

Decision Summary LA19055

This document summarizes my reasons for issuing Approval LA19055 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA19055. 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 December 19, 2019, Diamond Springs Poultry Ltd. (Diamond Springs) submitted a Part 1 application to the NRCB to expand an existing multi species CFO. An amended Part 1 was received on July 22, 2020. The Part 2 application was submitted on October 5, 2020 and on October 13, 2020, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 29,000 to 100,000 chicken broilers
- Constructing a chicken barn – 140 m x 23 m
- Constructing a runoff catch basin – 50 m x 25 m x 4 m deep
- Constructing a manure storage pad – 20 m x 20 m

The solid manure storage pad is proposed to be located on top of the existing footprint of a permitted CFO facility. Because the construction of this solid manure storage pad does not involve disturbing the existing, grandfathered liner, a permit for the construction of this pad is not required. This will reduce the overall size of the feedlot pens space which will be adjusted accordingly.

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 existing CFO is located at SW 19-10-21 W4M in Lethbridge County, roughly 1.8 km south of the hamlet of Shaughnessy, Alberta. The overall topography has soft rolling hills. The CFO is located on top of a knoll and slopes to the south and east and north. The closest common body of water is a drainage ditch that runs in north-south direction 50 m to the west of the CFO.

b. Existing permitted facilities

It is not clear when the CFO was originally established. However, on February 13, 1996, Lethbridge County issued development permit 96-05 that allowed the construction and operation of a poultry CFO with 14,000 chicken broilers. The CFO’s grandfathered status is explained in Appendix B attached. The CFO’s deemed facilities are listed in the appendix of LA19055.

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 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. Lethbridge County is an affected party (and therefore also a directly affected party) because the proposed expansion 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 Sunny South News on October 13, 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 Lethbridge County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and the Lethbridge Northern Irrigation District. Sixty one courtesy letters were sent to people identified by Lethbridge County as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

I received responses from Lethbridge County, Alberta Transportation, AEP, and the LNID. No response was received from AHS. No responses were received from individuals or other non-government parties.

Ms. Hilary Janzen, Senior planner with Lethbridge County, provided a written response on behalf of Lethbridge County. As noted in section 2, Lethbridge County is a directly affected party.

Ms. Janzen stated that the application is consistent with Lethbridge County’s municipal development plan. The application’s consistency with Lethbridge County’s municipal development plan, are addressed in Appendix A, attached.

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

The NRCB received a written response from Leah Olsen, development/planning technologist with Alberta Transportation (AT), Jeff Gutsell, hydrogeologist with AEP, and Alan Harrold, general manager with the LNID.

Ms. Olsen stated in her response that a permit from her department is not required and that there are no concerns with this application.

Mr. Gutsell stated that there are no water licenses issued and no water wells reported for this land location. He also stated that the CFO is located within the LNID and requested that the owner submits proof of adequate water to the AEP prior to populating the barn. A copy of the response was forwarded to Diamond Springs for their information and action.

Mr. Harrold stated that the increase in animal numbers would require an additional water conveyance agreement. He also pointed out that all permanent structures (including feedlot pens) require a 30 meter setback from all irrigation works and that land application of manure is not permitted within 30 meters of a canal/drain. He also reminded the applicant to not allow any manure contaminated runoff to enter the district works. A copy of the response was provided to Diamond Springs.

4. Environmental risk screening of existing and 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.)

All of the CFO's existing and proposed facilities pose a low potential risk to groundwater and surface water: (The CFO's existing facilities are listed in the appendix to LA19055.)

5. Other factors considered

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

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

With respect to the act's technical requirements, 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 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 expansion on the environment. Consistent with NRCB policy, I presumed that these effects are acceptable because the application meets all of AOPA's technical requirements. I also presume that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these presumptions are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

6. Terms and conditions

Approval LA19055 specifies the new permitted livestock capacity as 100,000 chicken broilers and 500 beef feeders and permits the construction of the chicken barn and the run off catch basin.

Approval LA19055 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 LA19055 includes conditions that:

- Set a deadline of December 31, 2023 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the chicken broiler 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”
- Require written confirmation from a qualified third party that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Diamond Springs from placing manure or livestock in the chicken broiler barn and from runoff entering the catch basin until the facilities have been inspected by the NRCB following their construction
- Require the existing pens at the proposed location of the new chicken broiler barn to be decommissioned prior to construction of the new barn

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA19055: Diamond Springs deemed permit and development permit 96-05 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all

existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions summarized above, Approval LA19055 includes all existing terms and conditions in development permit 96-05, except the terms and conditions noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions 1-5 from development permit 96-05 should be deleted and therefore are not carried forward to Approval LA19055. My reasons for deleting these conditions are provided in Appendix C.

7. Conclusion

Approval LA19055 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA19055.

Diamond Springs's deemed approval, including municipal development permit 96-05 are therefore cancelled, unless Approval LA19055 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Diamond Springs's deemed approval, and municipal development permit 96-05 will remain in effect.

November 17, 2020

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Grandfathering determination
- C. Explanation of conditions in Approval LA19055

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.”)

Diamond Springs’s CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on December 5, 2019, under Bylaw #19-043.

Section 6.6 Confined Feeding Operations lists several policies under subsection 6.6.3:

a) Urban Fringe: *“The County shall exclude the development of CFOs in the Urban Fringe land use districts.”*

The CFO is not within this zoning category as shown on Map 11B.

b) Impacts

This policy refers to lobbying for funding to counteract the impact of CFOs on county infrastructure. Municipal funding is not under the jurisdiction of the NRCB. Therefore, I will not include this policy in my MDP consistency determination.

c) Location

The three listed items under this policy section refer to a reciprocal MDP for residential development in the vicinity of CFOs. Development permits for residential development are under the jurisdiction of the respective municipality. Therefore, I will not discuss this policy any further.

d) NRCB

I) Given the County’s unique perspective regarding CFOs, the county will be proactive when discussing regulation amendments regarding CFOs with Alberta’s NRCB.

This policy is likely not a land use provision but rather a ‘mode of action’. I will therefore not discuss this policy in any more detail.

II) The NRCB in its approval review should also consider:

- *The cumulative effect of a new approval on any area new other existing confined feeding operations*

- *Environmentally sensitive areas as shown in the report, County of Lethbridge: Environmentally Sensitive areas in the Oldman River Region (see maps in Appendix C)*
- *Giving notice to adjacent landowners even in the case of applications for registration or authorizations, and*
- *Applying MDS calculations to all county residential clusters whether or not designated in the land use bylaw.*

The first of these four considerations is likely not a land use provision because of its project-specific focus (viewed cumulatively with other existing CFOs), and its request for the NRCB to make a discretionary judgement about the degree of cumulative effects that are acceptable. Therefore, this consideration is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: *Approvals*, part 8.2.5.)

As for the second consideration, this provision is likely not a land use provision because of its referral to a specific site. However, I considered it in respect to the CFOs impact on the environment as discussed in sections five above. At any rate, the CFO is not located close to any of the environmentally significant areas noted in the county's report.

The third of these four considerations is likely not a land use provision because it requests notification to adjacent landowners about registration and authorization applications. Sections 19 and 21 of AOPA determine the required notification process. In this case, the application was for an approval which triggered public notification requirements.

The fourth consideration appears to refer to AOPA's "minimum distance separation" (MDS) requirements. Under NRCB policy, approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. (See also Operational Policy 2016-7: *Approvals*, part 8.2.5.) At any rate, there are no country residential clusters in the immediate vicinity of the CFO, so this MDP consideration does not apply to Diamond Springs's application.

III) The NRCB is requested to take into consideration the requirements and policies of the County Council when making decision on such applications.

This provision is likely not a land use provision because it requests the consideration of policies and requirements of the county's council. AOPA is very specific in what approval officers must consider when determining consistency with the MDP (section 22(1)) and only refers to the MDP document. It is implied that this also includes any planning documents that are directly incorporated into the MDP. At any rate, the deemed application was sent to Lethbridge County for their input.

IV) CFOs "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas".

Diamond Springs's CFO is not located in any of the designated CFO exclusion areas, so the application is consistent with this provision.

V) CFOs "shall not be approved on parcels less than 64.7 hectares (160 acres) or an unsubdivided quarter section, having a minimum of 4.0 hectares (10 acres) of registered exceptions of rights-of-way"

This provision is likely not a land use provision because it refers to specifics in respect to a site of a CFO, rather than the use of a specific land. At any rate, the quarter section on which the CFO is located meets this requirement.

VI) The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.

In my view, this section provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I therefore also considered Lethbridge County's Land Use Bylaw #1404 (consolidated to Bylaw 20-002 and 20-014 (maps)). Under those bylaws, the subject land is currently zoned Rural Agriculture. CFOs are a discretionary use under this zoning category.

As stated in Part 2 (RA) section 3(3) in this bylaw, the minimum parcel size for CFOs is 64.7 hectares (160 acres).

This provision is the same as section 6.6.3 (IV) in the MDP. Hence, I will look at it in a similar manner as the MDP provision.

The subsequent sections (Rural Agriculture) in this land use bylaw, require minimum setbacks (sections 4 to 7). These include setbacks to property lines, roadways, canals and distance to neighbouring residences (section 6(6)). Apart from the MDS requirement which has been discussed previously, these requirements could be defined as being 'siting' requirements and would subsequently be exempt from consideration by an approval officer. Nevertheless, I am of the opinion that they ensure proper development of the rural areas in respect to future development and hence dictate a land use or are related to safety issues and will therefore be considered as an impact on the community. At any rate, the already constructed facilities meet these setbacks.

The above subsection of the MDP also seems to clearly incorporate the Animal Control Bylaw (Bylaw 17-008). Given that this is not a land use provision and the application is for a CFO that triggered an application process under AOPA and therefore falls under the jurisdiction of the NRCB, I determined that the animal control bylaw does not apply under this circumstance.

e) Development Setbacks

This provision requires CFO developments to meet the setbacks to roadways and property lines as set out in the LUB.

The development meets all of these setbacks.

I therefore conclude that this application is consistent with Lethbridge County's MDP, a conclusion that is supported by the comments provided by Lethbridge County's development officer.

APPENDIX B: Grandfathering determination

It is not clear when the CFO was originally established. However, on February 13, 1996, Lethbridge County issued development permit 96-05 that allowed the construction and operation of a poultry CFO with 14,000 chicken broilers.

Under section 18.1(2)(c) of AOPA, a grandfathered CFO's deemed capacity (that is, the animal numbers allowed by its deemed permit) is the capacity allowed by the CFO's municipal permit. However, the NRCB interprets section 18.1(2) as allowing a grandfathered CFO's deemed capacity to be based on its physical capacity as of January 1, 2002, *if* that physical capacity was more than the capacity allowed by the CFO's municipal permit. (See NRCB Operational Policy 2016-5: *Determining Capacity for Grandfathered Confined Feeding Operations*).

Diamond Springs claims that its CFO's physical capacity on January 1, 2002 was 500 beef feeders and 29,000 chicken broilers, which is more than the above-stated capacity in its municipal permit. Therefore, to determine the CFO's deemed capacity, I must consider, among other things:

- What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics; and

Aerial pictures, taken between 1999 and 2003 (Valtus), which covers the time in which AOPA came into effect (January 2, 2002), show the following facilities:

- Feedlot pens (irregular shape. Overall footprint approximately 117 m x 170 m) with 2 shelters (located within the pen area)
- Two chicken barns (77 m x 19 m and 92 m x 14 m)
- Two manure storage pads (located on the north side of each chicken barn) (20 m x 15 m each))

One of the two chicken broiler barns was permitted in development permit 96-05 with a capacity of 14,000 chicken broilers. The exact date of construction of the other barn is unclear, other than it was constructed prior to January 1, 2002. The footprint of the broiler barns are comparable, therefore a capacity of 15,000 chicken broiler for the second barn seems reasonable. This is supported by the calculation using Agdex 096-81, this barn could house approximately 19806 broilers, assuming 0.7 ft² per animal.

The overall footprint of the feedlot pens covers approximately 19,890 m² (214,101 ft²). Using the NRCB guideline to determine the capacity of livestock housing facilities (Technical Guideline Agdex 096-81, February 2016. Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002) the pen space for feeder cattle is assumed to be 175 ft² per head. Therefore, the existing pens would provide enough space to house over 1,000 head of feeder cattle. Subsequently, the claim of Diamond Springs to have 500 head feeder cattle is reasonable. This capacity will remain although the pen space will be reduced due to the construction of the proposed chicken barn and manure storage pad. My reasoning is that, using the same pen space per head, the remaining pen space (56 m x 170 m) is large enough to accommodate 500 head of feeder cattle.

Based on these findings I have determined that the applicants grandfathered capacity claim is reasonable. The CFO is therefore considered to have a deemed approval with a deemed capacity of 500 head feeder cattle and 29,000 chicken broilers.

APPENDIX C: Explanation of conditions in Approval LA19055

1. New conditions in Approval LA19055

a. Construction above the water table

Sections 9(2) and (3) of the Standards and Administration Regulation under the *Agricultural Operation Practices Act* (AOPA) prohibit construction of a manure storage facility if its bottom is less than one metre above the water table at the site “at the time of construction.”

Based on this information, the proposed catch basin does not meet the one metre requirement of sections 9(2) and (3). However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in Diamond Springs's report does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included requiring applicant to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Decommissioning of existing feedlot pens

Diamond Springs proposes to construct the new chicken broiler barn on top of the north row of the existing feedlot pens. A condition will therefore be included that requires Diamond Springs to decommission these pens according to Technical Guideline Agdex 096-90 (updated January 2018) – Closure of Manure Storage Facilities and Manure Collection Areas - prior to commencing construction of the new barn.

c. Construction Deadline

Diamond Springs proposes to complete construction of the proposed new chicken broiler barn by the summer of 2021. This time-frame seems rather short for the proposed scope of work. In order to account for unforeseeable circumstances, I will extend the construction completion deadline to December 31, 2023. Therefore, the deadline of December 31, 2023, is included as a condition in Approval LA19055

d. 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 LA19055 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the chicken broiler 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.”
- Diamond Springs to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the chicken broiler barn.

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 LA19055 includes a condition stating that Diamond Springs shall not place livestock or manure in the manure storage portions of the new chicken broiler barn and allow runoff to enter the new catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meets the approval requirements.

2. Conditions not carried forward from development permit 96-05

Condition 1: *"Stockpiling of poultry litter is not to occur for extended periods, ideally litter should be spread every 6 months."*

In my grandfathering determination, (see Appendix B above) I determined that the two manure storage areas located north of the existing chicken barns are grandfathered manure storage pads. In addition, Diamond Springs also applied for a manure storage pad for all other manure (additional chicken manure and cattle). In combination with the short term manure storage requirements set out in section 5, Standards and Administration Regulation, AOPA, this condition is redundant and will be deleted.

Condition 2: *"All runoff from stored poultry litter is to be contained in the immediate area of storage."*

Diamond Springs proposed to construct a catch basin that will collect runoff from existing and proposed manure storage and collection areas at this site. This condition is therefore redundant and can be deleted.

Condition 3: *"Deads are to be disposed of in a prompt and acceptable manner."*

The disposal of deads is regulated directly by AF's Regulatory Services Branch under the animal Health Act. Given AF's regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistency with AF's requirements. Therefore, I will delete this condition.

Condition 4: *"All waterways including the ditch in the immediate area are to be protected from contamination by the spreading of manure and/or run-off from the facility."*

This condition consists of two parts, the first part is protection of waterways from contamination via spreading of manure and the second part via runoff from the facility.

The first part of this condition is addressed through the opening terms of this permit that requires the permit holder to comply with the requirements of AOPA and the regulations passed pursuant to that act. This includes section 24, Standards and Administration Regulation that requires the owner of operator to adhere to all applicable setbacks (see section 24(9)). This part of the condition is therefore redundant and can be deleted.

The second part has been addressed through the construction of a catch basin (see also discussion under 'condition 2'). This part of the condition is therefore redundant and can be deleted.

Condition 5: *"A fly control program shall be in place."*

This condition is included in the opening terms of this permit that requires the permit holder to comply with the requirements of AOPA and the regulations passed pursuant to that act. This includes section 20, Standards and Administration Regulation that requires the owner of operator to employ reasonable measures to control the level of infestation of flies. This condition is therefore redundant and will be deleted.