

Decision Summary RA22001

This document summarizes my reasons for issuing Approval RA22001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22001. 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 5, 2022, Byron and Donna Toews, operating as Albanna Farms Ltd. (Albanna Farms) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on March 7, 2022. On March 16, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing birds numbers from from 13,000 to 33,200 chicken layers. The number of the existing chicken pullets will stay at 25,000
- Constructing a two story layer barn (63.4 m x 16.5 m)
- Constructing a manure storage shed attached to the east end of the layer barn (21.3 x 9.1 m)

Albanna Farms indicated that their previous layer barn burned down in December 2021.

a. Location

The existing CFO is located at NW 6-31-24 W4M in Kneehill County, roughly 7 km northeast of Linden, Alberta. The terrain is undulating with a general slope towards the north and northeast.

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 13,000 chicken layers and 25,000 chicken pullets 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 RA22001.

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

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

The NRCB gave notice of the application by public advertisement in the Three Hills Capital on March 16, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, eleven letters were sent to people identified by Kneehill 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), and Alberta Environment and Parks (AEP).

I also sent a copy of the application to Altagas Utilities Inc., and Ember Resources Inc.

I only received a response from Mr. Balraj Deol, an AHS environmental health officer/executive officer, indicating that AHS has no concerns with this application and included some comments under the Public Health Act and its regulations.

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 CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO expansion is consistent with the land use provisions of Kneehill 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 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 10, the application meets all relevant AOPA requirements. The exemption that is required to address the AOPA requirements around the 100 metre water well setback is discussed in the following parts of this decision summary.

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." Kneehill County is an affected party (and directly affected) because the proposed CFO expansion is located within its boundaries.

Ms. Barb Hazelton, the manager of planning and development with Kneehill County, provided a written response on behalf of Kneehill County. Ms. Hazelton stated that the county has not concerns with this application. The application's consistency with Kneehill County's municipal development plan is addressed in Appendix A, attached.

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

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 or groundwater monitoring for the facility. In this case a determination was made and surface water or groundwater 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.)

I assessed the CFO's existing pullet barn using the ERST. The assessment found that this facility poses a low potential risk to groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted.

9. Exemptions

I determined that the proposed layer 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 setback is warranted due to the construction of the water well, the location of the water well upslope from the layer barn, and the barn having walls and a roof, the aquifer is not likely to be contaminated.

10. 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. The application meets the setbacks under Kneehill County's land use bylaw.

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

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.

11. Terms and conditions

Approval RA22001 specifies the cumulative permitted livestock capacity as 33,200 chicken layers and 25,000 chicken pullets, and permits the construction of the layer barn and the manure storage shed.

Approval RA22001 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 RA22001 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

12. Conclusion

Approval RA22001 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22001.

Albanna Farms' deemed registration is therefore superseded, and its content consolidated into this Approval RA22001, unless Approval RA22001 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Albanna Farms' deemed registration will remain in effect.

April 29, 2022

(original signed)
Francisco Echegaray, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Exemptions from water well setback
- C. Explanation of conditions in Approval RA22001
- 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.)

Albanna Farms’ CFO is located in Kneehill County and is therefore subject to that county’s MDP. Kneehill County adopted the latest revision to this plan on February 23, 2021, under Bylaw #1829.

As relevant here:

Policy 11 of the MDP states that “no new or expansions of existing confined feeding operations (CFOs) will be allowed in the following areas:

- (i) In hazard lands or environmentally sensitive lands as defined by the province and the 2010 Summit Report,
- (ii) Within 1.6 kilometres (1 mile) of any hamlet or grouped Country Residential development, or
- (iii) Within 1.6 kilometres (1 mile) of an urban fringe area or an Inter-municipal Development Plan boundary

Albanna Farms’ proposed CFO expansion is not located within any of these setbacks or exclusion zones.

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

APPENDIX B: Exemption from water wells setbacks

1. Water Well Considerations

The proposed layer barn is to be located less than 100 m from a water well. During a site visit, I confirmed that one water well is located approximately 20 m from it. This is in conflict with the section 7(1)(b) of the *Standards and Administration Regulation (SAR)* under AOPA.

Section 7(2), however, 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), and, if required, a groundwater monitoring program is implemented.

The potential risks of direct aquifer contamination from the MSF/MCA are presumed to be low if the applicant's proposed MSF/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 20 m west of the layer barn is likely AEP water well ID # 10011093. This well is reported to have been installed in 2021 and has a perforated or screened zone from 19.8 m to 30.5 m below ground level across stratigraphy. The well has an above ground casing. This well is used for non-domestic purposes. The well's log identifies protective layer or layers from 8.2 m to 19.8 m below ground level. The well has a bentonite seal from ground surface to 19.8 m below ground level. The well appeared to be in good condition at the time of my site inspection and its casing was protected by a welded steel cage. The well is up-gradient of the CFO and MSF.

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

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

In this case, the results of the water well exemption screening tool suggest that an exemption is likely as seen in Technical Document RA22001.

APPENDIX C: Explanation of conditions in Approval RA22001

Approval RA22001 includes several conditions, discussed below:

a. Construction Deadline

Albanna Farms proposes to complete construction of the proposed new layer barn and the manure storage shed by January 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of January 31, 2025 is included as a condition in Approval RA22001.

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 RA22001 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the layer barn and the manure storage shed 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. Albanna Farms shall 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 RA22001 includes conditions stating that Albanna Farms shall not place birds or manure in the manure storage or collection portions of the new layer barn, or manure in the manure storage shed until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.

APPENDIX D: Determination of deemed permit status

Albanna Farms 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 of the owner or operator. Accordingly, under section 11(3) of the Administrative Procedures Regulation, I waived the notice that might otherwise be required for determination of a deemed permit.

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.

Albanna Farms provided information which demonstrates, that the CFO existed on January 1, 2002. This information includes the barns dimensions and housing type with the application.

The facilities shown on aerial photographs indicate that the footprint of the pullet barn and the layer barn (burned down) buildings remained the same.

To obtain information regarding the average barn area required for a chicken layer operation, I consulted Technical Guideline AgDex 096-81 – Calculator for Determining Livestock Capacity Operations as they existed on January 1, 2002. The information reviewed provides a level of consistency showing that the facilities existed with a capacity for at least 13,000 chicken layers and 25,000 chicken broilers. Therefore, it is reasonable to conclude that this operation has a deemed AOPA capacity of 13,000 chicken layers and 25,000 chicken broilers.

Based on these findings, the CFO is considered to have a deemed registration and a deemed capacity of 13,000 chicken layers and 25,000 chicken broilers.