

Decision Summary LA22035

This document summarizes my reasons for issuing Approval LA22035 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22035. 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 June 21, 2022, North Farview Poultry Farms Ltd. (North Farview) submitted a Part 1 application to the NRCB to expand an existing poultry CFO by increasing the number of chicken broilers from 52,000 to 97,000 and constructing an additional broiler barn (122 m x 20 m).

The Part 2 application was submitted on June 27, 2022. On July 12, 2022, I deemed the application complete.

a. Location

The existing CFO is located at SE 12-10-21 W4M in Lethbridge County, roughly 9 km northeast of Lethbridge, Alberta. The terrain is mostly flat, with an irrigation canal about 300 m to the west.

b. Existing permits

The NRCB has previously issued Approval LA14035 which allows North Farview to construct and operate a 52,000 chicken broiler CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA22035.

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 ½ mile. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to Lethbridge County, which is the municipality where the CFO is located. The CFO is not located within 100 m of the bank of the river, stream, or canal.

The NRCB gave notice of the application by public advertisement in the Sunny South News on July 12, 2022. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. As a courtesy, 13 letters were sent to people identified by Lethbridge County as owning or residing on land within the affected party radius. An updated courtesy letter was sent July 6, 2022, as there was an administrative error on the first one.

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), Alberta Transportation, and the St. Mary River Irrigation District (SMRID).

I received response letters from AEP, AHS and the SMRID.

Ms. Linda Park, a land administrator, at the St. Mary River Irrigation District responded to the referral letter stating that, if water is required from the district for this operation, they must purchase an allocation of water and all works required to serve the property.

Ms. Sandip Gill, an AHS environmental health officer, indicated that AHS has no concerns with this application and included comments under the *Public Health Act* that the applicant must follow.

Mr. Jeff Gutsell, a hydrogeologist with AEP, responded by stating that there are no water licences issued and no water wells reported for this land location. He also stated that the CFO is located within the SMRID and requested that the owner submits proof of adequate water to the AEP prior to populating the new barn. The applicant has been made aware of the AEP request and is reminded that they need to obtain all required licences before expanding the CFO.

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 expansion is consistent with the land use provisions of Lethbridge 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 expansion:

- Meets the required AOPA setbacks from all nearby residences with the use of an expansion factor (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 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 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.” Lethbridge County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Hilary Janzen, the supervisor of planning and development with Lethbridge County, provided a written response on behalf of Lethbridge County. Ms. Janzen stated that the application is not consistent with Lethbridge County’s land use provisions of the municipal development plan because the existing CFO is located on a parcel of land is 38.3 acres in size, and policy 3.7 of the County’s MDP excludes the establishment of CFOs on parcels of less than 80 acres in size.

The application’s consistency with Lethbridge County’s municipal development plan and the county’s concern are 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 monitoring is not required.

When reviewing a new 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.) 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 North Farview's existing CFO facilities were assessed in 2014 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.

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. Janzen indicated that the application appears to meet the setbacks required by Lethbridge County's land use bylaw (LUB).

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. AEP has not made me aware of statements of concern submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the Water Act in respect of the subject of this application. I received a response from AEP indicating that North Farview must obtain a water licence through AEP or water allocation through the water irrigation district. Furthermore, the application meets AOPAs technical requirements.

I am not aware of any written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed August 9, 2022).

Finally, I considered the effects of the proposed 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 on 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 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.

10. Terms and conditions

Approval LA22035 specifies the cumulative permitted livestock capacity as 97,000 chicken broilers, and permits the construction of the chicken broiler barn.

Approval LA22035 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 LA22035 includes conditions that generally address a construction deadline, document submission and a construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated previous Approval LA14035 with Approval LA22035 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties keep track of a CFO's requirements, by providing a single document that lists all the operating and construction requirements. Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA22035 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22035.

Approval LA14035 is therefore superseded, and its content consolidated into Approval LA22035, unless Approval LA22035 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA14035 will remain in effect.

August 25, 2022

(Original signed)

Francisco Echegaray
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22035

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.)

North Farview’s CFO is located in Lethbridge County and is therefore subject to that county’s MDP. Lethbridge County adopted the latest revision to this plan on March 10, 2022, under Bylaw #22-001.

The relevant section in the MDP that governs CFOs is section 3 Intensive Livestock/Confined Feeding Operations. The policies relevant to this application are:

3.1 and 3.2 stipulate that establishment/development of new CFOs within the MDP CFO exclusion areas (Map 2 of the MDP), exclusion zones identified in an IDP, or identified residential growth center are not permitted.

This CFO is not a new CFO and is also not located within any of the exclusion areas. These policies (3.1 and 3.2) therefore do not apply.

3.3 states that the expansion of existing CFOs within the county’s CFO exclusion zones is permissible if an IDP exists which allows for such.

This CFO is not within any exclusion zones identified by an IDP or the county’s MDP.

3.4 elaborates on municipal plan consistencies of neighbouring municipalities and is therefore not a land use provision. I will therefore not further discuss this section.

3.5 states that “CFOs shall not be supported to establish or expand within the environmentally sensitive areas as shown in the *Cotton Wood Report: County of Lethbridge: Environmentally Sensitive Areas in the Oldman River Region (1988)*.”

The CFO is not within any of the identified areas. Therefore, this application is consistent with this policy.

3.6 states that all setbacks should be adhered to (e.g. property lines, road setbacks).

The new broiler barn meets the applicable setbacks. Therefore, this application is consistent with this policy.

3.7 CFOs are discretionary uses within the 'Rural Agriculture' land use district and prohibited in all other districts. CFOs are to be excluded from being established on parcels less than 80-acres in size (an exclusion area) as the stipulated minimum agricultural parcel size allowed within the 'Rural Agriculture' district is 80-acres (or 70-acres with up to 10-acres of exceptions on the title).

The existing CFO is located within a 'rural agriculture' land use district. Therefore, this application is consistent with this part of the policy. The second part of this provision is likely not a land use provision because it refers to specifics in respect to the site of a CFO, rather than the use of specific land. In addition to the fact that this is an established CFO, I cannot regard this provision as it appears to be 'a test or condition related to the site for a CFO' (section 20(1.1)).

Sections 3.8, 3.9, 3.10, and 3.11 are not considered land use provisions because they either deal with conditions under which CFOs are allowed to continue to operate (section 3.8), manure application (section 3.9), reciprocal MDS (section 3.10), or county-NRCB interaction (section 3.11).

For these reasons, I conclude that the application is consistent with the land use provisions of Lethbridge County's MDP.

APPENDIX B: Explanation of conditions in Approval LA22035

Approval LA22035 includes several conditions, discussed below, and carries forward all conditions from Approval LA14035. Construction conditions from historical Approval LA14035 that have been met are identified in the appendix to Approval LA22035.

1. New conditions in Approval LA22035

a. Construction Deadline

North Farview proposes to complete construction of the proposed new broiler barn by June 25, 2025. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of June 25, 2025 is included as a condition in Approval LA22035.

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 LA22035 includes a condition requiring:

the concrete used to construct the liner of the manure collection and storage portion of the broiler 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.” North Farview 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 LA22035 includes a condition stating that North Farview shall not place livestock or manure in the manure storage or collection portions of the new broiler barn until NRCB personnel have inspected the broiler barn and confirmed in writing that it meets the approval requirements.