

## Decision Summary RA22024

This document summarizes my reasons for issuing Approval RA22024 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22024. 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 August 3, 2022, Chicken Hill Farms Ltd. (Chicken Hill) submitted a Part 1 application to the NRCB to expand an existing poultry CFO. The Part 2 application was submitted on September 6, 2022. On September 15, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken numbers from 120,000 to 126,000 broilers
- Constructing a new poultry barn (poultry barn #5) – 18.5 m x 76.5 m

#### a. Location

The existing CFO is located at NE 14-41-27 W4M in Lacombe County, roughly 5.5 km northwest of the City of Lacombe, AB. The terrain is slightly undulating sloping to the southeast.

#### b. Existing permits

The CFO is currently permitted under NRCB Approval RA18045. This approval allows the construction and operation of a 120,000 chicken broiler CFO. The CFO's permitted facilities are listed in the appendix of Approval RA22024.

### 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 Lacombe 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 Lacombe Express on September 15, 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, nine letters were sent to people identified by Lacombe 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 received responses from AHS and AEP.

Mr. Quentin Schatz, an AHS environmental health officer/executive officer, indicated that AHS has no concerns with this application. Mr. Quentin included in his response that AHS recommendations under the under the *Public Health Act* that the applicant must follow.

Ms. Laura Partridge, a senior water administration officer with AEP, indicated that there is an existing water licence at this location; however, the applicant must amend the ownership name on the licence.

### **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 located.

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

I have determined that the proposed expansion is consistent with the land use provisions of Lacombe 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 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 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." Lacombe County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Allison Noonan, a planning services administrative assistant with Lacombe County, provided a written response on behalf of Lacombe County. Ms. Noonan stated that the application is consistent with Lacombe County's land use provisions of the municipal development plan. The application's consistency with Lacombe County's municipal development plan is addressed in Appendix A, attached.

Ms. Noonan also indicated that the application meets the setbacks required by Lacombe County's land use bylaw (LUB).

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 and/or groundwater monitoring for the facility. In this case a determination was made, and a new monitoring is not required, as Approval RA18045 required a water well monitoring, this condition will be carried forward to Approval RA220024.

Nonetheless, as part of my review of this application, I assessed the risk to the environment posed by the CFO's proposed 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](http://www.nrcb.ca).)

The assessment indicated that the potential risks to surface water and groundwater were low.

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). 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 Chicken Hill existing CFO facilities were assessed in 2016 and 2018 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since the assessments were 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. Noonan also noted that the application meets the setbacks required by Lacombe 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 Chicken Hill has enough water under their licence. 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 October 14, 2022).

Finally, I considered the effects of the proposed CFO on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from referral agencies and Lacombe County, and my own observations from a site visit

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, and I note that Lacombe County's response states that the application is consistent with their MDP.

## 10. Terms and conditions

Approval RA22024 specifies the cumulative permitted livestock capacity as 126,000 chicken broilers and permits the construction of the proposed poultry barn #5.

Approval RA22024 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 RA22024 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 Approval RA18045 with Approval RA22024 (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. Construction conditions from historical Approval RA18045 that have been met are identified in the appendix to Approval RA22024.

## 11. Conclusion

Approval RA22024 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22024.

Approval RA18045 is therefore superseded, and its content consolidated into this Approval RA22024, unless Approval RA22024 is held invalid following a review and decision by the NRCB's board or by a court, in which case Approval RA18045 will remain in effect.

November 1, 2022

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

## Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA22024

## APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for 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.)

Chicken Hill’s CFO is located in Lacombe County and is therefore subject to that county’s MDP. Lacombe County adopted the latest revision to this plan on April 8, 2021 (updated on April 14, 2022), under Bylaw 1238/17. As relevant here:

Section 3.3.1 states that “All lands in the County shall be deemed to be agricultural lands unless otherwise designated by the Municipal Development Plan, an approved statutory or non-statutory plan, the Land Use Bylaw, or provincial legislation.”

This provides insight for the interpretation of the remaining portions of the MDP and land use bylaw (LUB).

Section 3.9.1 of the county’s MDP states that the “County shall provide input on applications for confined feeding operations to the Natural Resources Conservation Board (NRCB) under the *Agricultural Operations Practices Act*. The county’s support is subject to the following:

- a) No new confined feeding operation shall be permitted less than 1.6 kilometres (1 mile) from the boundary of:
  - i) a town, village, summer village or hamlet;
  - ii) an area developed or designated for multi-lot residential use; or
  - iii) a provincial or municipal park or recreation area, or other area used or intended to be used for a recreational facility development,except that where provincial regulations require a larger setback distance, that distance shall apply.

Further restriction on the development of confined feeding operations may apply as directed by an Intermunicipal Development Plan or other local plan approved by Council.”

Chicken Hill’s proposed CFO expansion is not for a new CFO, and therefore, it is not subject to these setbacks. Irrespective, the CFO is outside of these 1.6 km setbacks.

As for section 3.9.1's reference to intermunicipal development plans (IDP) or other plans approved by the county's council, the proposed CFO expansion is not located within an area covered by an intermunicipal development plan or other local plan.

For these reasons, I conclude that the application is consistent with the land use provisions of Lacombe County's MDP. This conclusion is consistent with the county's written response to the application.

## **APPENDIX B: Explanation of conditions in Approval RA22024**

Approval RA22024 includes several conditions, discussed below, and carry forward all conditions from Approval RA18045. Construction conditions from historical Approval RA18045 that have been met are identified in the appendix to Approval RA22024.

### **a. Construction Deadline**

Chicken Hill proposes to complete construction of the proposed new broiler barn by January 20, 2023. This time-frame may not be reasonable for the proposed scope of work. Allowing additional construction seasons is more reasonable, therefore a deadline of November 30, 2024 is included as a condition in Approval RA22024.

### **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 RA22024 includes conditions 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. Chicken Hill 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 RA22024 includes a condition stating that Chicken Hill shall not place birds 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.