary.

8. Terms and conditions

Authorization RA24036 permits the construction of the new turkey barn.

Authorization RA24036 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.

In addition to the terms described above, Authorization RA24036 includes conditions that generally address construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA24036 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24036.

Authorization RA24036 must be read in conjunction with Olson Farms' Deemed (Grandfathered) Permit PR24002 which remains in effect.

January 16, 2025

(Original signed)
Sarah Neff
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA24036

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.

“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 9.2.7.)

Olson Farms’ 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 “should” 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. Olson Farms’ 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 7 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.

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. Regardless, Olson Farms’ CFO is currently in operation.

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 construction 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 these reasons, I conclude that the application is consistent with the land use provisions of the County of Wetaskiwin’s MDP that I may consider.

APPENDIX B: Explanation of conditions in Authorization RA24036

Authorization RA24036 includes several conditions, discussed below:

a. Construction Deadline

Olson Farms proposes to complete construction of the proposed new turkey barn by January 1, 2025. To account for unforeseen delays, it is my opinion that a longer timeframe is appropriate for the proposed construction. Therefore, the deadline of November 30, 2027, is included as a condition in Authorization RA24036.

b. Facility decommissioning

As noted in part 1 above, Olson Farms proposes to convert the 3 existing south barns to storage. A condition has been included in Authorization RA24036 requiring the 3 existing south barns to be decommissioned in accordance with Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas" and must be decommissioned within 1 year of the birds being removed from the barns.

c. Post-construction inspection and review

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. Authorization RA24036 includes a condition stating that Olson Farms shall not place livestock or manure in the manure storage or collection portions of the new turkey barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.