



Decision Summary RA24008

This document summarizes my reasons for issuing Approval RA24008 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24008. 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 February 22, 2024, Kamlah Farms Ltd. (Kamlah Farms) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on February 26, 2024. On March 12, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers by adding 16,000 chicken pullets
- No changes to the currently permitted 35,000 chicken breeders and 130,000 chicken broilers
- Constructing a chicken pullet barn – 93 m x 30 m

I note that under AOPA's Standards and Administration Regulation, (Table 1) chicken pullets and chicken broilers are considered the same type of livestock. Kamlah Farms has proposed an additional 16,000 chicken pullets; for clarity in assessing this CFO's consistency with AOPA's technical requirements, the pullets will be combined with the already permitted 130,000 chicken broilers. Therefore, the total proposed livestock will be 146,000 chicken pullets/broilers and 35,000 chicken breeders.

a. Location

The existing CFO is located at NW 5-31-28 W4M in Mountain View County, roughly 13 km southeast of Didsbury, AB. The terrain is generally level. A small intermittent creek is located approximately 407 m to the west.

b. Existing permits

The CFO is currently permitted under Approval RA21006. This permit allows Kamlah Farms to operate a 130,000 chicken broiler and a 35,000 chicken breeder CFO. The CFO's existing permitted facilities are listed in the appendix to Approval RA24008.

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 one (1) mile. (The NRCB refers to this distance as the “notification distance”.)

None of the CFO facilities are located within 100 m of a bank of a river, stream, or canal.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in The Albertan newspaper in circulation in the community affected by the application on March 12, 2024, and
- sending 23 notification letters to people identified by Mountain View County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours.

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.

A referral letter and a copy of the complete application was emailed to Alberta Environment and Protected Areas (EPA).

I also sent a copy of the application to Ember Resources Inc., EQUUS, and Crossroads Gas Co-op Ltd. as right of way holders on the subject land.

No responses were received in response to the completed application. However, during the preliminary application process (prior to the application being considered complete), I spoke with Ms. Laura Partridge at EPA as I inquired what water licences are currently in place for the CFO. Ms. Partridge provided me with a copy of the current licence and commented that the applicant “probably needs more (licensed) water”. This information was passed on to the applicant. The applicant is reminded that they are required to obtain sufficient water licences for their livestock.

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 existing CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Mountain View 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 nearby residences, with one exception (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owner of that residence has signed a written waiver of the MDS requirement to their residence
- 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 by providing a manure management plan
- 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 and in Appendix B, 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." Mountain View County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Peggy Grochmal, a permitting and development officer with Mountain View County, provided a written response on behalf of Mountain View County. Ms. Grochmal stated that the application is consistent with the land use provisions in Mountain View County's municipal development plan. The application's consistency with the land use provisions of Mountain View County's municipal development plan is addressed in Appendix A, attached.

Ms. Grochmal's response also stated that the applicant is required to contact the County and enter into a road use agreement prior to the start of construction. The applicant has been made aware of this request.

No responses were received from any other person, organization, or member of the public.

The NRCB considers a person who owns a residence within the MDS of the CFO, and who waives the MDS requirements in writing to be automatically considered a directly affected (see NRCB Operational Policy 2016-7: Approvals, part 7.2.1). Denise Derksen provided an MDS waiver and is a directly affected party.

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 no monitoring is required.

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.) 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 9.17.

In this case, the risks posed by Kamlah Farms' existing CFO facilities were assessed in 2018 and 2021 using the ERST. According to those assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities 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. Grochmal also listed the setbacks required by Mountain View County's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the existing CFO may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concern submitted under

section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* in respect of the subject of this application. Furthermore, the application meets AOPA's 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 April 12, 2024).

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 Operational Policy 2016-7: Approvals, part 9.10.9, 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 Operational Policy 2016-7: Approvals, part 9.10.9, 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 9.10.9). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval RA24008 specifies the cumulative permitted livestock capacity as 35,000 chicken breeders, and 146,000 chicken pullets/broilers, and permits the construction of the chicken pullet barn.

Approval RA24008 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 RA24008 includes conditions that generally address a construction deadline, 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 RA21006 with Approval RA24008 (see NRCB Operational Policy 2016-7: Approvals, part 11.5). 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. As stated in Appendix B, all prior conditions in RA21006 were met and therefore do not need to be carried over.

11. Conclusion

Approval RA24008 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24008.

Approval RA21006 is therefore superseded, and its content consolidated into Approval RA24008, unless Approval RA24008 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA21006 will remain in effect.

April 26, 2024

(Original signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA24008

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.

“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 9.2.7.)

Kamlah Farms’ CFO is located in Mountain View County and is therefore subject to that county’s MDP. Mountain View County adopted the latest revision to this plan on September 14, 2022, under Bylaw No. 20/20.

As relevant here, section 2.0 of the MDP provides a “growth management strategy” that is reflected in the land use map in Figure 3 of the MDP. Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” based on these designations is not considered to be a “land use provision”, rather it helps to identify where the location of CFO’s would be considered to be more suited within the county.

Kamlah Farms’ CFO is within the “Agricultural Preservation Area” marked on Figure 3. Section 2 of the MDP explains that the “majority” of this area is subject to the “applicable Agricultural Land Use Policies outlined in section 3.0 of the MDP...”

3.3.1 states that all lands in the County are deemed to be agricultural, unless otherwise designated for other uses. Kamlah Farms’ land is designated as agricultural.

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified growth centre or of an IDP with adjacent urban municipalities. The CFO is existing; therefore this provision does not apply. Nevertheless, Kamlah Farms’ CFO is not within this 1.6 km setback for either the growth centre or an IDP.

Sub-section 3.3.17 states that applications for new or expanding CFOs “shall meet all Provincial standards.” This sub-section likely isn’t a “land use provision” and therefore is not relevant to my MDP consistency determination. Regardless, Kamlah Farms’ application meets AOPA requirements.

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

APPENDIX B: Explanation of conditions in Approval RA24008

Approval RA24008 includes several conditions, discussed below. All conditions from RA21006 were met and therefore are not carried over.

a. Construction Deadline

Kamlah Farms proposes to complete construction of the proposed new chicken pullet barn by September 2024. In my opinion, a timeframe that allows for two full construction seasons is more appropriate as it allows for unexpected construction delays. The deadline of October 31, 2025 is included as a condition in Approval RA24008.

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 RA24008 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the pullet 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. Kamlah Farms to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the pullet barn.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed in accordance with the permit requirements. To be effective, these inspections must occur before birds or manure are placed in the newly constructed facilities. Approval RA24008 includes a condition stating that Kamlah Farms shall not place birds or manure in the manure storage or collection portions of the new pullet barn until NRCB personnel have inspected the pullet barn and confirmed in writing that it meets the approval requirements.