



Decision Summary LA22018

This document summarizes my reasons for issuing Approval LA22018 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22018. 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 March 11, 2022, Southern Sky Hutterian Brethren (Southern Sky) submitted a Part 1 application to the NRCB to construct a new poultry CFO.

The Part 2 application was submitted on August 5, 2022. On August 18, 2022, I deemed the application complete.

The proposed CFO involves:

- Increasing livestock numbers from 0 to 36,000 chicken layers and 45,000 chicken pullets
- Constructing a layer barn – 96.6 m x 38.3 m plus attached manure storage (21.3 m x 7.6 m)
- Constructing a pullet barn – 78 m x 24.6 m plus attached manure storage (21.3 m x 7.6 m)

a. Location

The proposed CFO is located at NW 1-1-21 W4M in Cardston County, roughly 8 km east of the Hamlet of Del Bonita. The terrain is sloping to the west. The closest body of water is a small creek, 600 m to the west of the proposed site.

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.”)

The proposed CFO is not within 100 m of a bank of a river, stream or canal and no other municipality is within the ½ mile radius.

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

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Western Weekly on August 18, 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, seven letters were sent to people identified by Cardston 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), Alberta Transportation.

I also sent a copy of the application to Chief Mountain Gas Co-op Ltd.

The NRCB received responses from Kirsten Dykstra, a public health inspector with AHS, Jen Burns, a planning technologist with AT, and Jeff Gutsell, a hydrogeologist with AEP.

Ms. Dykstra stated in her response that AHS does not foresee any public health problems and requested that no CFO facilities are constructed within 100 m of any of the water wells.

Ms. Burns stated in her response that a permit from her department is not required.

Mr. Gutsell stated in his response that AEP has not received an application from Southern Sky Colony for a water license. He requested Southern Sky Colony produce proof that their water needs are covered by a legitimate source of licensed water.

The NRCB also received a response from Mr. Delbert Beazer, CEO of the Chief Mountain Gas Co-op Ltd. In his response, Mr. Beazer stated that they have no concerns with this application.

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 Cardston 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:

- 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

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.” Cardston County is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

The NRCB did not receive a response from Cardston County. The application’s consistency with Cardston 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.

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.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. AEP submitted a response, stating that Southern Sky Colony does not have a water licence and has not proven to have any other licensed source of water for the proposed CFO and requested submission of such proof from Southern Sky Colony.

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of any written decision of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application.

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.

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 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 LA22018 specifies the cumulative permitted livestock capacity as 36,000 chicken layers, and 45,000 chicken pullets and permits the construction of the layer barn, and a pullet barn plus associated manure storages.

Approval LA22018 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 LA22018 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

11. Conclusion

Approval LA22018 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22018.

October 4, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22018

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.)

Southern Sky’s is located in Cardston County and is therefore subject to that county’s MDP. Cardston County adopted the latest revision to this plan in December 1999, under Bylaw# 448/99.

Section 4 of the MDP – titled ‘Municipal Planning Policy’- provides land use policies for development within the county’s boundaries. The introductory statement of section 4.1 states that agriculture is the predominant land use in the county and that it is imperative to protect agricultural endeavours. Section 4.1 then discusses planning issues unrelated to CFOs. The MDP’s only direct references to CFOs (called “intensive livestock operations”) are in terms of CFO (parcel) subdivisions and limiting development near existing CFOs rather than vice versa (section 4.6.20).

Although section 4.8 (Environmental considerations) does not specifically refer to CFOs, it provides guidance to all developments in environmental significant areas identified in the report “environmentally Significant Areas in the Oldman River Region: MD of Cardston”. Southern Sky Colony’s new chicken layer barn and pullet barn are close to, but not within an area identified to be part of the Milk River Ridge unglaciated areas which are determined to be of national significance (Map 1 of the report).

Section 4.10 (Fringe areas) provides guidance for development within urban “fringe areas”. Southern Sky Colony’s proposed new chicken layer barn and pullet barn are not located in or near any fringe areas identified in the MDP.

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

APPENDIX B: Explanation of conditions in Approval LA22018

Approval LA22018 includes several conditions, discussed below:

a. Construction Deadline

Southern Sky proposes to complete construction of the proposed new layer and pullet barns with attached manure storages by December 31, 2023. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2023, is included as a condition in Approval LA22018.

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 LA22018 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer barn and pullet barn with attached manure storages 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. Southern Sky to 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, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA22018 includes a condition stating that Southern Sky shall not place livestock or manure in the manure storage or collection portions of the new layer and pullet barns with attached manure storages until NRCB personnel have inspected the layer and pullet barns and confirmed in writing that they meet the approval requirements.