

Decision Summary LA20021

This document summarizes my reasons for issuing Approval LA20021 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20021. 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.

1. Background

On May 26, 2020, Prairie Dust Farms Ltd. (Prairie Dust) submitted a Part 1 application to the NRCB to construct a new 84,000 head poultry broiler CFO with two broiler barns (120 m x 18 m each). The Part 2 application was submitted on May 27, 2020. On June 10, 2020, I deemed the application complete.

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The proposed CFO is located at NW 22-10-14 W4M in the Municipal District (MD) of Taber, roughly 5 km northeast of the hamlet of Purple Springs. The terrain is flat with the nearest water body being a Taber Irrigation District (TID) canal which is located approximately 1 km southwest of the proposed CFO.

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 approval application. 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 ½ mile. (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. The MD of Taber is an affected party (and therefore also a directly affected party) because the proposed facility 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 Taber Times on June 10, 2020 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 the MD of Taber, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Taber Irrigation District (TID). Five courtesy letters were sent to people identified by the MD of Taber as owning or residing on land within the affected party radius.

3. Responses from the municipality, referral agencies, and other individuals

I received responses from the MD of Taber, AEP, Alberta Transportation, and the TID. No response was received from AHS or from other parties.

Mr. Kirk Hughes, director of planning and economic development, provided a written response on behalf of the MD of Taber. As noted in section 2, the MD of Taber is a directly affected party.

Mr. Hughes stated that the application is consistent with the MD of Taber’s municipal development plan and that there are no other planning type documents which would apply to the subject area. The application’s consistency with the MD of Taber’s municipal development plan is addressed in Appendix A, attached.

Mr. Hughes also stated that the application appears to meet the setbacks as outlined in the MD of Taber’s land use bylaw (LUB).

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP. Mr Gutsell requested proof of water allocation, as well as license and approval numbers for infrastructure which may be present at the CFO. The TID responded to this response and provided the requested information and further details relating to water licensing. These documents have been forwarded to the applicant for their information.

Ms. Leah Olsen, a development and planning technologist, provided a written response on behalf of Alberta Transportation. Ms. Olsen stated a permit would not be required from Alberta Transportation.

Mr. Christopher Gallagher, district manager, provided a written response on behalf of the TID. Mr. Gallagher indicated the TID had no objections to the application and has agreed, in principal, to providing water for the CFO providing it is eventually constructed.

4. Environmental risk screening of proposed facilities

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO's existing and proposed manure storage facilities. I used the NRCB's environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The 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/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

I assessed the proposed new poultry broiler barns using the NRCB's risk screening tool, and determined that they pose a low risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

In addition, the proposed CFO is consistent with the land use provisions of the MD of Taber'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:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA's nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners of manure storage facilities

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

In addition, I assessed the effects of the proposed CFO 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 also determined that the application's effects on the economy and community are acceptable, and that the proposed CFO 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.)

6. Terms and conditions

Approval LA20021 specifies the new permitted livestock capacity as 84,000 poultry broilers and permits the construction of two broiler barns.

Approval LA20021 also 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 LA20021 includes conditions that:

- Set a deadline of December 31, 2022 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the 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”
- Require documentation that confirms the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Prairie Dust from placing manure or livestock in the broiler barns until the facilities have been inspected by the NRCB following their construction

For an explanation of the reasons for these conditions, see Appendix B.

7. Conclusion

Approval LA20021 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20021.

July 23, 2020

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20021

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for 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.”)

Prairie Dust’s CFO is located in the MD of Taber and is therefore subject to that county’s MDP. The MD adopted the latest revision to this plan in September, 2013, under Bylaw #1856.

Sections 5.1.13 – 5.1.15 of the MDP provide policies “related to confined feeding operations.” The stated purposes of these policies include providing the NRCB with “requirements that the council of the MD wish to have considered when applications for CFOs are evaluated for approval....”

Neither this introductory text, nor the text in sections 5.1.13, are clear as to whether these policies were intended to apply to applications for both new CFOs and for expansions of existing CFOs. However, a broad reading of these provisions suggests that they were meant to cover new CFOs as well as CFO expansions, and the MD’s director of planning and economic development’s response impliedly supports this interpretation. Therefore, I presume these sections apply to Prairie Dust’s proposed construction.

Each of the applicable sections are discussed below.

Section 5.1.13

This section states that CFOs should be discouraged in the areas shown in Map 2 as “restricted”. Prairie Dust’s proposed CFO is not within any of the “restricted” areas in Map 2.

Sections 5.1.14(a)-(d)

These sections list setbacks for CFOs from roads and property lines. Prairie Dust’s proposed construction is not within any of these setbacks.

Section 5.1.15

Under this section, the MD requests that the NRCB consider the four following items:

- (a) the proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water supplies;

- (b) the cumulative effect of a new approval on any area near other existing confined feeding operations;
- (c) environmentally sensitive areas shown in the report, MD of Taber Environmentally Sensitive Areas in the Oldman River Region;
- (d) give[ing] notice to adjacent landowners even in the case of applications for registration or authorization.

Neither (a), (b) or (c) are likely “land use provisions,” as they call for site-specific judgements about the acceptability of an individual operation in light of certain criteria (“proximity,” magnitude and nature of cumulative effect, effect on environmentally sensitive areas). As such, these three MDP policies are not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.). Even if (a) and (c) are relevant, Prairie Dust’s proposed facilities would be consistent with them, as discussed below.

Item (a) refers to the impact of the operation on drinking water supplies. Several of the requirements under AOPA and its regulations are designed to prevent or minimize leakage from CFO facilities and thus to prevent manure from reaching and contaminating surface water and groundwater. Because Prairie Dust’s proposed construction meets these requirements, these facilities will not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

The proposed CFO is not located in an environmentally sensitive area as indicated in item (c) above.

Policy 5.1.15(d) is a procedural requirement so it also is likely not a “land use provision.” Therefore it is not relevant to my MDP consistency determination. At any rate, as explained above, the NRCB did notify the MD and several referral agencies (see also Operational Policy 2016-7: *Approvals*, part 7.4). The notification requirements under AOPA have been met.

For these reasons, I conclude that the proposed construction and permitting of the poultry barns is consistent with the land use provisions of the MD of Taber’s MDP. The MD’s response supports my conclusion.

Under the MD of Taber’s Land Use Bylaw (LUB) #1899, the subject land is currently zoned as Rural Agricultural. The LUB does not specifically list CFOs as a permitted or discretionary use under this section. Ordinarily, a land use bylaw intends to preclude land uses that are not-listed as permitted or discretionary (and that do not meet any other relevant criteria). CFO developments are discussed throughout the LUB and under Schedule 3 are listed as not requiring a development permit. I interpret this LUB’s omission of CFOs as simply a reflection of the county’s recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs.

APPENDIX B: Explanation of conditions in Approval LA20021

Approval LA20021 includes several conditions, discussed below:

a. Construction Deadline

Prairie Dust proposes to complete construction of the proposed new broiler barns by December 31, 2021. This time-frame will only allow for one complete construction season, in my opinion allowing for at least 2 full construction seasons would be reasonable for the proposed scope of work. The deadline of December 31, 2022 is therefore included as a condition in Approval LA20021.

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 LA20021 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the 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.”
- Prairie Dust to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the broiler barns.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA20021 includes a condition stating that Prairie Dust shall not place livestock or manure in the manure storage portions of the new broiler barns until NRCB personnel have inspected the broiler barns and confirmed in writing that it meets the approval requirements.