

Decision Summary BA21011

This document summarizes my reasons for issuing Approval BA21011 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21011. 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 April 22, 2021, Glenbea Farms Ltd. (Glenbea) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on May 14, 2021. On May 25, 2021, I deemed the application complete.

The proposed expansion involves:

- Changing livestock type from chicken layers to chicken pullets
- Changing livestock numbers from 30,000 chicken layers to 120,000 chicken pullets
- Constructing a new pullet barn – 107 m x 22 m
- Constructing an attached solid manure storage pad – 25 m x 22 m
- Decommissioning the existing liquid manure storage

The application also notified the NRCB of the proposed construction of an office and mechanical room (22 m x 12 m). This facility is an “ancillary structure,” under section 1(1)(a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

a. Location

The existing CFO is located at SW 11-62-3 W5M in the County of Barrhead, roughly 5 km north east of Neerlandia, AB. The terrain is relatively flat sloping to the south with a seasonal drainage approximately 240 m being the nearest common body of water.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes development permit 36-99, issued June 15, 1999. This deemed approval allows for the construction and operation of a 30,000 chicken layer CFO. The determination of the CFO’s deemed permit status under section 18.1 of AOPA is explained in Appendix D attached. The deemed facilities are listed in the appendix to the Approval BA21011.

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 0.5 mile. (The NRCB refers to this distance as the “affected party radius.”)

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

The NRCB gave notice of the application by public advertisement in the Barrhead Leader on May 25, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, 11 letters were sent to people identified by the County of Barrhead 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).

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 proposed CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the County of Barrhead’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 all nearby residences (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS)
- Meets the required AOPA setbacks from 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 11, the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around setbacks to water wells is discussed in the following parts of this decision summary.

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.” The County of Barrhead is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Jenny Bruns, a development officer with the County of Barrhead, provided a written response on behalf of the county. Ms. Bruns stated that the application is consistent with the county’s land use provisions of the municipal development plan. The application’s consistency with the County of Barrhead’s municipal development plan is addressed in Appendix A, attached.

AEP sent a generic response to the application that addresses water regulations in general and that the applicant should contact AEP if they require additional approvals under the *Water Act*.

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

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO’s existing manure storage facilities and manure collection areas. I used the NRCB’s environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within a low, moderate, or high risk range. (A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.)

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 Approval BA21011) with the exception of the liquid earthen manure storage (lagoon) which scored a moderate risk

to groundwater. As the applicant has agreed to decommission this facility as a part of this application that risk is considered addressed. To ensure this, a condition will be included requiring the facility be decommissioned.

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. Bruns also listed the setbacks required by the County of Barrhead's land use bylaw (LUB). The application appears to meet these setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments. A generic response was received from AEP in regards 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 on 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 and the directly affected parties' concerns have been addressed.

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 (Approvals Policy 8.7.3.). In my view, this presumption is not rebutted because the County of Barrhead's response states that the application is consistent with their MDP.

10. Exemptions

I determined that the proposed pullet barn is located within the required AOPA setback from a water well. As explained in Appendix B, an exemption to the 100 metre water well/spring setback is warranted due to the wells location and the facilities design (see appendix B).

11. Terms and conditions

Approval BA21011 specifies the cumulative permitted livestock capacity as 120,000 chicken pullets and permits the construction of the new pullet barn with attached solid manure storage pad.

Approval BA21011 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 BA21011 includes conditions that generally address construction deadlines, document submission and construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval BA21011: development permit 36-99 (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.

12. Conclusion

Approval BA21011 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21011.

Glenbea's deemed approval, including municipal development permit 36-99 is therefore cancelled, and their content consolidated into this Approval BA21011, unless Approval BA21011 is held invalid following a review and decision by the NRCB's board members or by a court, in which case development permit 36-99 will remain in effect.

June 30, 2021

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemption from water well setback
- C. Explanation of conditions in Approval BA21011
- D. Determination of deemed permit status

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.)

Glenbea’s CFO is located in the County of Barrhead and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on August 17, 2010, under Bylaw No. 4-2010.

Part 3.1.3 of the MDP lists 14 agricultural development policies and includes CFOs as among “primary use[s]” in agricultural use area. The first policy recognizes agriculture as the priority land use in rural areas, supports agricultural diversification, encourages siting agricultural industries in agricultural areas, and discourages non-agricultural land uses in intensive agricultural areas. Of the remaining 13 policies, only policies 10 and 11 relate specifically to CFOs.

Policy 10 states “input shall be provided to the NRCB in responding to applications for new or expanded CFOs based on the technical and locational merits of each application.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see NRCB Operational Policy 2016-7, *Approvals* 8.2.4). Therefore, this policy is not relevant to the MDP consistency determination required by section 20(1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 11 states “minimum distance separations for CFOs shall conform to standards set out in AOPA.” The policy’s use of the term “minimum distance separations” appears to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. MDP policy 11 is not relevant to my MDP consistency determination because it is based on AOPA’s MDS requirements. (See NRCB Operational Policy 2016-7, *Approvals*, part 8.2.5). That said, the CFO meets the MDS requirements under AOPA and is therefore consistent with this MDP policy.

In my view, the text of the county’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB), in section 1.5 of the MDP. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider the County of Barrhead’s Land Use Bylaw No. 5-2010. Under that bylaw, the subject land is currently zoned Agricultural. CFOs are not listed as either a permitted or discretionary land use in this zoning category. Ordinarily, this omission would mean that CFOs are a prohibited land use in this zoning category. However, section 7.13 of the LUB states that the county does not regulate proposed CFO developments that require

approvals or registrations under AOPA. This section suggests that the county omitted CFOs from the lists of permitted and discretionary uses simply because of the county's lack of permitting authority, rather than to prohibit CFOs in the Agricultural district.

I conclude that the application is consistent with the relevant land use provisions of the County of Barrhead's MDP and is not contrary to the county's LUB. The proposed facilities meet the required setbacks identified by the county's LUB. The county's response confirms my conclusion.

APPENDIX B: Exemption from water and well setbacks

1. Water Well Considerations

The proposed pullet barn is to be located less than 100 m from a water well or water wells. I have confirmed that 1 water well is located approximately 64 m from it during a site visit and through google earth imagery. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation* (SAR). Section 7(2) allows for exemptions if, before construction, the applicant can demonstrate that the aquifer into which the water well is drilled is not likely to be contaminated by the manure storage facility (MSF)/manure collection area (MCA), or if required by an approval officer a groundwater monitoring program is implemented.

One basis for granting an exemption is if the “aquifer into which the well is drilled is not likely to be contaminated” by the proposed MCA.

Section 7(2) of the SAR states that the 100 m setback to a water well does not apply if the pullet barn is not likely to contaminate the aquifer into which the water well is drilled and if required by an approval officer, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MCA are presumed to be low if the applicant’s proposed MCA meets AOPA’s technical requirements to control runoff and leakage. Approval officers also assess whether the water well itself could act as a conduit for aquifer contamination.

In this case, I felt the following factors were relevant to determine the risk of aquifer contamination via the water well:

- a. How the well was constructed
- b. Whether the well is being properly maintained
- c. The distance between the well and the proposed MSF/MCA
- d. Whether the well is up- or down-gradient from the MSF/MCA and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

These presumptions and considerations are based on NRCB Operational Policy 2016-7: Approvals, part 8.7.1.

The water well:

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the water well located approximately 64 m W of the pullet barn is likely AEP water well ID 373730. This well is reported to have been installed in 1978. There is not much information on the well log in regards to this well. It has a withdrawal depth of 30.48m with alternating stratigraphy of shale and sandstone above this depth. The well is above grade with a capped casing and is used for non-domestic purposes. The well’s log identifies a protective layer of clay from surface to 4.57 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected and mounded. The well is up-gradient of the proposed CFO facility.

The NRCB has developed a “water well exemption screening tool,” based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well.¹

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document BA21011.

¹ A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

APPENDIX C: Explanation of conditions in Approval BA21011

Approval BA21011 includes several conditions, discussed below. Construction conditions from historical development permit 36-99 that have been met are identified in the appendix to Approval BA21011.

1. New conditions in Approval BA21011

a. Construction Deadline

Glenbea proposes to complete construction of the proposed new pullet barn with attached solid manure storage pad by December 31, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2024 is included as a condition in Approval BA21011.

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 BA21011 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the new pullet barn with attached solid manure storage pad 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.”
- b. Glenbea to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the facility.
- c. 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 BA21011 includes a condition stating that Glenbea shall not place livestock or manure in the manure storage or collection portions of the new pullet barn with attached solid manure storage until NRCB personnel have inspected the facility and confirmed in writing that it meets the approval requirements.

d. Decommissioning of existing earthen manure storage

A condition will be included requiring Glenbea to properly decommission the liquid earthen manure storage. This decommissioning must be in accordance with Technical Guideline Agdex 096-90, “Closure of Manure Storage Facilities and Manure Collection Areas”. Confirmation of this must be provided and accepted by the NRCB.

APPENDIX D: Determination of deemed permit status

Glenbea claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. I am treating that as a request for a determination of deemed permit status. Under section 11(1) of the Administrative Procedures Regulation under AOPA, because I am cross-appointed as an NRCB inspector, I conducted an investigation into the deemed permit status of the CFO/MSF.

The investigation was to determine the capacity of the CFO: that was in place on January 1, 2002.

The CFO was originally permitted by the County of Barrhead on June 15, 1999 under development permit 36-99. This permit allowed the expansion and operation of a chicken layer CFO with 30,000 layers. This development permit is a deemed (i.e. grandfathered) approval under section 18.1(1)(b) of AOPA. The CFO’s deemed facilities are listed in the Appendix of Approval BA21011.

Under section 11 of the Administrative Procedures Regulation, notice of a deemed permit determination is not required if the CFO was constructed pursuant to a development permit issued before January 1, 2002.

Under section 18.1(2)(c), the CFO’s deemed capacity is the capacity stated in the CFO’s development permit. Therefore, the CFO has a deemed capacity of 30,000 chicken layers.