



Decision Summary BA24004

This document summarizes my reasons for issuing Approval BA24004 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA24004. 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 January 17, 2024, Tiemstra Poultry Ltd. (Tiemstra Poultry) submitted a Part 1 application to the NRCB to expand an existing poultry CFO.

The Part 2 application was submitted on March 19, 2024. On March 26, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken breeders from 23,612 to 34,000
- Increasing chicken pullets from 13,296 to 17,000
- Constructing a new breeder barn – 97.5 m x 19 m

The application also notified the NRCB of the proposed construction of an egg packing room (45.75 m x 9 m). This facility is an “ancillary structure,” under section 1(1)(a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure is part of the CFO but does not need to be permitted under the Act.

a. Location

The existing CFO is located at SE 27-61-3 W5M in the County of Barrhead, roughly 2 km SE of Neerlandia AB. The terrain is relatively flat sloping to the east.

To date, the CFO has been permitted under NRCB Approval BA15002. That permit allowed the construction and operation of a 23,612 chicken broiler breeder and 13,296 pullet CFO. The CFO’s existing permitted facilities are listed in the appendix to the Approval BA24004.

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 “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 the County of Barrhead, 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 Town and Country This Week newspaper in circulation in the community affected by the application on March 26, 2024, and
- sending 10 notification letters to people identified by the 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.

Referral letters and a copy of the complete application were emailed to Alberta Environment and Protected Areas (EPA)

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 barn is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the County of Barrhead’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 two exceptions (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS). The owner of the residences have signed written waivers of the MDS requirement to their

- residences
- 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 and in Appendix A, 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." The County of Barrhead is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Jenny Bruns, a development officer with the County of Barrhead, provided a written response on behalf of the County. Ms. Bruns stated that the application is consistent with the land use provisions of the County's municipal development plan. The application's consistency with the land use provisions of the County's municipal development plan is addressed in Appendix A, attached.

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 party (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1). Ron and Charlene Hamoen and Keith Piers provided MDS waivers and are therefore directly affected parties.

8. 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.) 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 Tiemstra Poultry's existing CFO facilities were assessed in 2016 using the ERST. According to that 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 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 may be 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.

Ms. Bruns also listed the setbacks required by County's land use bylaw (LUB). The applicant has purchased the northern property (see Technical Document BA24004) and therefore now meets these setback requirements.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments and a copy of the application was sent to EPA, who did not have any comments.

I am unaware of any active *Water Act* applications or EPEA applications regarding the location. If additional water licensing is needed an application is required by EPA. I am also unaware of any 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.

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 25, 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 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 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 as the application is consistent with the MDP.

10. Terms and conditions

Approval BA24004 specifies the cumulative permitted livestock capacity as 34,000 chicken breeders and 17,000 chicken pullets and permits the construction of the new breeder barn 97.5 m x 19 m and the egg packing room.

Approval BA24004 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 BA24004 includes conditions that generally address construction deadlines, document submission, and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval BA24004: Approval BA15002 (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.

11. Conclusion

Approval BA24004 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA24004.

Tiemstra Poultry's NRCB-issued Approval BA15002 is therefore superseded, and its content consolidated into this Approval BA24004, unless Approval BA24004 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval BA15002 will remain in effect.

May 8, 2024

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Explanation of conditions in Approval BA24004

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization 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 22(2.1) 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.)

Tiemstra Poultry’s CFO is located in the County of Barrhead and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on August 17, 2010, under Bylaw No. 4-2010.

Part 3.1.3 of the MDP lists 14 agricultural development policies and includes CFOs as among “primary use[s]” in agricultural use area. The first policy recognizes agriculture as the priority land use in rural areas, supports agricultural diversification, encourages siting agricultural industries in agricultural areas, and discourages non-agricultural land uses in intensive agricultural areas. Of the remaining 13 policies, only 10 and 11 relate specifically to CFOs.

Policy 10 states “input shall be provided to the NRCB in responding to applications for new or expanded CFOs based on the technical and locational merits of each application.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see NRCB Operational Policy 2016-7, Approvals 8.2.4). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(2.1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA.

Policy 11 states that “minimum distance separations shall conform to standards set out in the Agricultural Operation Practices Act.” “Minimum distance separations” appears to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. MDP policy 11 is not relevant to my MDP consistency determination because it is based on AOPA’s MDS requirements. (See NRCB Operational Policy 2016-7, Approvals, part 8.2.5). That said, the CFO has obtained the necessary waivers required to meet AOPA’s MDS requirements, as explained in Appendix B.

I conclude that the application is consistent with the relevant land use provisions of the County of Barrhead’s MDP that I may consider.

APPENDIX B: Determining directly affected party status

The following individuals qualify for directly affected party status because they own a residence within the minimum distance separation (MDS) and waived the MDS requirement in writing: Ron and Charlene Hamoen; and Keith Piers. See NRCB Operational Policy 2016-7: Approvals, part 7.2.1.

APPENDIX C: Explanation of conditions in Approval BA24004

1. New conditions in Approval BA24004

a. Construction Deadline

Tiemstra Poultry proposes to complete construction of the proposed new breeder barn by December 31, 2026. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2026 is included as a condition in Approval BA24004.

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 BA24004 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the breeder 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. Tiemstra Poultry's to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the breeder 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 livestock or manure are placed in the newly constructed facilities. Approval BA24004 includes a condition stating that Tiemstra Poultry shall not place livestock or manure in the manure storage or collection portions of the new breeder barn until NRCB personnel have inspected the breeder barn and confirmed in writing that it meets the approval requirements.