

## Decision Summary FA22001

This document summarizes my reasons for issuing Approval FA22001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document FA22001. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On June 29, 2022, Homeland Hutterian Brethren (Homeland) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on July 8, 2022. On August 10, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken broiler numbers from 2,000 to 6,000
- Constructing a mixed poultry barn – 27 m x 21 m

#### a. Location

The existing CFO is located at Sec 32-74-22 W5M in the Municipal District of Smoky River, roughly 26 km southwest of the Hamlet of Guy, Alberta. The terrain gently slopes to the southeast.

#### b. Existing permits

To date, the CFO has been permitted under NRCB Approval FA09003A. That permit allowed the construction and operation of a mixed livestock CFO (see livestock numbers in Approval FA22001). The CFO's existing permitted facilities are listed in the appendix to the Approval FA22001.

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

A copy of the application was sent to the M.D. of Smoky River, which is the municipality where the CFO is located. The CFO is not within 100 m of a river, stream, or a canal.

The NRCB gave notice of the application by public advertisement in a newspaper in circulation in the community affected by the application. In this case, public advertisement was in the South Peace News on August 10, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 23 letters were sent to people identified by the M.D. 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).

### **4. Municipal Development Plan (MDP) consistency**

I have determined that the proposed expansion is consistent with the land use provisions of the M.D. of Smoky River’s municipal development plan. (See Appendix A for a more detailed discussion of the county’s planning requirements.)

### **5. 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 (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 9 and Appendix B, the application meets all relevant AOPA requirements.

### **6. 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." The M.D. is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Rita Therriault, the chief administrative officer/development officer with the M.D. of Smoky River, provided a written response on behalf of the M.D. Ms. Therriault stated that the application is consistent with the M.D. of Smoky River's land use provisions of the municipal development plan. The application's consistency with the M.D.'s municipal development plan is addressed in Appendix A, attached.

Dylon Gallant, an inspector, replied on behalf of AHS. Mr. Gallant stated they had no concerns with the application. Mr. Gallant requested that Homeland ensure the property is maintained in accordance with Alberta *Public Health Act* and Nuisance and General Sanitation Regulations 243/2003 and requests that if any public health issue arises that they be notified.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received a response from 1 individual.

The NRCB received this response several days after the deadline set out in the public notice. Under NRCB Operational Policy 2016-7: Approvals at part 7.11.5, I considered whether there were exceptional circumstances that warranted considering the submission nonetheless.

In this case, I could not identify exceptional circumstances for the lateness of the submission, so I did not consider it in my decision.

I did however, provide a copy of the submission to Homeland for their review and consideration.

## **7. Environmental risk of CFO facilities**

When reviewing a new approval 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](http://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 Homeland's existing CFO facilities were assessed in 2015 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.

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

## **8. 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. Therriault also stated that the application meets all municipal setbacks required by the M.D.'s land use bylaw (LUB).

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. A copy of the application was provided to AEP and AHS and no concern (or response) was raised.

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 September 5, 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, having considered all the information before me (including in the Technical Document, and from my site visit), this presumption is not rebutted.

Consistent with NRCB policy (Approvals Policy 8.7.3), if the application is consistent with the MDP land use provisions then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted based on the information available.

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 because I did not see any information that suggested it was not an appropriate use of land.

## **9. Terms and conditions**

Approval FA22001 permits the construction of the mixed poultry barn and specifies the cumulative permitted livestock capacity as:

- Milking cows (plus associated dries and replacements) – 200
- Swine Farrow to finish – 500

- Layers – 20,000
- Pullets – 10,000
- Broilers – 6,000
- Turkey toms – 20,000
- Ducks – 1,000
- Geese – 500
- Beef Finishers – 200
- Ewes/Rams – 1,500

Approval FA22001 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 FA22001 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Approval FA09003A with Approval FA22001 (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.

## 10. Conclusion

Approval FA22001 is issued for the reasons provided above, in the attached appendices, and in Technical Document FA22001.

Homeland's Approval FA09003A is therefore superseded, and its content consolidated into this Approval FA22001, unless Approval FA22001 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval FA09003A will remain in effect.

September 28, 2022

(Original signed)

Nathan Shirley  
Approval Officer

## Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval FA22001

## **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.)

Homeland’s CFO is located in the M.D. of Smoky River and is therefore subject to that county’s MDP. The M.D. adopted the latest revision to this plan on October 12, 2016, under Bylaw 16-886.

Section 3.2.6 of the MDP deals with CFOs and below are the relevant policies followed by my assessment for each one.

*b. The Development Authority, upon consideration of policies 3.2.6(c)-(r), shall refer all applications for CFOs to Council for comments.*

This policy is procedural and identifies how applications for CFO’s will be processed when received by the M.D. I do not consider this to be a land use provision and therefore will not consider it in my determination. In any case the application was submitted to the M.D. for their review and response which they provided.

*(c) The Municipal District will not support applications to the NRCB to establish or expand CFOs unless they are compatible with adjacent land uses and do not cause adverse health or environmental impacts.*

This provision provides direction regarding how the M.D. will respond to CFO applications. I do not consider this to be a land use provision and therefore will not consider it in my determination as this requires discretionary judgement. Despite this, the application meets the requirements set out in AOPA. Therefore, I consider this policy met.

*3.2.6(e) CFO operators must enter into a Road Use Agreement with the Municipal District.*

This policy is likely not a valid “land use provision,” as it is a “condition” which I am directed under section 20(1.1) of AOPA not to consider. Additionally, this policy is procedural in nature and therefore I am not able to consider in my determination. The municipal district did not raise any concern regarding this matter. The applicant is reminded that they must comply with applicable transportation requirements and the county requested that the applicant needs to contact them in regards to road use planning.

*3.2.6(f) the NRCB Approval Officer shall notify the Municipal District when Part 1 of an application for CFO has been received by the NRCB. Once Part 2 of an application has been completed and submitted to NRCB it will be available for viewing by all affected parties.*

This policy is considered procedural in nature. I am therefore not considering it in my determination. However, the part 1 and part 2 were both sent to the M.D. and also posted on the NRCB website.

*3.2.6(g) Schedule B – Confined Feeding Operations Siting Restrictions outlines those areas restricting and allowing the placement of new and expanding CFOs within the Municipal District as well as the stipulated minimum setbacks for CFOs requiring an approval or registration with the NRCB.*

*3.2.6(h) All setbacks are to be measured from the peripheral boundaries of the subjects outlined within the MDP, meaning*

- i. the top of bank for watercourses,*
- ii. the high water mark for waterbodies,*
- iii. the incorporated boundaries for towns, villages, and hamlet boundaries,*
- iv. road ROW boundaries, and*
- v. the outer boundary of identified recreation sites.*

*3.2.6(i) Notwithstanding the Agricultural Operation Practices Act (AOPA), the expansion or establishment of CFOs will not be supported*

- i. within 3.2 km (2 miles) of the boundaries of a town, village or hamlet within the Municipal District boundaries;*
- ii. within 1.6 km of a community facility or recreation area;*
- iii. within 0.8 km (1/2 mile) of Crown-owned wetlands and environmentally sensitive land;*
- iv. within the Urban Growth Corridor;*
- v. within the Urban Development Corridor;*
- vi. within 0.8 km (1/2 mile) for key waterbodies with significant recreational and environmental value including Lake 16, Lac Magloire, Kimiwan Lake, Rat Lake, Winagami Lake, Maurice Lake, and the Muskeg Lakes;*
- vii. within 30 m of all registered drainage projects; and*
- viii. within 30 m of streams and creeks.*

In accordance with Schedule B (map) of the MDP and the above listed setbacks the application meets all the listed setbacks as well as the technical and locational requirements of AOPA.

*j. To ensure an appropriate setback and access for the proposed operation, a minimum roadway setback of 150 m (500 ft) is required for all CFOs. AI (requires change to LUB)*

The CFO meets the roadway setback. This is confirmed in the response provided by the M.D.

*k. To reduce the risk of surface and dugout water contamination, being the primary source of potable water for many residents in the Municipal District, CFOs shall include manure injection as part of the manure management plan.*

This application is for a poultry barn which has a solid manure system. It is impractical to inject solid manure into the soil, rather AOPA requires that manure land applied to cultivated land be incorporated into the soil within 48 hours of application. A condition is being carried forward from

Approval FA09003A that requires liquid manure produced at the CFO to be land applied using direct injection.

*l. To prevent potential rural land use conflicts and preserve agricultural lands for agricultural uses within the agricultural district, CFOs are encouraged to identify and employ the long term use of effective odour reducing technology best suited to the operation and site specific conditions, to mitigate the potential negative impacts on adjacent landowners and the residents of the Municipal District.*

This policy encourages CFO operators to mitigate odours. It is more of a request and is site-specific and therefore not considered to be a land use provision which I am to consider.

*m. To ensure adequate emergency provisions, owners/operators of the CFOs shall work cooperatively with the Director of Disaster Services and other municipal officials as appointed by Council, in the development of an emergency response plan.*

This is not considered a land use provision and therefore will not be considered in my determination. Homeland is encouraged to consider the M.D's. request to work cooperatively with their Director of Disaster Services.

*n. Due to climatic constraints (primarily long winters and short growing seasons) that may inhibit timely and effective manure injection, all liquid manure tanks/lagoons should be designed to retain 18 months of storage.*

This is considered to be a test or condition which AOPA directs me not to consider, and not a valid land use provision. Additionally, this application is for a poultry barn and an increase in the number of chicken boilers. The poultry barn is designed to manage solid manure and meets the AOPA requirements.

*o. To reduce the odour emissions of a confined feeding operation, the Municipality strongly encourages all liquid manure storage lagoons, reservoirs and open tanks to be covered with synthetic liners and to install biofilters.*

This policy is both a request and suggestion for the management and operation of liquid manure storage facilities. I also consider it to be a test or condition which AOPA directs me not to consider, and not a valid land use provision. Because of this I will not consider it as part of my determination.

*p. To alleviate the current cumulative impact(s) of an increasing number of CFOs on adjacent landowners, no new or expanding CFOs shall be permitted in the area designated on Schedule B as "Restricted" and as reviewed by Council from time to time, with input from area residents.*

The CFO is not located in a restricted area designated on Schedule B.

*q. Notwithstanding policy 3.2.6 (p) and other policies contained within this plan regarding CFOs, Council may consider the support of an application for a CFO in a restricted area, if the applicant can highlight and prove the technological aspects (i.e. digesters, biofiltration etc.) of the proposed operation that would reduce the cumulative effect of a new approval on existing/future land uses and property owners in the area. Further, support for an application may be granted if the proposed owner/operator can identify cooperative efforts, with the*

*neighbours and the Municipal District, to integrate operations that reduce the impact of the CFOs within the area.*

The CFO is not located in a restricted area therefore this policy does not apply.

*r. Prior to considering the support of an application of a CFO under policy 3.2.6(q) in any area regarded as restricted, the applicant shall have demonstrated the appropriate enhancements of the operation that would effectively mitigate the potential environmental and emission related issues associated with the proposed development, thereby mitigating the potential risks associated with the proposed operation. An applicant may be requested to provide comparable evidence and proof that the proposed enhancement will facilitate the mitigation of environmental and emissions issues.*

The CFO is not located in a restricted area therefore this policy does not apply.

For these reasons, I conclude that the application is consistent with the land use provisions of the M.D. of Smoky River's MDP that I may consider.

## **APPENDIX B: Explanation of conditions in Approval FA22001**

Approval FA22001 includes several conditions, discussed below, and carries forward one condition from Approval FA09003A (see section 2 of this appendix). Construction conditions from historical Approval FA09003A that have been met are identified and included in the appendix to Approval FA22001.

### **1. New conditions in Approval FA22001**

#### **a. Construction Deadline**

Homeland proposes to complete construction of the proposed mixed poultry barn as soon as possible after a permit is received. Due to unforeseen slowdowns that may occur during construction I'm including a construction deadline of December 1, 2024 which allows two full construction seasons to complete the work, as a condition in Approval FA22001.

#### **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 FA22001 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the mixed poultry 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."
- b. Homeland to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the mixed 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. Approval FA22001 includes a condition stating that Homeland shall not place livestock or manure in the manure storage or collection portions of the mixed poultry barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the approval requirements.

### **2. Conditions carried forward from Approval FA09003A**

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that the following condition from Approval FA09003A will be carried forward.

17. All liquid manure must be applied to land using direct injection unless otherwise specified in writing by the NRCB.