

Decision Summary RA21010

This document summarizes my reasons for issuing Approval RA21010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21010. 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 29, 2021, 1126362 Alberta Ltd. and Muneer Gilani, operating as Country Hills Egg Farm (Country Hills), submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on June 7, 2021. On June 15, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 100,000 chicken layers plus 52,000 chicken pullets to 151,200 chicken layers plus 63,000 chicken pullets
- Constructing chicken layer barn # 3 (116.5 m x 17.2 m) with an attached manure storage building (34.9 m x 25.1 m) and a manure dryer room (6.1 m x 4.9 m)

The application also notified the NRCB of the proposed construction of a hallway connecting the barns (31 m x 7.7 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 NW 22-25-28 W4M in Rocky View County, roughly five km east of the City of Calgary. The terrain is undulating with a general slope to the east and southeast towards a slough.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA17033. That permit allowed the construction and operation of a 100,000 chicken layers plus 52,000 chicken pullets CFO. The CFO’s existing permitted facilities are listed in the appendix to the Approval RA21010.

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

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

The NRCB gave notice of the application by public advertisement in a newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Rocky View Weekly on June 15, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, 248 letters were sent to people identified by Rocky 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), Alberta Environment and Parks (AEP) and Alberta Transportation (AT).

The NRCB received a response from a Development and Planning Technologist, on behalf of AT, indicating that County Hills have to apply for a Roadside Development Permit.

No response was received from AEP or AHS.

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 expansion is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO expansion is consistent with the land use provisions of Rocky 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 CFO 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 owners of that residence have 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/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 the 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.” Rocky View County is an affected party (and directly affected) because the proposed CFO expansion is located within its boundaries.

Ms. Jessica Anderson, a senior planner with Rocky View County, provided a written response on behalf of Rocky View County. Ms. Anderson stated that the application is consistent with Rocky View County’s land use provisions of the municipal development plan. The application’s consistency with Rocky View County’s municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received responses from two individuals.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (See NRCB Operational Policy 2016-7: Approvals, part 6.2). Mr. Gurjit Jhutti and Ms. Harbans Banwait provided an MDS waiver and are therefore considered directly affected parties.

Two persons submitted responses. One of them owns or resides on land within the 1.5 mile notification radius for affected persons. Because of his location within this radius, and because he submitted a response, he qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The second person that responded to the application does not own or reside on land within the 1.5 mile radius for affected persons. I do not consider this respondent to be directly affected by

the approval application.

Appendix B sets out my reasons for determining which respondents are directly affected.

The directly affected party that submitted a response, did not raised any concern regarding the application, as he responded with a letter of support.

8. Environmental risk of CFO facilities

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require surface and/or groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

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 County Hills' existing CFO facilities were assessed in 2017 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.

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. Anderson also noted that the application meets the setbacks required by Rocky View County's land use bylaw (LUB).

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments, and determined that these are acceptable.

I am not aware of any applicable statement of concern submitted under section 73 of the Environmental Protection and Enhancement Act or under section 109 of the Water Act, or any written decision of the Environmental Appeals Board or Director under the Water Act relating to the CFO site.

Finally, I considered the effects of the proposed CFO 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 CFO 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 and the application meets the land use requirements and setbacks in the County's MDP and LUB.

10. Terms and conditions

Approval RA21010 specifies the cumulative permitted livestock capacity as 151,200 chicken layers plus 63,000 chicken pullets, and permits the construction of the chicken layer barn # 3 with an attached manure storage building, and a manure dryer room.

Approval RA21010 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 RA21010 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the previously issued Approval RA17033 with Approval RA21010 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the co-permit holders, 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 C discusses which conditions from the historical permit are carried forward into the new approval.

11. Conclusion

Approval RA21010 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21010.

NRCB-issued Approval RA17033 is therefore superseded, and its content consolidated into this Approval RA21010, unless Approval RA21010 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA17033 will remain in effect.

September 3, 2021

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

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Explanation of conditions in Approval RA21010

APPENDIX A: Consistency with the municipal development plan

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

County Hills’ CFO is located in Rocky View County and is therefore subject to that county’s MDP. Rocky View County adopted the latest revision to this plan on April 10, 2018, under Bylaw #C-7280-2013.

Sections 8.20 – 8.24 of the MDP deal specifically with CFOs.

Section 8.20 states that the county “should make site recommendations on all new or expanded” CFOs and lists several criteria for the county to consider when making these recommendations. The criteria are not directly relevant to my MDP consistency determination as they appear to be intended to govern the county’s responses to individual CFO applications to the NRCB. In addition, the criteria require site and CFO-specific considerations that are involved in permitting decisions, so the criteria are not “land use provisions.” Therefore, this section is not relevant to my MDP consistency determination.

Section 8.21 “recommend[s]” that CFO applicants “provide nearby land owners with technical design information, receive feedback through a public involvement process, and report back to the County on how the proposal addresses public input.” This provision is not considered a land use provision because of its project-specific and procedural focus. Therefore, it is also not relevant to my MDP consistency determination. However, neighbouring land owners were notified of the application as specified under AOPA. The neighbours have had the opportunity to review and comment on the application. Additionally, Country Hills conducted a public engagement program that included a virtual open house and information session on June 10, 2021.

Section 8.22 states that CFOs should be located in areas where there will be “minimal conflict with non-complementary land uses.” Because the “minimum conflict” test calls for a discretionary judgement, the criteria is not a “land use provision” and the section is not relevant to my MDP consistency determination. Nevertheless, as noted in the county’s response, lands within 2,400 m of the CFO are generally agricultural. All residences on these properties meet the MDS requirements of the regulations, with one exception. The owners of that property signed a MDS waiver. It is therefore my opinion that because of this the application would be consistent with this section, if the section applied.

Section 8.23 states that land uses incompatible with a CFO shall not be supported when proposed within the MDS of the CFO. The proposed expansion meets the required MDS with one exception, however, the owners of that residence have provided an MDS waiver for the proposed development.

Section 8.24 states that a CFO, including its MDS, “should not be located within the boundary of any intermunicipal development plan or notification zone, statutory planning area, hamlet, residential area, institutional use, or federal, provincial, or municipal park or recreation area.” In its response, the county stated that Country Hills’ land is not affected by any area structure plans, conceptual schemes, or intermunicipal plans. Country Hills’ proposed expansion therefore meets these requirements.

Sections 8.25 - 8.28 relate to minimizing land use conflict for non-agricultural development near agricultural operation and are not relevant to this application.

For these reasons, I conclude that the application is consistent with the land use provisions of Rocky View County’s MDP. The county’s response confirms my conclusion.

APPENDIX B: Determining directly affected party status

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Mr. Gurjit Jhutti and Ms. Harbans Banwait. See NRCB Operational Policy 2016:7 – Approvals, part 6.2

The following individual qualifies for directly affected party status because he submitted a response to the application and he owns or resides on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation: Mr. John Morgan, whose residence is located in the Georgian Estate, Rocky View County. See NRCB Operational Policy 2016:7 – Approvals, part 6.2.

A person who is not specified in section 5 of the Part 2 Matters Regulation as an affected party can also qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the application. The following individual that submitted a response to the application may fall under this category: Mr. Nav Basi, on behalf of Evolution Properties Inc.

Mr. Basi did not provide a legal land location or address; however, through a corporate search the applicant found the address to be in Range Road 293, in Rocky View County.

Under NRCB policy, a person has the burden of demonstrating that they are directly affected by an application. In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 – Approvals, part 6.3):

1. A plausible chain of causality exists between the proposed project and the effect asserted;
2. The effect would probably occur;
3. The effect could reasonably be expected to impact the party;
4. The effect would not be trivial; and
5. The effect falls within the NRCB regulatory mandate under AOPA.

Mr. Basi raised concerns regarding smell contaminating the air quality and affecting new residential development in the surrounding area.

Mr. Basi’s address is located roughly 10 km northwest of Country Hills’ CFO; by contrast, the required minimum distance separation (MDS) from the CFO to the nearest residence is 641 m, for land zoned agriculture; and 841 m for land zoned country residential. AOPA’s MDS is a means for mitigating odour and other nuisance impacts from CFO.

The NRCB’s board members has made it clear that a party cannot satisfy their burden of proof “without substantive supporting evidence.” *Pigs R Us Inc.*, RFR 2017-11, p. 3.

Using these factors, I conclude that Mr. Basi, did not establish a sufficient chain of causality, or provided supportive evidence, and as such, he will not be considered a directly affected party for this application.

APPENDIX C: Explanation of conditions in Approval RA21010

Approval RA21010 includes several conditions, discussed below, and carries forward a number of conditions from Approval RA17033. Construction conditions from historical Approval RA17033 that have been met are identified in the appendix to Approval RA21010.

1. New conditions in Approval RA21010

a. Construction Deadline

County Hills proposes to complete construction of the proposed chicken layer barn # 3 with an attached manure storage building, and a manure dryer room by February 1, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of February 28, 2023 is included as a condition in Approval RA21010.

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 RA21010 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer barn # 3 with an attached manure storage building and a manure dryer room 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. County Hills to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

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 RA21010 includes conditions stating that County Hills shall not place livestock or manure in the manure storage or collection portions of the new the chicken layer barn # 3, or place manure in the attached manure storage building and the manure dryer room until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.