

Decision Summary RA21011

This document summarizes my reasons for issuing Approval RA21011 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21011. 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 Farms (Country Hills) submitted a Part 1 application to the NRCB to construct a new poultry CFO with 63,000 chicken pullets. The Part 2 application was submitted on July 30, 2021. On January 25, 2022, I deemed the application complete.

Country Hills' application included a signed declaration indicating that they wanted to apply through the NRCB for both the *Water Act* licence and their AOPA approval; and therefore, this is a joint *Water Act/AOPA* application. Alberta Environment and Parks (AEP) processes the *Water Act* application, and makes a decision about issuing a water licence; however, the NRCB and AEP have a joined public notice in the newspaper, and coordinate the receipt of written responses to the applications.

The proposed CFO involves:

- Constructing a pullet barn (103.7 m x 15.9 m)
- Constructing a solid manure storage building (31.5 m x 31.5 m)

The application also notified the NRCB of the proposed construction of a hallway between the pullet barn and the manure storage building (25 m x 5.5 m). This structure 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 require a permit under the act.

a. Location

The proposed CFO is located at SW 22-25-28 W4M in Rocky View County, roughly 5 km east of the City of Calgary. The terrain is undulating with a general slope to the east and southeast towards a slough located more than 300 m to the east.

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 Rocky View County, which is the municipality where the CFO is to be located.

The NRCB gave notice of the *Water Act/AOPA* joint application by public advertisement in the Rocky View Weekly on January 25, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, twenty one 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).

I also sent a copy of the application to ATCO Gas and Pipelines Ltd. as they have a right of way on the land where the CFO is proposed to be located

The NRCB received a response from a development and planning technologist, on behalf of AT, indicating that County Hills does not require a highway roadside development permit.

AEP responded to the NRCB by indicating they have issued water licence No 00478088-00-00 under the *Water Act*.

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.

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document’s Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of Rocky View County's MDP. (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:

- 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'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

Country Hills owns and operates a chicken layer CFO located north of the proposed chicken pullet CFO. I determined that the existing chicken layer CFO located on the NW 22, and the proposed chicken pullet CFO to be located on the SW 22 (south of a subdivided parcel) are not located on adjacent land parcels. Therefore, according to Section 3(11) of the Standards and Administration Regulation, for the purpose of calculating the MDS, the proposed chicken pullet CFO is a new CFO on its own and not an expansion of the existing chicken layer CFO. (See section 1. of Appendix B for more details).

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 is located within its boundaries.

Ms. Jessica Anderson, supervisor, planning policy & planning 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 corporations, who were represented by their lawyer.

The two corporations own land within the 0.5 mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, the two corporations qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties (DAP) raised concerns regarding air and odour pollution, increase in traffic, noise, the ethical treatment of animals, and the groundwater diversion. These concerns are addressed in Appendix B.

The DAPs submitted a second response with concerns related to the diversion of water through the *Water Act* application. I forwarded this second response to Alberta Environment and Parks.

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.

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 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 may have on natural resources administered by provincial departments, and determined that these are acceptable.

I have considered statement of concerns submitted under section 109 of the *Water Act* in respect of the subject of this application. Country Hills, through Stantec Consulting Ltd, has addressed these concerns and forwarded them to Alberta Environment and Parks (AEP). On March 30, 2022 AEP issued water licence No 00478088-00-00 under the *Water Act*.

Finally, I considered the effects of the proposed CFO 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 and the directly affected parties' concerns have been addressed, by Country Hills, and in Appendix B of this Decision Summary.

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, by Country Hills, and on Appendix B of this Decision Summary.

I also presumed that the proposed CFO 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 RA21011 specifies the cumulative permitted livestock capacity as 63,000 chicken pullets and permits the construction of the pullet barn and the manure storage building.

Approval RA21011 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 RA21011 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

11. Conclusion

Approval RA21011 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21011.

April 14, 2022

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

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by the directly affected parties
- C. Explanation of conditions in Approval RA21011

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.)

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 - 8.22 and 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 appear to be intended to govern the county’s responses to individual CFO applications to the NRCB, and are procedural in nature. 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 1,600 m of the CFO are generally agricultural, with some residential and one industrial parcel on the northeast. All residences on these properties meet the MDS requirements of the regulations. It is therefore my opinion that because of this the application would be consistent with this section, if the section applied.

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. I note that the plan area for the IDP between Rocky View County and the City of Calgary does not apply to this proposed CFO’s location. Country Hills’ proposed CFO, therefore meets these requirements.

Sections 8.23, and 8.25 - 8.28 relate to minimizing land use conflict for non-agricultural development near agricultural operations 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 supports my conclusion.

APPENDIX B: Concerns raised by directly affected parties (DAPs).

The following corporations qualify for directly affected party status because they submitted a response to the application and they own land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

2044781 Alberta Ltd.
2044799 Alberta Ltd
Both at NE 22-25-28 W4M
(Through their legal counsel Ms. Katelyn Rath)

In a letter dated March 15, 2022 Muneer Gilani, on behalf of Country Hills, responded to the issues raised in the written response. The full response is included on pages 22 and 23 of 81 of Technical Document RA21011.

The directly affected parties (DAPs) raised the following concerns which are listed and summarized below, together with my analysis and conclusions, as well as the applicant’s response:

- 1. Air and odour pollution, and noise** – The respondents expressed concern about a potential increase (by doubling the operation) in odours and dust resulting in negative effects on air quality. The response also mentioned the increase of noise due to the chickens, and due to truck traffic (that removes manure, ships chickens and supplies the operation, as well as high traffic during construction).

Applicant’s response:

The applicant stated the following:

...”Pullets produce significantly reduced smell compared to other forms of chickens. Our barn will use belt manure dryers which reduce smell. We recognize the concern raised by the neighbour represented by Ms Rath and contend that such an agriculture use is consistent with the area. There are goats, cattle, and other animals in our area, and all would produce manure. Our chickens will be housed indoors thereby reducing smell compared to other livestock in the area.

We also note that we have indoor storage of manure available for at least 9 months should it be required”...

...” As our chickens will be housed indoors – we do not believe noise will pose a material nuisance to our neighbours that is inconsistent with agriculture areas” ...

Approval officer’s conclusions:

AOPA’s minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts, noise and dust, from confined feeding operations (CFOs). Country Hills’ CFO will be located well outside of the required MDS from existing residences—the closest neighbouring residence to the CFO is more than 500 m away from the proposed CFO. This is more than twice as far as the required 211 m MDS to that residence.

The closest of the residences on the land owned by the DAPs is located more than 1,180 m away from the proposed location of the CFO, which is more than four times as far as the required 281 m MDS to residences on Category 2 land zoning (country residential).

In several review decisions, the NRCB's board members have made it clear that concerns regarding noise and dust related to road use are matters that should be addressed through municipal road use agreements or under another municipal authority, rather than by approval officers when issuing permits under AOPA. (See, e.g. Muilwijk, RFR 2011-07 at 5; Zealand Farms, RFR 2011-02 at 5; Duinkerken, RFR 2006-02 at 3; Shady Lane Colony, Decision 05-03 (pdf p. 2)). Additionally, for more details please refer to section #2 of this appendix.

Notwithstanding the CFO's distances to its nearest neighbours, it is reasonable to expect that they will experience some odours, noise, dust and other potential nuisances when the CFO starts operation.

Often, any issues that arise relating to the operation of a CFO, and other disagreements, can be resolved through good communication between neighbours and the CFO operator. However, if a member of the public has concerns regarding a CFO, including whether or not the operation is complying with AOPA, they may contact the NRCB through its toll free reporting line (1-866-383-6722). An NRCB inspector will follow up on the concern.

The respondent indicated that odour is already an issue, and by doubling the operation, odours can be expected to occur again. The present application is for a new poultry CFO with 63,000 chicken pullets. Country Hills owns and operates a chicken layer CFO located north of the proposed chicken pullet CFO. The land with the existing chicken layer operation and the land for the proposed chicken pullet operation are separated by a subdivided parcel of land (approximately 16 hectares); which is also owned by Country Hills. The parcel of land has some storage buildings that were formerly used for an egg grading station, additionally, there are two residences on it.

I considered whether, for MDS purposes, the proposed new CFO and the existing CFO would be a single operation. The CFOs are both owned by the same owner and operator, but the proposed chicken pullet operation will have its own utilities and infrastructure, and could potentially be sold separately without affecting the chicken layer operation on the NW 22. Further, I determined that the existing chicken layer CFO located on the NW 22, and the proposed chicken pullet CFO to be located on the SW 22 (south of the subdivided parcel) are not located on adjacent land parcels. Section 3(11) of the Standards and Administration Regulation only requires an approval officer to determine if two CFOs are one if they are located on "adjacent land parcels." Therefore, for the purpose of calculating the MDS, the proposed chicken pullet CFO is a new CFO on its own and not an expansion of the existing chicken layer CFO.

- 2. Road use and traffic** – The DAPs' response indicated that there will be an increase in traffic due to manure removal, shipment of chickens and shipping supplies to the operation; as well as traffic during construction and employees accessing the operation. The increase in traffic will cause dust and the roads to degrade. The DAPs stated that the applicant has not provided information as to what steps will be taken to address

these problems.

Applicant's response:

The applicant stated the following:

..." Our pullet barn will add 1-2 trailers of feed per week to traffic of the area and potentially 1-2 staff members per day. Given our proximity to the secondary highway (564/Country Hills Blvd) we do not believe the pullet barns traffic will materially impact the vehicular traffic in the area (which would frequently several thousands of cars per day)"...

Approval officer's conclusions

Traffic on highway 564 and the county roads may increase as a result of the new CFO. However, no concerns about a potential increase in traffic, or dust for these roads were raised by Alberta Transportation (AT), or Rocky View County which have jurisdiction over the management of these roads.

Several board panel decisions have made it clear that traffic and road use matters are outside of the approval officer's purview under AOPA (See, e.g. Hutterian Brethren Murray Lake, RFR 2020 at p.3-4).

- 3. Animal welfare** – The respondents were concerned with the ethical treatment of the chickens at the CFO. The response referred to stress and the negative effect of air quality on the chickens, causing illness, which can affect livestock in the surrounding area. The DAP stated that the applicant has not provided information as to how it would protect its animals and reduce stress on the animals.

Applicant's response:

The applicant stated the following:

..."Country Hills Egg Farm meets or exceeds all the requirements for animal care set by the federal agency responsible for the Codes of Practice. We undergo regular 3rd party audits and have scored well in our audits. We also employ a veterinarian who, periodically, visits our facility to provide training and support to our staff to ensure our hens receive optimal care at all times. We take our responsibility to care for our hens seriously. We also commit to continue to work with industry professionals to ensure best practices in biosecurity and animal welfare are employed and positive outcomes achieved"...

Approval officer's conclusions

Animal welfare is the responsibility of the Food Safety and Animal Welfare Division of Alberta Agriculture, Forestry and Rural Economic Development, other agencies, and livestock groups. Animal welfare does not fall under AOPA and is therefore not considered as part of my review of the application. Operators are responsible for the welfare of the livestock under their care and control.

- 4. Groundwater supply** - The DAPs submitted an additional letter addressed to Alberta Environment and Parks concerned about the impact on groundwater quantity. The respondents indicated that they own two wells on the land (NE 22-25-28 W4M), that they

are a household user, and that they maintain priority over the CFO to divert water if diversion issues occur.

Approval officer's conclusions

Alberta Environment and Parks (AEP) is responsible for licencing and monitoring the supply of groundwater in the province. The water licencing process includes an opportunity for neighbours to provide input. Therefore, for efficiency and to avoid inconsistent regulation, NRCB approval officers generally do not consider water supply concerns when reviewing AOPA permit applications, other than ensuring that applicants sign one of the water licencing declarations listed in the Part 2 application form. (This declaration is on page 3 of Technical Document RA21011.)

Country Hills' application included a signed declaration indicating that they would apply through the NRCB for both the *Water Act* licence and their AOPA application. I forwarded both the application, and the concerns relating to water supply, to AEP for its information and response.

Country Hills, through Stantec Consulting Ltd, has addressed these concerns and forwarded them to Alberta Environment and Parks (AEP).

On March 30, 2022 AEP issued water licence No 00478088-00-00 under the *Water Act*.

The applicant included an extra item on his response to the statement of concerns regarding consultation, by stating that they ...”did attempt to contact all households within 1.5 miles of the new operation. We also held a virtual open house on June 10, 2021 which was attended by many neighbours including the concerned neighbour. We also met with several neighbours who were very supportive of our farm and our plans”...

APPENDIX C: Explanation of conditions in Approval RA21011

Approval RA21011 includes several conditions, discussed below:

a. Construction Deadline

Country Hills proposes to complete construction of the proposed new pullet barn and manure storage building by May 1, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of May 1, 2025 is included as a condition in Approval RA21011.

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 RA21011 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portions of the pullet barn and manure storage building 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. Country Hills to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage areas 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 RA21011 includes conditions stating that Country Hills shall not place livestock or manure in the manure storage or collection portions of the new pullet barn, or place manure in the manure storage building, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.