

Decision Summary RA10017B

This document summarizes my reasons for issuing Approval RA10017B under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Decision Summaries RA10017 and RA10017A, as well as in Completeness Review RA10017, and Technical Documents RA10017A and RA10017B. Those document and the full applications are available from the decisions search engine on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca. 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.

1. Background

Approval RA10017 was issued April 28, 2011 to John and Jacque Campmans (the Campmans). That Approval allows the Campmans to construct and operate a chicken broiler “confined feeding operation” (CFO) with 80,000 broiler chickens housed in two broiler barns (134 metres x 19.5 metres, each). Approval RA10017A was issued on January 25, 2017 allowing an extension of the construction deadline until November 30, 2019. Approval RA10017A, also allowed the barns to be constructed 2.5 metres wider, in order to meet new industry standards for the density of broilers in barns. The two broiler barns have not yet been built.

The CFO is permitted to be located at NW 21-33-1 W5M in Mountain View County, roughly five km north of Olds, Alberta.

On January 29, 2019, the Campmans submitted an application to amend Approval RA10017A, in order to relocate the construction site of the broiler barns 35 metres west and 35 metres north of the original permitted location. There is no proposed increase in chicken numbers or manure production with this amendment application.

Additionally, this approval will correct a clerical error in the dimensions of the poultry barns amended under the previously issued Approval RA10017A. Under the previous application (RA10017A), the operator requested to amend the width of the two barns from 19.5 metres to 22 metres, but keeping the same length of the barns at 134 metres. Decision summary RA10017A reflected these changes; however, the permit erroneously permitted the construction of each poultry barn at a dimension of 132 metres x 22 metres, instead of 134 metres x 22 metres.

On February 19, 2019 I deemed the application complete.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct the applicant to notify) all parties that are “affected” by an application to amend an approval. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is 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 individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Mountain View County is an affected party (and therefore also a directly affected party) because the proposed CFO is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Mountain View Gazette on February 19, 2019 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Mountain View County, Alberta Health Services (AHS), Alberta Environment and Parks (EP), and TransCanada Corporation. Eighteen courtesy letters were sent to people identified by Mountain View County as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

I received responses from the County, AHS and AEP. TransCanada Corporation submitted a response; however, the NRCB received it after the submission deadline included in the notice.

Ms. Jessica Ross, the manager of development and permitting services with Mountain View County, provided a written response on behalf of the county. As noted in section 2, Mountain View County is a directly affected party.

Ms. Ross stated that the application for amendment was brought to, and accepted by, the Municipal Planning Commission “for information”. Her response did not comment on whether the application is consistent with the county’s municipal development plan (MDP) or whether the county supported the application. The application’s consistency with the county’s MDP is addressed in Appendix A, attached.

The NRCB received a response from Quentin Schatz, an environmental health officer on behalf of AHS, indicating that the agency has no objections to this application.

Laura Partridge, a water administrator technologist at AEP stated that the Campmans do not require additional water licensing at this time.

4. Responses from other directly affected parties

The NRCB received two responses from two individuals.

Both individuals who submitted responses own or reside on land within the 0.5 mile radius for

affected persons. Because of their location within this radius, they are presumed to be directly affected by the application.

The directly affected parties raised concerns regarding:

- Quality of life
- Land for manure application
- Groundwater supply and usage
- Surface water
- Property values
- Shelter belt
- Increase in chicken numbers
- CFO built in landlocked land
- Existing cattle transfer station and chemical manufacturing/storage

These concerns are addressed in Appendix B.

5. Environmental risk screening of existing and proposed facilities

When reviewing applications for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool 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/Guides 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 done 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 the Campmans' permitted CFO facilities were assessed in 2017. According to that assessment, the facilities posed a low risk to surface water and groundwater.

The Campmans have now applied to relocate the barns, so I re-assessed the risks posed by these two facilities. My re-assessment found that the relocated barns, once constructed and operated, will still pose a low risk to surface water and groundwater.

6. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.¹

In addition, the proposed CFO modification is consistent with the land use provisions of Mountain View County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed CFO modification:

- Meets the required AOPA setbacks from all nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](http://www.nrcb.ca/Guides), available on the NRCB website at www.nrcb.ca/Guides.

MDS). The owner of that residence has 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

In addition, I assessed the effects of the proposed CFO modification on the environment. Consistent with NRCB policy, I determined that these effects are acceptable because the application meets all of AOPA's technical requirements. I have carefully considered the concerns raised by the directly affected parties, and in my view, those concerns have been adequately addressed by the application and conditions. I also determined that the application's effects on the economy and community are acceptable, and that the proposed CFO modification is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

7. Terms and conditions

Rather than issuing a separate "amendment" to Approval RA10017A, I am issuing a new approval (RA10017B) with the required amendment. Approval RA10017B therefore contains all of the terms and conditions in Approval RA10017A, except for the modification in regards to the location of the barns, and correcting the clerical error of the dimensions of the barns.

8. Conclusion

Approval RA10017B is issued for the reasons provided above, in the attached appendices, and in Decision Summaries RA10017 and RA10017A, as well as in Completeness Review RA10017, and Technical Documents RA10017A and RA10017B.

Approval RA10017A is therefore cancelled, unless Approval RA10017B is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA10017A will remain in effect.

April 10, 2019

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

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by referral agencies and directly affected parties

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an amendment of an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

The Campmans’ CFO is permitted to be constructed in Mountain View County and is therefore subject to that county’s MDP. Mountain View County adopted the latest revision to this plan on August 22, 2018, under Bylaw #09/12. The county has amended this plan since the NRCB issued Approval RA10017A in 2017. Therefore, it is appropriate to re-consider whether the Campmans’ current proposal is consistent with the current version of the county’s MDP.

Section 2.0 of the MDP provides a “growth management strategy” that is reflected in the land use map in Figure 3 of the MDP. The discussion in this section emphasizes that this strategy is “conceptual in nature” for purposes of determining “where certain types of development should and should not occur” within the county. However, this section explains that the land use designations on this map are just a “baseline”; development applications must still be reviewed on a “case by case, site-specific basis.”

Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” is not a “land use provision” and therefore is not relevant to my MDP consistency determination.

At any rate, the Campmans’ permitted CFO is within the “Agricultural Preservation Area” marked on Figure 3. Section 2 of the MDP explains that the “majority” of this area is subject to the “applicable Land Use Policies outlined in section 3.0 of the MDP....” (Figure 3 identifies a sub-part of this area as a “concentrated confined feeding operation” area. The Campmans’ CFO is not in this concentrated CFO area. However, the MDP does not require that all CFOs be located in this concentrated CFO area.)

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified residential growth centre or urban centre shown in Figure 3. The Campmans’ application is not for a new CFO because the CFO has already been permitted under Approval RA10017A, even though it has not yet been constructed. At any rate, the site of the permitted CFO is not within this 1.6 km setback.

Sub-section 3.3.17 states that applications for new or expanding CFOs “shall meet all Provincial standards.” This sub-section likely isn’t a “land use provision” and therefore is not relevant to my MDP consistency determination. In addition, the proposed relocation of the barns is not an “expansion” under AOPA. Regardless, the Campmans’ application meets AOPA requirements, as discussed in part 6 above.

No other policies in section 3.0 preclude the Campmans' application. Therefore, their CFO with the proposed barn relocation is an acceptable land use within the Agricultural Preservation Area of the MDP. Thus, the CFO is consistent with the MDP.

For these reasons, I conclude that the application is not inconsistent with the land use provisions of Mountain View County's MDP.

In my view, under sections 3.3.5, 3.3.14, 13.3.1 and 13.3.2, amongst others, Mountain View County's MDP provides a clear intent to adopt provisions from the land use bylaw # 16/18 (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered Mountain View County's LUB. Under that bylaw, the subject land is currently zoned as Agriculture. CFOs are not listed as permitted or discretionary use in this district. Section 9.5 of the LUB states that CFOs are regulated by the NRCB under provincial regulations, and are therefore exempt from municipal control under the land use bylaw.

Notwithstanding this statement, section 9.5.1 of the LUB lists several requirements for siting CFOs. Notably, sub-section 9.5.1 (a) states that CFO developments "shall be consistent with the land use provisions of the MDP." This CFO is consistent with Mountain View County's MDP.

Section 9.5.1 (b)(i) of the LUB relates to required CFO (new and expanding) setbacks (0.5 miles) from multi-parcel residential development, any urban centre, school, or hospital. This CFO is not located near any of these and meets this setback requirement. Section 9.5.1 (b)(ii) relates to MDS requirements in AOPA. As noted in Part 6 of Decision Summary RA10017B, this CFO meets MDS requirements with a waiver.

APPENDIX B: Concerns raised by directly affected parties

The following individuals own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

Bert Curtiss

Pt of NW 21-33-1 W5M

Michael T. Arnold

Pt of NW 21-33-1 W5M

Therefore, under NRCB policy, these individuals are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.

The directly affected parties raised the following concerns:

- Quality of life (increase in odours and noise)
- Land for manure application
- Groundwater supply and usage
- Surface water (runoff from the barns)
- Property values
- Shelter belt (trees and existing barn)
- Increase in chicken numbers
- CFO built in landlocked land (not adjacent land to future expansion)
- Existing cattle transfer station and chemical manufacturing/storage

The issues are summarized and listed below, together with my analysis and conclusions.

1. **Increase in odours and noise** – One of the individuals expressed concern about a potential increase in odours and noise (the impact on their quality of life) due to the barns being built closer to them.

Approval officer’s conclusion:

AOPA’s minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from confined feeding operations (CFOs). With the exception of one residence that has signed an MDS waiver, the Campmans’ CFO will be situated well outside of the required MDS from other existing residences—the closest neighbouring residence to the CFO (other than the person who has signed a waiver) is more than 400 m away from the Campmans’ CFO. This is farther away than the required 230 m MDS to that residence.

This application for amendment does not include an increase in animal numbers.

Notwithstanding the CFO’s distances to its nearest neighbours, it is reasonable to expect that there will be some odour emissions and other potential nuisances when the CFO is operational.

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 or not the operation is complying with AOPA, they may contact the NRCB through its toll free

response line (1-866-383-6722 or 310-0000). An NRCB inspector will follow up on the concern.

2. **Land for manure application**– Both respondents raised concerns regarding the land for manure spreading (whether the applicant has enough land base for manure spreading), and what would happen if the operation changes owners, or the neighbours do not want to receive manure anymore.

Approval officer's conclusion:

Manure application is regulated under section 24 of the Standards and Administration Regulation.

Under section 24(2)(a) of the regulation, a permit applicant must satisfy an approval officer that they have access to sufficient land base to apply their manure for the first year following the granting of the application. The Campmans had satisfied this requirement at the time of the application for RA10017; however, as a response to the statement of concerns, they have provided updated information regarding the availability of these lands.

Lands not owned by the Campmans are covered by signed manure spreading agreements. The applicant demonstrated at the time of the application that these manure spreading lands are available. These manure spreading lands may change over time and the operator (or current operator) must keep records to show where their manure has been spread.

For this proposal, 162 hectares (401 acres) of land in the black soil zone are required for manure spreading. The Campmans have secured 242 hectares (599 acres) of land for manure spreading. After the NRCB adjusted this area due to setbacks to residences and bodies of water, there were still 232 hectares (574 acres) available for manure spreading. Therefore, the application meets the land base requirement in section 24 of the regulation.

Complaints about CFO-related issues can be reported to the NRCB's 24 hour response line (1-866-383-6722) and will be followed up on by an NRCB inspector within 24 hours. Neighbours can also call any NRCB office during regular business hours if they have questions about permit conditions or ongoing AOPA operational requirements.

3. **Groundwater supply** - the potential impact on groundwater quantity was a significant concern for one of the parties. The individual expressed concern that there is a cattle gathering station and a chemical manufacturing/storage on site that also uses water, and there is no calculation of their consumption.

Approval officer's conclusions

This application does not include an increase in chicken numbers, and therefore, there is not an increase in water usage. Alberta Environment and Parks (AEP) is responsible for licencing the use of groundwater and surface water in the province (which includes the cattle gathering station and the chemical manufacturing/storage). The water licencing 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.

A water administrator technologist at AEP stated that since there is not increase in chicken numbers, the Campmans do not require additional water licensing at this time.

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

4. **Surface water (runoff from the barns)** – Both respondents have concerns related to the impact of the CFO facilities into the quality of the surface water, and runoff from the facilities being closer to a dug out on the northwest corner of the quarter section, used for watering livestock and waterfowl habitat. The respondents stated that the drainage included in the application is inaccurate. The respondents encouraged a visit from an NRCB staff to see the runoff occurring at the time.

Approval officer's conclusions

AOPA and its regulations contain several requirements to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating surface water. Two of these requirements are the setbacks from springs and common bodies of water set out in Section 7(1)(a), (c), 10, and 24(9) of the Standards and Administration Regulation, which prohibits the construction of a manure storage facility or manure collection area less than 100 m from a spring and 30 m from a common body of water.

During my site visits, I have not noted any springs or common bodies of water within 100 m and 30 m, respectively, of the proposed CFO. I also verified these distances by reviewing available air photos. The proposed CFO meets all of these requirements.

Additionally, I consulted a topographic map to determine the general slope of the land. I found that the terrain is nearly level with a general slope to the west and northwest, towards a dugout located on the property of the applicant's neighbour. The location of this dugout is more than 300 metres from the location of the barns.

As suggested by the respondents, I visited the site of the CFO on March 20, and April 2, 2019. I drove around the area and took some photos. At the time of my visits, I did not notice any active runoff from the field, where the barn will be located, towards the neighbour's dugout.

As noted in section 5 of the decision summary, I assessed the CFO's proposed facilities, using the NRCB's ERST, in order to determine the level of risk they pose to surface water. The CFO's proposed facilities pose a low risk to surface water.

As noted in the decision summary above, and further documented in Technical Document RA10017B, the proposed CFO meets all AOPA technical requirements. Because the CFO meets or exceeds these requirements, I concluded that the level of risk to surface water posed by the proposed CFO facilities is acceptable, and therefore a runoff control system is not necessary, at this time, for this proposed CFO.

Sections 24(9) (a), (b) and (c), and (10)(a), (b) and (c) of the Standards and Administration Regulation, define the setbacks for manure application from a common body of water and water wells, as well as setbacks based on the slope of the terrain to common bodies of water. The operator is responsible to follow these requirements.

Incidences of non-compliance can be reported to the NRCB's 24 hour a day response line 1-866-383-6722 or 310-0000 (toll free line). NRCB inspectors investigate all complaints.

5. **Property values** – One of the parties indicated that the CFO will devalue their property (residences).

Approval officer's conclusions

In several review decisions, the NRCB's board members have consistently stated that concerns regarding effects on land or 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.")

At any rate, as explained in Appendix A above, the Campmans' application was consistent at the time of the initial application, and continues to do so, with the land use provisions of the county's MDP. This suggests that the CFO is presumed to be an appropriate land use in the area. This, in turn, suggests that the effects on property values are acceptable.

- 6. Shelter belt (trees and existing barn)** – One of the respondent questioned why a shelter belt of trees that was supposed to be planted at the time of the original application (in 2010,) has not been planted. He also indicated that a barn, located on his property, served as a barrier for noise, odours and wind; unfortunately it has burned down, and they do not have that shelter anymore.

Approval officer's conclusion:

Approval RA10017 does not include a condition to plant a shelter belt of trees between the chicken broiler CFO and the neighbours.

As indicated in subsection 1 of this appendix, AOPA's MDS is a means for mitigating odour and other nuisance impacts from CFOs. The Campmans' CFO meets the MDS requirement.

- 7. Increase in chicken numbers** – One of the parties opposes the application to increase 16,000 chicken

Approval officer's conclusion:

The application is only to relocate the two previously permitted chicken broiler barns. Despite a reference to an increase in the MDS waiver form, the application does not include increase of chicken numbers or manure production, from the original permitted capacity of 80,000 chicken broilers, included under Approval RA10017.

- 8. CFO built in landlocked land** – One of the respondents was concerned that there is not adjacent land available to the operator to purchase for future expansions.

Approval officer's conclusions

AOPA does not require that the applicant own adjacent land. If at some point in the future the CFO wants to expand, they will be required to meet the requirements in place at that time.

- 9. Existing cattle transfer station and chemical manufacturing/storage** – both respondents were concerned about the water usage and effect into the environment of two

existing commercial operations on site. They were concerned that these facilities have not been considered in the application.

Approval officer's conclusions

As explained in decision summary RA10017, on this quarter section there is a facility that looks like a feedlot. It holds cattle in multiple pens (with windbreaks) and has cattle handling facilities. This facility has been permitted by Alberta Agriculture, Inspection and Investigation Branch as a livestock assembly station. Under Approval RA10017, the livestock assembly station was determined not to be a confined feeding operation (CFO).

In a response to the statement of concerns, Mr. Campmans, indicated that their cattle assembly yard has not been used for at least seven years, and they have no plans to start the cattle business at this time.

If in the future the operator wishes to convert this livestock assembly station to a feedlot (CFO), they would be required to obtain an AOPA permit. The livestock assembly station slopes to the south and there are existing ditches in place to provide runoff control from this livestock assembly station.

Also on this quarter section, there is a dairy supply business (chemical manufacturing/storage, as referred by the respondent). This commercial operation is not a CFO and does not require a permit under AOPA.