

Decision Summary BA21021

This document summarizes my reasons for issuing Registration BA21021 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21021. 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 October 27, 2021, Koekkoek Poultry Farm Ltd. (Koekkoek Poultry) submitted a Part 1 application to the NRCB to construct a new poultry CFO.

The Part 2 application was submitted on March 1, 2022. On March 15, 2022, I deemed the application complete.

The proposed CFO involves constructing one broiler barn (100.5 m x 25.6 m) for 45,000 broiler chickens.

a. Location

The proposed CFO is located at SE 35-60-3 W5M in the County of Barrhead, roughly 10 km SE of Neerlandia, AB. The terrain is relatively flat with a seasonal drainage running 50 m SW of the proposed barn.

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 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 the County of Barrhead, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in the Barrhead Leader on March 15, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 7 letters were sent to people identified by the County of Barrhead as owning or residing on land within the affected party radius.

3. Notice to other persons or organizations

Under section 21 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).

AEP provided a generic response indicating that if any permits are needed the applicant must obtain them. Koekkoek Poultry has been notified of this requirement and is reminded that if additional water licensing is required they must obtain the appropriate permits.

No comments from AHS were received.

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 is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of the County of Barrhead'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:

- 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

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." The County of Barrhead is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

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

Ms. Bruns also listed the setbacks required by the county's land use bylaw (LUB). The application meets these setbacks.

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

9. Terms and conditions

Registration BA21021 specifies the cumulative permitted livestock capacity as 45,000 broiler chickens and permits the construction of a new broiler barn 100.5 m x 25.6 m).

Registration BA21021 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 BA21021 includes conditions that generally address construction deadlines, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

10. Conclusion

Registration BA21021 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21021.

April 28, 2022

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Registration BA21021

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.)

Koekkoek Poultry’s CFO is located in the County of Barrhead and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on August 17, 2010, under Bylaw No. 4-2010.

Part 3.13 of the MDP lists 14 agricultural development policies and includes CFOs as among “primary use[s]” in agricultural use area. The first policy recognizes agricultural as the priority land use in rural areas, supports agricultural diversification, encourages siting agricultural industries in agricultural areas, and discourages non-agricultural land uses in intensive agricultural areas. Of the remaining 13 policies, only 10 and 11 relate specifically to CFOs.

Policy 10 states “input shall be provided to the NRCB in responding to 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 NRCB Operational Policy 2016-7, Approvals 8.2.4). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(2.1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 11 states “minimum distance separations” appears to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. MDP policy 11 is not relevant to my MDP consistency determination because it is based on AOPA’s MDS requirements. (See NRCB Operational Policy 2016-7, Approvals, part 8.2.5). That said, the CFO meets the MDS requirements under AOPA and is therefore consistent with this MDP policy.

I conclude that the application is consistent with the relevant land use provisions of the County of Barrhead’s MDP.

APPENDIX B: Explanation of conditions in Registration BA21021

Registration BA21021 includes several conditions, discussed below:

a. Construction Deadline

Koekkoek proposes to complete construction of the proposed new broiler barn by December, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2024 is included as a condition in Registration BA21024.

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 BA21021 includes conditions requiring:

- a. Koekkoek to provide documentation to confirm the specifications of the concrete (category D (solid manure - dry) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas") used to construct the manure storage and collection portions of the broiler 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 BA21021 includes a condition stating that Koekkoek shall not place livestock or manure in the manure storage or collection portions of the new broiler barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the registration requirements.