



Decision Summary Approval RA21006

This document summarizes my reasons for issuing Approval RA21006 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21006. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at www.nrcb.ca under Confined Feeding Operations (CFO)/CFO Search. My decision is based on the act and its regulations, the policies of the NRCB, the information contained in the application, and all other materials in the application file.

Under AOPA this type of application requires an approval. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On January 18, 2021, Kamlah Farms Ltd., and Jeff & Grejanka Kamlah (Kamlah Farms) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on January 22, 2021. On February 16, 2021, I deemed the application complete.

The proposed expansion involves:

- Decreasing previously permitted chicken broiler numbers from 220,000 to 130,000
- Cancelling the proposed construction of two permitted broiler barns (RA18036)
- Increasing chicken breeder numbers from 0 to 35,000
- Constructing two new chicken breeder barns, each 92.7 m x 30.0 m

a. Location

The existing CFO is located at NW 5-31-28 W4M in Mountain View County, roughly 13 kilometers south east of Didsbury, AB. The terrain is generally level. A small intermittent creek is located approximately 407 m to the west.

b. Existing permits

In 2018, the NRCB issued Approval RA18036 to Kamlah Farms. This allows Kamlah Farms to construct and operate a 220,000 chicken broiler CFO with four broiler barns. In this application, Kamlah Farms has requested to reduce their permitted chicken broiler numbers down to 130,000, and to cancel two previously permitted (but not constructed) broiler barns. The CFO's existing permitted facilities are listed in the appendix to the Approval RA21006, and are updated based on this proposed change.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are "affected" by an approval application. Section 5 of AOPA's Part 2 Matters Regulation defines "affected parties" as:

- In the case where part of a CFO is located, or is to be located, within 100 m of a bank of a river, stream or canal, a person or municipality entitled to divert water from that body within 10 miles downstream

- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a specified distance from the CFO, depending on the size of the CFO
- all persons who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For the size of this CFO the specified distance is one miles. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Mountain View County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Mountain View Gazette on February 16, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, twenty three letters were sent to people identified by Mountain View County as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 19 of AOPA, the NRCB may also notify persons and organizations the approval officer considers appropriate. This includes sending applications to referral agencies which have a potential regulatory interest under their respective legislation.

Referral letters and a copy of the complete application were emailed to Alberta Health Services (AHS), and Alberta Environment and Parks (AEP).

I also sent a copy of the application to EQUUS REA Ltd.

No responses were received from these agencies.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 20(10) of AOPA requires that an approval officer must ensure the application complies with any applicable ALSA regional plan.

There is no ALSA regional plan for the area where the CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion 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.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from nearby residences, with one exception (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence. Approvals policy section 6.2 presumes that a person who provides a written MDS waiver is automatically considered to be directly affected.

- 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/protective layers of manure storage facilities and manure collection areas

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

7. Responses from municipality and other directly affected parties

Directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions relevant to the application, and are entitled to request an NRCB Board review of the approval officer's decision. Not all affected parties are "directly affected" under AOPA.

Municipalities that are affected parties are identified by the act as "directly affected." Mountain View County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Peggy Grochmal, a permitting and development officer with Mountain View County, provided a written response on behalf of Mountain View County. Ms. Grochmal stated that the application is consistent with Mountain View County's land use provisions in their municipal development plan. The application's consistency with Mountain View County's municipal development plan is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers assess the CFO's existing buildings, structures, and other facilities. In doing so, the approval officer considers information related to the site and the facilities, as well as results from the NRCB's environmental risk screening tool (ERST). The assessment of environmental risk focuses on surface water and groundwater. The ERST provides for a numeric scoring of risks, 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.) However, if those risks have previously been assessed, the approval officer will not conduct a new assessment unless site changes are identified that require a new assessment, or the assessment was supported with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Kamlah Farms' existing CFO facilities were assessed in 2018 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

As part of my review of this application, I assessed the risks to surface water and ground water posed by the CFO's proposed manure storage and collection facilities. My assessment found that the facilities pose a low potential risk to groundwater and surface water.

9. Other factors

Because the approval application is consistent with the MDP land use provisions, and meets the requirements of AOPA and its regulations, I also considered other factors.

AOPA requires me to consider matters that would normally be considered if a development permit were being issued. The NRCB interprets this to include aspects such as property line and road setbacks related to the site of the CFO. (Grow North, RFR 2011-01 at page 2). Approval officers are limited to what matters they can consider though as their regulatory authority is limited.

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

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. No response was received from AEP in regard to the application; furthermore, the application meets AOPAs technical requirements.

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted.

I also presumed that the proposed expansion is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted because Mountain View County's response stated that the application is consistent with their MDP.

10. Terms and conditions

Approval RA21006 specifies the cumulative permitted livestock capacity as 35,000 chicken breeders, and 130,000 chicken broilers, and permits the construction of the two chicken breeder barns. Approval RA21006 also removes two previously permitted, but unconstructed chicken broiler barns.

Approval RA21006 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 RA21006 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Approval RA18036 with Approval RA21006 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval RA21006 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21006.

Approval RA18036 is therefore cancelled, and its content consolidated into this Approval RA21006, unless Approval RA21006 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA18036 will remain in effect.

March 24, 2021

(original signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA21006

APPENDIX A: Consistency with the municipal development plan

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

This does not mean consistency with the entire MDP. In general, “land use provisions” cover MDP policies that provide generic directions about the acceptability of various land uses in specific areas.

Conversely, “land use provisions” do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. Similarly, section 20(1.1) of the act precludes approval officers from considering MDP provisions “respecting tests or conditions related to the construction of or the site” of a CFO or manure storage facility, or regarding the land application of manure. (These types of MDP provisions are commonly referred to as MDP “tests or conditions.”). “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Kamlah Farms’ CFO is located in Mountain View County and is therefore subject to that county’s MDP. Mountain View County adopted the latest revision to this plan on December 9, 2020, under Bylaw #20/20.

As relevant here, 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. Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” based on these designations is not considered to be a “land use provision”, rather it helps to identify where the location of CFO’s would be considered to be more suited within the county. Because of this I do not consider it to be relevant to my MDP consistency determination.

At any rate, Kamlah Farms’ 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....”

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified growth centre or an IDP with adjacent urban municipalities. Kamlah Farms is an existing CFO so this policy is not relevant to my MDP consistency determination. Regardless, Kamlah Farms meets these setbacks.

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. Regardless, Kamlah Farms’ application meets AOPA requirements.

Sub-section 3.3.18 states that after provincial approval is obtained for new or expanding CFOs, the construction shall be subject to Mountain View County Road Use Agreement Policy. The NRCB Board has previously stated that road use agreements are between the developer and the municipality, not the NRCB (see *Zealand Farms*, RFR 2011-02 at 5, *Faberdale*, RFR 2018-12 at 3). Furthermore, this is not a land use provision, so I am precluded from considering this policy.

No other policies in section 3.0 preclude Kamlah Farms' application. Therefore, their proposed CFO conversion and expansion 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 consistent with the land use provisions of Mountain View County's MDP that I may consider.

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.

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 this Decision Summary, the CFO meets the MDS requirements.

APPENDIX B: Explanation of conditions in Approval RA21006

Approval RA21006 includes several conditions, discussed below. Construction conditions from historical RA18036 that have been met are identified in the appendix to Approval RA21006. No other construction or operating conditions are carried forward. The two previously permitted but unconstructed chicken broiler barns have amended out under Section 23 of AOPA, based on the requested reduction of broiler numbers.

1. New conditions in Approval RA21006

a. Construction Deadline

Kamlah Farms proposes to complete construction of the proposed new chicken breeder barns by December 1, 2021. In my opinion, a construction deadline that allows for two construction seasons is more realistic due to potential construction delays. Therefore, a deadline of December 1, 2022 is included as a condition in Approval RA21006.

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 RA21006 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken breeder barns to meet the specification category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Kamlah Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the chicken breeder barns.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval RA21006 includes conditions stating that Kamlah Farms shall not place livestock or manure in the manure storage or collection portions of the new chicken breeder barns until NRCB personnel have inspected the chicken breeder barns and confirmed in writing that they meet the approval requirements.