

Decision Summary BA21003

This document summarizes my reasons for issuing Registration BA21003 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21003. 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 a registration. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On February 4, 2021, Ace Poultry Farms Inc. (Ace Poultry) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on November 10, 2021. On November 17, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 20,000 to 55,000 chicken broilers
- Constructing poultry barn #2 – 110 m x 20 m

a. Location

The existing CFO is located at SE 7-56-14 W4M in the County of Two Hills, roughly three kilometres east of the hamlet of Willingdon, Alberta. The terrain is relatively flat with a slight slope towards an intermittent drainage that runs north-south through the CFO property. The drainage runs between both the existing facilities and the proposed poultry barn #2.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed registration under section 18.1 of AOPA. This deemed registration allows for the construction and operation of a 20,000 chicken broiler CFO. The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Appendix C, attached. The deemed facilities are listed in the appendix to the Registration BA21003.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies (or directs the applicant to notify) all parties that are “affected” by a registration 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 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 ½ mile (805 m) from the CFO
- all persons who own or reside on land within the greater of ½ mile (805 m) or the minimum distance separation for the land on which the CFO is located

The land zoning on which the CFO is located would require a minimum distance separation of 200 metres. Therefore, the notification distance is 0.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

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

The NRCB gave notice of the application by public advertisement in the News Advertiser newspaper on November 17, 2021. The full application was posted on the NRCB website. As a courtesy, 11 letters were sent to people identified by the County of Two Hills as owning or residing on land within the notification distance.

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) and Alberta Environment and Parks (AEP).

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that the current water registration and licence require a name change amendment under the *Water Act*. Additionally, Ms. Partridge included a livestock water requirement worksheet for the applicant to calculate the annual water requirement for the additional livestock to determine if additional water licencing is required. Ms. Partridge mentioned if additional water licencing is required, a new application must be submitted and may also require a hydrogeological study to support the increase in water requirements.

AHS did not provide any comments.

4. Alberta Land Stewardship Act (ALSA) regional plan

Section 22(9) 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 to be 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 Two Hill’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
- 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 9, 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.” The County of Two Hills is an affected party (and directly affected) because the proposed CFO expansion is located within its boundaries.

Mr. Gary Buchanan, planning & development director with the County of Two Hills, provided a written response on behalf of county. Mr. Buchanan stated that the application is consistent with the County of Two Hill’s land use provisions of the municipal development plan. The application’s consistency with the County of Two Hill’s municipal development plan is addressed in Appendix A, attached.

Mr. Buchanan also listed the setbacks required by the County of Two Hill’s land use bylaw (LUB) and noted that the application meets these setbacks.

The County of Two Hills also raised concerns in regards to road use. Under NRCB policy, approval officers will not include conditions in permits requiring operators to enter into a road use agreement with the municipality. The reason for this policy is that roads are a “municipal responsibility and are not located on the CFO site.” (See NRCB Operational Policy 2016-7: Approvals part 8.9.) The condition of surrounding roads is not a requirement of AOPA and as such cannot be addressed further in this decision. However, I did forward a copy of the county’s response to Ace Poultry for their information and review.

No other responses were received.

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). Barry Porozni provided an MDS waiver and is therefore considered to be a directly affected party.

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 groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

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.)

According to this assessment, the existing solid manure storage pad poses a moderate risk to surface water. A condition is included in Registration BA21003 to construct and maintain berms in good working order to control surface water run-on and runoff for the existing solid manure storage pad. All other existing CFO facilities pose a low potential risk to groundwater and surface water (the CFO's existing facilities are listed in the appendix to Registration BA21003).

9. Terms and conditions

Registration BA21003 specifies the cumulative permitted livestock capacity as 55,000 chicken broilers and permits the construction of the new poultry barn #2.

Registration BA21003 contains terms that the NRCB generally includes in all AOPA registrations, 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, Registration BA21003 includes conditions that generally address construction deadlines, surface water run-on and runoff controls, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Registration BA21003 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21003.

Ace Poultry's deemed registration is therefore superseded, and its content consolidated into this Registration BA21003, unless Registration BA21003 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed registration will remain in effect.

January 13, 2022

(Original signed)
Julie Wright
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration BA21003
- C. Determination of deemed permit status

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for a registration or amendment of a registration 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.)

Ace Poultry’s CFO is located in the County of Two Hills and is therefore subject to that county’s MDP. The County of Two Hills adopted the latest revision to this plan on January 16, 2019, under Bylaw #3-2018.

Policy 5.3.1 states that “[m]ost” of the land within the county is designated as an “Agricultural Use Area” as shown on Map 2. Ace Poultry’s CFO is within the Agricultural Land Use area designated on Map 2 of the MDP, and its proposed expansion is fully consistent with the “agricultural and agriculture-related” land uses for that area.

Policy 5.3.2 states that this area is, “for the most part, conserved for agricultural and agriculture-related uses.”

Policy 5.3.3 states “The primary use of the Agricultural Use Area is for extensive and intensive agricultural uses and confined feeding operations...”

Policies 5.3.1-5.3.3 are likely considered general guiding principles and sets the context regarding the planning and development of agriculture lands.

Policy 5.3.7 specifically deals with CFOs and manure storage facilities (MSFs) as defined by AOPA. Under this policy, all such facilities “must fully satisfy all the requirements and regulations adopted under ... [AOPA], specifically the minimum distance separation requirements and land base requirements.” The CFO meets the requirements as set out in AOPA and therefore meets this policy requirement.

Policy 5.3.8 states that the county will provide “input” to the NRCB on 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 Operational Policy 2016-7, Approvals, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA and the planning and

development director stated in his response that the application is consistent with the county's MDP.

For these reasons, I determined that the application is consistent with the land use provisions of the county's MDP.

APPENDIX B: Explanation of conditions in Registration BA21003

Registration BA21003 includes several conditions, discussed below:

a. Construction deadline

Ace Poultry proposes to complete construction of the new poultry barn by November 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 1, 2024 is included as a condition in Registration BA21003.

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, Registration BA21003 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the poultry barn 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. Ace Poultry to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the poultry 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. Registration BA21003 includes a condition stating that Ace Poultry shall not place livestock or manure in the manure storage or collection portions of the new poultry barn until NRCB personnel have inspected the barn and confirmed in writing that it meets the registration requirements.

c. Operating condition

A condition has been included in Registration BA21003 requiring the permit holder to construct and maintain in good working order berms around the existing solid manure storage pad to prevent surface water run-on and runoff.

APPENDIX C: Determination of deemed permit status

Ace Poultry 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 is not covered by a municipal development permit (or permit issued under the *Public Health Act*) issued before AOPA came into effect on January 1, 2002. However, under section 18.1(1)(a) of AOPA, the CFO may still hold a deemed permit if:

- a. the CFO “existed” on January 1, 2002; and,
- b. the CFO facilities were at a size that was at or greater than the permit threshold sizes under AOPA. (See NRCB Operational Policy 2016-6: *Public Notice on Grandfathering Decisions*, part 1.)

To determine whether the CFO meets these two criteria, the NRCB must consider, among other things:

- a. What facilities existed at the site on January 1, 2002, including their dimensions, types of physical structures and other physical characteristics
- b. How each of those facilities was being used on January 1, 2002

I found that the livestock type and capacity of the structures could reliably be determined by viewing historical aerial photos and records from the owner or operator.

As required under section 11(2) of the Administrative Procedures Regulation, I provided notice to those parties who would be entitled to notice if this were an application for a new registration. In this case, that included:

The NRCB published notice of the deemed permit determination as part of the notice for the proposed poultry barn application, in the News Advertiser on November 17, 2021.

Under section 18.1(2)(a) of AOPA, if a CFO existed on January 1, 2002, the CFO’s deemed capacity is its physical capacity to confine livestock on January 1, 2002.

As confirmed using aerial photos taken between 1999 and 2003 (Valtus), the existing poultry barn and solid manure storage pad has not changed since these photos were taken. The external measurements of the barn are 91 m x 12.1 m and the solid manure pad is 20 m x 19 m.

Using Technical Guideline Agdex 096-81 “Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002” to calculate capacity, I found that the capacity of site is 19,758 broiler chickens. Broiler poultry operations often switch between two categories known as Kentucky fried chicken size and broiler size, which have factors of 0.5 ft²/bird and 0.7 ft²/bird respectively. Therefore, I applied a value of 0.6 ft²/bird to account for changing between two categories. My calculation is shown below.

$$\text{Calculated bird \#} = \frac{\text{barn ft}^2}{\text{ft}^2 \text{ per bird}}$$

$$\text{calculated bird \#} = \frac{(298.6 \times 39.7)}{0.7 \text{ ft}^2}$$

$$19,758 = \frac{11854.5}{0.6 \text{ ft}^2}$$

Based on these findings, I find that the claimed capacity is reasonable. Therefore, the CFO is considered to have a deemed registration and a deemed capacity of 20,000 chicken broilers.

I did not receive any submissions relating to grandfathering.