

Decision Summary RA20025

This document summarizes my reasons for issuing Approval RA20025 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20025. 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.

1. Background

On April 27, 2020, Hutterian Brethren Church of Beiseker (Beiseker Colony) submitted a Part 1 application to the NRCB to expand an existing CFO. The Part 2 application was submitted on May 7, 2020. On June 2, 2020, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers 0 to 3,000 beef finishers
- Decreasing livestock numbers from 335 to 0 sows farrow to finish
- Constructing feedlot pens (176 m x 66 m) and a catch basin (91 m x 16 m x 2.5 m deep)
- Decommissioning dairy pens/corrals and dry cow pens/corrals

Under AOPA, this type of application requires an approval. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at Sec. 13-28-27 W4M and E½ 14-28-27 W4M in Rocky View County, roughly 10 kilometers west of Beiseker, Alberta. The CFO is located in a valley along the Rosebud River. The location of the proposed facilities is atop the north plateau of the valley. The Rosebud River is located within 40 metres of the existing facilities, but more than 500 metres from the proposed facilities.

b. Existing permitted facilities

The CFO is grandfathered, with a deemed approval under section 18.1 of AOPA. Since AOPA came into effect on January 1, 2002, the NRCB has issued the CFO the following permit(s): Authorizations RA02062 and RA14028, and Approval RA15022. (The NRCB determined the CFO’s grandfathered status when it issued RA15022.) Collectively, these NRCB permits and the CFO’s deemed approval allow Beiseker Colony to construct and operate a multi-species CFO. The CFO’s deemed and NRCB-permitted facilities are listed in the appendix of RA20025.

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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 including:

- the municipality where the CFO is 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 this application, the distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Rocky View County is an affected party (and therefore also a directly affected party) because the proposed facilities are located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB posted the full application on the NRCB website on June 2, 2020 for public viewing. Ordinarily, the NRCB publishes official notice in a circulating newspaper in the community affected by the application. However, the Rocky View Weekly was not publishing at that time due to Covid-19, and no other paper publications adequately covered the area. Therefore, the official notice was mailed to 39 people identified by Rocky View County as owning or residing on land within the affected party radius. The notice was also posted on the Public Notices section of the Rocky View County’s website.

The NRCB also emailed referral letters and a copy of the complete application to Rocky View County, Alberta Health Services (AHS), Alberta Environment and Parks (EP), Alberta Agriculture and Forestry (AF), Alberta Transportation, right of way companies – Ember Resources; and mailed to Canoke Petroleum Company.

3. Responses from the municipality and referral agencies

I received responses from Rocky View County, Alberta Health Services, Alberta Transportation and TC Energy. No responses were received from Alberta Environment and Parks, Ember Resources, and Canoke Petroleum Company.

Ms. Jessica Anderson, a planner with Rocky View County, provided a written response on behalf of Rocky View County. As noted in section 2, Rocky View County is a directly affected party.

Ms. Anderson stated that the application is consistent with Rocky View County’s municipal development plan. The application’s consistency with Rocky View County’s municipal development plan, is addressed in Appendix A, attached.

Ms. Anderson also indicated that the subject lands are generally agricultural (Ranch and Farm District, as well as Direct Control District to accommodate the existing colony) under Rocky View County's land use bylaw (LUB). She indicated that the lands are not affected by any area structure plans, conceptual schemes, or intermunicipal development plans. She stated that the proposed facilities are not required to meet setback requirements.

Ms. Carol Brittain, a public health inspector, provided a written response on behalf of Alberta Health Services. In her response, Ms. Brittain provided comments relating to the three existing water wells on the site, protocol if any complaints on the site are received by AHS, and a request for AHS to be notified if any public health concerns are identified. Ms. Brittain's comments are addressed in Appendix B, attached.

Mr. Trevor Richelhof, a development and planning technologist, responded on behalf of Alberta Transportation. In his response, Mr. Richelhof indicated that the proposed development falls within the control distance of a provincial highway; however the development will not cause any concern for ongoing highway operation or future highway expansion. Therefore, Alberta Transportation issued an exemption for the proposed development. A copy of the exemption was provided to the applicant. The applicant is reminded that they are required to follow the terms and conditions of their exemption, as outlined in the letter from Alberta Transportation.

Ms. Kayla McCarthy, a planner, responded on behalf of TC Energy, in response to the letter sent to Canoke Petroleum Company. In her response, Ms. McCarthy indicated that the two companies provide land use planning consulting and municipal land use surrounding pipeline infrastructure. Ms. McCarthy indicated that they have no comments or concerns with the proposal.

4. Responses from other directly affected parties

No responses were received from individuals or other non-government parties.

5. Environmental risk screening of existing and proposed facilities

When reviewing a new approval application for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool 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 done 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 Beiseker Colony's existing CFO facilities were assessed in 2014 and 2015. According to those assessments, all existing facilities posed a low risk to surface water and groundwater, except for the dairy pens/corrals which scored a low-moderate risk to surface water, and low risk to groundwater. The dairy pens/corrals' risks to surface water were addressed by a condition in Authorization RA14028. Further, the applicant has proposed to decommission these pens/corrals as part of Approval RA20025.

The circumstances have not changed since the 2014 and 2015 assessments were done. As a

result, a new assessment of the risks posed by the CFO's existing facilities is not required.

I also assessed the proposed new feedlot pens and catch basin, using the NRCB's risk screening tool, and determined that they both pose a low potential risk to groundwater and surface water.

6. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 7.

In addition, the proposed expansion is consistent with the land use provisions of Rocky View County's municipal development plan.

With respect to the act's technical requirements, 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 of manure storage facilities

In addition, I assessed the effects of the proposed expansion on the environment. Consistent with NRCB policy, I presumed that these effects are acceptable because the application meets all of AOPA's technical requirements and, in my opinion, the referral agencies' concerns have been adequately addressed. I also presumed that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these presumptions are based on the application's consistency with the municipal development plan. Having considered all the information before me, I am of the opinion that the presumptions are not rebutted.

While assessing this application, I received technical assistance from Scott Cunningham, NRCB Environmental Specialist.

7. Terms and conditions

Approval RA20025 specifies the new permitted livestock capacity as:

- 3,900 Chicken Layers
- 600 Ducks
- 600 Geese
- 240 Dairy Cows (plus dry cows and replacements)
- 3,000 Beef Finishers

Approval RA20025 also permits the site expansion by constructing the feedlot pens and catch basin.

Approval RA20025 also 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 RA20025 includes conditions that:

- Set a deadline of December 31, 2021 for the approved construction to be completed
- Require submission of an engineer's completion report for the feedlot pens, and a submission of a completion report for the catch basin
- Prohibit Beiseker Colony from placing manure or livestock in the feedlot pens, and allowing manure impacted runoff in the catch basin, until the facilities have been inspected by the NRCB following their construction
- Require the dairy pens/corrals and dry cow pens/corrals to be decommissioned
- Prohibit the swine slurry tank from storing manure, and the farrow to finish barns from storing manure or housing animals

For an explanation of the reasons for these conditions, see Appendix C.

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated Approval RA15022 with Approval RA20025 (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

In addition to containing the new terms and conditions summarized above, Approval RA20025 includes all existing terms and conditions in RA15022, except the terms and conditions noted below. Construction conditions that are being carried forward and that have been met are identified and included in an appendix to the new approval.

Pursuant to section 23 of AOPA (approval officer amendments), I have updated condition #13 from RA15022 to reflect current NRCB practices.

8. Conclusion

Approval RA20025 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20025.

Beiseker Colony's NRCB-issued Approval RA15022 is cancelled, unless Approval RA20025 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA15022 will remain in effect.

September 4, 2020

(Original Signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Comments from Alberta Health Services
- C. Explanation of conditions in Approval RA20025

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval or amendment of an approval only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Beiseker Colony’s CFO is located in Rocky View County and is therefore subject to that county’s MDP. Rocky View County adopted the latest revision to this plan on April 10, 2018, under Bylaw #C-7280-2013.

Sections 8.20 – 8.24 of the MDP deal specifically with CFOs.

Section 8.20 states that the county “should make site recommendations on all new or expanded” CFOs and lists several criteria for the county to consider when making these recommendations. The criteria are not directly relevant to my MDP consistency determination as they appear to be intended to govern the county’s responses to individual CFO applications to the NRCB. In addition, the criteria require site and CFO-specific considerations that are involved in permitting decisions, so the criteria are not “land use provisions.” Therefore, this section is not relevant to my MDP consistency determination.

Section 8.21 “recommend[s]” that CFO applicants “provide nearby land owners with technical design information, receive feedback through a public involvement process, and report back to the County on how the proposal addresses public input.” This provision is not considered a land use provision because of its project-specific and procedural focus. Therefore, it is also not relevant to my MDP consistency determination. However, neighbouring land owners were notified of the application as specified under AOPA. The neighbours have had the opportunity to review and comment on the application.

Section 8.22 states that CFOs should be located in areas where there will be “minimal conflict with non-complementary land uses.” Because the “minimum conflict” test calls for a discretionary judgement, the criteria is not a “land use provision” and the section is not relevant to my MDP consistency determination. Nevertheless, as noted in the county’s response, lands within 1,600 m of the CFO are generally agricultural. All residences on these properties meet the MDS requirements of the regulations. It is therefore my opinion that because of this the application would be consistent with this section, if the section applied.

Section 8.23 states that land uses incompatible with a CFO shall not be supported when proposed within the MDS of the CFO. The proposed expansion meets the required MDS.

Section 8.24 states that a CFO, including its MDS, “should not be located within the boundary of any intermunicipal development plan or notification zone, statutory planning area, hamlet,

residential area, institutional use, or federal, provincial, or municipal park or recreation area.” In its response, the county stated that Beiseker Colony’s land is not affected by any area structure plans, conceptual schemes, or intermunicipal plans. Beiseker Colony’s proposed expansion therefore meets these requirements.

Sections 8.25 - 8.28 relate to minimizing land use conflict for non-agricultural development near agricultural operation and are not relevant to this application.

For these reasons, I conclude that the application is consistent with the land use provisions of Rocky View County’s MDP. The county’s response confirms my conclusion.

APPENDIX B: Comments from Alberta Health Services

The NRCB received a letter dated June 29, 2020 from Carol Brittain, a public health inspector from Alberta Health Services. In her letter, Ms. Brittain states that AHS has comments for consideration.

Comment 1 states that there are three existing wells on the property. AHS recommends a full assessment of water wells on the property be conducted, and appropriate mitigation measures be put in place to protect groundwater.

As part of the application, an Environment Risk Screening Tool (ERST) assessment was completed. The ERST assesses the risk of new and existing facilities' potential risks to ground and surface water. A component of the ERST assesses the existing water wells. As discussed previously in this document, my assessment found that the potential risks to ground and surface water were low for the existing and proposed facilities, with the exception of the dairy pens that will be decommissioned as part of this application.

AHS' comments have been forwarded to the applicant. It is the applicant's responsibility to follow up with AHS to ensure that any additional assessments are completed, and that they are following all AHS regulations. Therefore, it is my opinion that the suggested assessment has been completed.

Comment 2 discusses possible outcomes if complaints are received by AHS with respect to the construction or operation of the CFO. AHS states that they will work with the NRCB to address any public health issues. Comment 3 states that if any issues of public health concerns are identified, AHS wishes to be notified. The NRCB regularly works with AHS and other agencies. The NRCB refers concerns or health related issues to AHS (see the NRCB's *Compliance and Enforcement Policy* 4.1 and 4.4) and has good working relationships with AHS's public health officers. Therefore, it is my opinion that these comments are addressed.

APPENDIX C: Explanation of conditions in Approval RA20025

Approval RA20025 includes several conditions, discussed below, and carries forward three conditions from RA15022 (see section 2 of this appendix).

Approval RA20025 includes several conditions, discussed below:

1. New conditions in Approval RA20025

a. Construction Deadline

Beiseker Colony proposes to complete construction of the proposed new feedlot pens and catch basin by Summer, 2020. This time-frame is unrealistic due to the time required for the permitting process, as well as the length of time needed to obtain the liner materials. It is my opinion that a deadline that allows for at least one full construction period is more reasonable for the proposed scope of work. The deadline of December 31, 2021 is included as a condition in Approval RA20025.

b. Construction above the water table

Section 9(2) of the Standards and Administration Regulation under the *Agricultural Operation Practices Act* (AOPA) prohibit construction of a manure storage facility if its bottom is less than one metre above the water table of the site “at the time of construction.” Based on the information included in the application, the proposed facilities meet the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition is included requiring applicant to cease construction and notify the NRCB immediately if the water table is encountered during construction.

c. 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 RA20025 includes conditions requiring:

- A construction completion report, certifying that the manure collection portions of the new synthetic lined catch basin were constructed as per their application and the manufacturer’s requirements.
- A completion report, stamped by a professional engineer, certifying that the manure storage and collection portions of the feedlot pens have been constructed in accordance with the proposed design and the manufacturer’s 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 RA20025 includes conditions stating that Beiseker Colony shall not place livestock or manure in the manure storage and collection portions of the new feedlot pens, or manure impacted run off in the catch basin, until NRCB personnel have inspected the completed feedlot pens and catch basin and confirmed in writing that they meet the approval requirements. Approval RA20025 also includes a condition requiring an inspection of the feedlot pens once the geosynthetic clay liner is installed. The geosynthetic clay liner will not be visible once construction is complete; therefore it is necessary for this mid-point inspection to take place before the protective soil cap is placed.

d. Decommissioning of existing dairy and dry cow pens/corrals

As the applicant has proposed to decommission the existing dairy and dry cow pens/corrals, a condition will be included requiring Beiseker Colony to properly decommission these facilities. This decommissioning must be in accordance with Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas".

e. Prohibiting use of existing swine slurry tank and farrow to finish barn

As discussed in Technical Document RA20025, the existing swine slurry tank and the farrow to finish barn are partially decommissioned and not in working order. These facilities may not be used to store manure or to house livestock unless otherwise directed by the NRCB.

2. Conditions carried forward from RA15022

Condition 13 in RA15022 details that the operator shall conduct water quality tests on their water wells. Keeping with current NRCB practices, I have issued a water well monitoring statement and have updated the wording in RA20025.

Condition 14 of Approval RA15022 states that "unless otherwise directed by the NRCB in writing, the permit holder shall maintain, and make available to the NRCB upon request, an ongoing record of the number of each type of livestock present at the CFO."

Condition 15 of Approval RA15022 states that "Manure must be incorporated within 24 hours of application".