

## Decision Summary BA21016

This document summarizes my reasons for issuing Authorization BA21016 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21016. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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 authorization. For additional information on NRCB permits please refer to [www.nrcb.ca](http://www.nrcb.ca).

### 1. Background

On July 26, 2021, Springside Poultry Ltd. (Springside) submitted a Part 1 application to the NRCB to construct a new rooster barn (35 m x 13 m) at an existing poultry CFO.

The Part 2 application was submitted on July 29, 2021. On August 3, 2021, I deemed the application complete.

#### a. Location

The existing CFO is located at Pt. NE 32-57-25 W4M in Sturgeon County, roughly 5 km northwest of the town of Legal, AB. The terrain is flat, sloping to the southeast. The nearest common body of water is a seasonal drainage 1.2 km to the northeast.

#### b. Existing permits

The CFO is already permitted under Approval BA16017.

### 2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- 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 municipality entitled to divert water from that body within 10 miles downstream
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is a 0.5 mile (804 m) from the CFO

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

### 3. Notice to other persons or organizations

Under NRCB policy, 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.

#### **4. Municipal Development Plan (MDP) consistency**

I have determined that the proposed construction is consistent with the land use provisions of Sturgeon County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

#### **5. AOPA requirements**

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

- 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 groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

#### **6. Responses from municipality and agencies**

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." Sturgeon County is an affected party (and directly affected) because the proposed construction is located within its boundaries.

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

Ms. Williams also listed the setbacks required by county's land use bylaw (LUB) and noted that the application meets these setbacks. Ms. Williams also noted that an Alberta Transportation permit is required as the land is within 800 m of a provincial highway. The applicant has been made aware of this requirement and is reminded that they must obtain this permit.

Ms. Koreen Anderson, public health inspector, replied on behalf of AHS. Ms. Anderson enquired if a risk assessment had been completed considering the water sources located onsite. As noted below an environmental risk assessment for the existing location was previously conducted and remains accurate to date.

#### **7. Environmental risk of facilities**

When reviewing a new authorization 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](http://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 Springside's 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.

New MSF/MCA 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 monitoring for the facility. In this case a determination was made and monitoring is not required.

## **8. Terms and conditions**

Authorization BA21016 permits the construction of the rooster barn.

Authorization BA21016 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization BA21016 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

## **9. Conclusion**

Authorization BA21016 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21016.

Authorization BA21016 must be read in conjunction with Springside's previously NRCB issued Approval BA16017 which remains in effect.

September 10, 2021

(Original signed)

Nathan Shirley  
Approval Officer

**Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization BA21016

## **APPENDIX A: Consistency with the municipal development plan**

Under section 22 of AOPA, an approval officer may only approve an application for an authorization 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 22(2.1) 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.)

Springside’s CFO is located in Sturgeon County and is, therefore, subject to that county’s MDP. Sturgeon County adopted the latest revision to this plan on April 22, 2014, under Bylaw #1313/13.

As relevant here, section 1.4.4 of Sturgeon County’s MDP states that the county “[s]hall support ‘right to farm legislation’ by applying the requirements outlined within ... AOPA.” This is a general policy statement and likely not a “land use provision,” so I do not consider it to be directly relevant to my MDP consistency determination. However, this policy provides general guidance for interpreting the MDP’s more CFO-specific policies.

Section 1.4.4 of the MDP further states that, when “referred to” by the NRCB, the county “will apply the objectives of the Integrated Regional Growth Strategy (IRGS)” in the county’s “referred evaluation” of proposals for new or expanding CFOs. This policy appears to be intended solely at guiding the county’s development of its own response to an AOPA permit application, so the policy likely isn’t relevant to my MDP land use consistency determination.

The CFO is located in an area designated “Neighbourhood C” on Map 5 of the county’s MDP. According to Section C.1(b) of the MDP, the county aims to minimize land-use conflicts in Neighbourhood C between “working landscapes and residential communities” by discouraging the “expansion” of CFOs within specified distance of several listed towns. Section C.1(b) also refers to Appendix A-2 of the MDP, which lists linear distance for CFOs from town boundaries, and appears to be based on the “affected party” notice radii from AOPA’s Part 2 Matters Regulation.

Under this section, the setback distances are set by reference to the distances in the Part 2 Matters Regulation under AOPA, for determining “affected parties” with respect to an AOPA permit application. That distance is 0.8 km for Springside’s CFO.

It is uncertain whether this MDP policy is a valid “land use provision” and, therefore, whether it is relevant to my MDP consistency determination. At any rate, Springside’s CFO is not within any of the setbacks in section C.1(b) of the county’s MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of the county's MDP. The county's non-objection to the proposed expansion supports this conclusion.

NRCB Approvals Policy 8.2.3 and NRCB Board Decision 2015-01 Folsom Dairy Ltd., at pp 5-6 states that an approval officer should only consider a municipality's land use bylaw (LUB), if the text of MDP provides a clear intent to adopt an LUB. In my view, the MDP does not show a clear and direct intention to incorporate the LUB. In addition, the agricultural section of the LUB makes no mention of CFOs and section 2.3 of the LUB states CFOs do not require a development permit but shall be in conformance with the applicable regulations of the bylaw as well as in accordance with other applicable legislation. Therefore I will not be considering the LUB.

## **APPENDIX B: Explanation of conditions in Authorization BA21016**

### **a. Construction Deadline**

Springside proposes to complete construction of the proposed new rooster barn by December 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2023 is included as a condition in Authorization BA21016.

### **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, Authorization BA21016 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the rooster 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.”
- b. Springside to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the rooster barn.

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. Authorization BA21016 includes a condition stating that Springside shall not place livestock or manure in the manure storage or collection portions of the new rooster barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.