

Decision Summary RA20021

This document summarizes my reasons for issuing Approval RA20021 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20021. 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 20, 2020, Wind River Hutterian Brethren submitted a Part 1 application to the NRCB to expand an existing beef CFO by adding and constructing a CFO with 60,000 chicken broilers, 900 ducks, 300 geese, 250 chicken layers and three milking cows. The Part 2 application was submitted on June 3, 2020. On June 18, 2020, I deemed the application complete.

The proposed CFO expansion also involves:

- Constructing two broiler barns (152.4 m x 18.3 m each)
- Constructing a multi-species barn (MacDonald barn) (42.7 m x 12.2 m)

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 NE 9-26-9 W4M in Special Area #3, at the intersection of secondary highways #570 and #884, south of Youngstown, Alberta. The terrain is nearly level to undulating with a general slope to the west towards the Blood Indian Creek, located more than 800 metres from the CFO.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval RA14012. This approval allows the construction and operation of a beef CFO with 3,555 finishers. The CFO’s existing permitted facilities are listed in an appendix to Approval RA14012.

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:

- 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 individuals 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. Special Area #3 is an affected party (and therefore also a directly affected party) because the proposed expansion is 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 published notice of the application in the Oyen Echo on June 18, 2020 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Special Area #3, Alberta Health Services (AHS), Alberta Environment and Parks (EP), Alberta Transportation (AT) and East Central Gas Coop. Seven courtesy letters were sent to people identified by Special Area #3 as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

I received responses from the municipality and AT. No response was received from AEP, AHS or East Central Gas Coop.

Mr. Darran Dick, a development officer with Special Area #3, provided a written response on their behalf. As noted in section 2, Special Area #3 is a directly affected party.

Mr. Dick stated that the application is consistent with the Land Use Order (LUO) of the Special Areas; and, the lands within a 1600 meter radius of the proposal are zoned Agricultural District.

The letter further indicates that the Special Areas Municipal Planning Commission has reviewed the application and has submitted some recommendations on the premise that the NRCB is ensuring that the applicant will adhere to all other regulations and legislation as set out by other government bodies.

These recommendations are addressed in Appendix A attached.

An Alberta Transportation, Development and Planning Technologist, has issued a roadside development permit.

4. Responses from other directly affected parties

The NRCB received two minimum distance separation (MDS) waivers from the following individuals:

Darcy and Linda Lockhart
SW 10-26-9 W4M

Lorne and Myrna Lyon
SE 9-26-9 W4M

The two parties that submitted MDS waivers own or reside on land within the 1.5 mile radius for affected persons. Because of their location within this radius, they are presumed to be directly affected by the application.

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 Wind River Hutterian Brethren's existing CFO facilities were assessed in 2014. According to that assessment, the facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since that assessment was 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 poultry barns, using the NRCB's risk screening tool, and determined that they all pose a low 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 CFO expansion is consistent with the land use provisions of Special Areas Board's land use order. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed CFO expansion:

- Meets the required AOPA setbacks from all nearby residences, with three exceptions (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of those 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

In addition, I assessed the effects of the proposed CFO expansion on the environment. Consistent with NRCB policy, I determined that these effects are acceptable because the application meets all of AOPA's technical requirements. I also determined that the application's effects on the economy and community are acceptable, and that the proposed CFO expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipality's planning document. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3.)

7. Terms and conditions

Approval RA20021 specifies the new permitted livestock capacity as:

- 3,555 beef finishers
- 60,000 chicken broilers
- 900 ducks
- 300 geese
- 250 chicken layers
- 3 dairy cows, and permits the construction of the two broiler barns, and a multi-species barn.

Approval RA20021 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 RA20021 includes conditions that:

- Set a deadline of December 31, 2025 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the poultry barns and the multi-species 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”
- Require written confirmation that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Wind River Hutterian Brethren from placing manure or livestock in the new barns until the facilities have been inspected by the NRCB following their construction

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated Approval RA14012 with Approval RA20021 (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.

Therefore, in addition to containing the new terms and conditions summarized above, Approval RA20021 includes all existing terms and conditions from Approval RA14012. Construction conditions that have been met are identified and included in an appendix to Approval RA20021.

8. Conclusion

Approval RA20021 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20021.

Approval RA14012 is therefore cancelled, unless Approval RA20021 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA14012 will remain in effect.

September 11, 2020


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

Appendices:

- A. Consistency with the Special Areas Board Land Use Order
- B. Explanation of conditions in Approval RA20021

APPENDIX A: Consistency with the Special Areas Board Land Use Order

Under section 20 of AOPA, an approval officer may approve an application for 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). An MDP is a statutory plan provided for under section 632 of Part 17 of the *Municipal Government Act* (MGA).

The Special Areas Board is not subject to Part 17 of the MGA and therefore does not have a MDP. However, that Board has adopted a Land Use Order (LUO) to regulate and control the use and development of land and buildings within Special Areas 2, 3 and 4, and to facilitate orderly and economic development within those Areas. NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, states that if a municipality is not required to have an MDP under the MGA, the approval officer will consider the municipality’s land use bylaw and any other relevant planning document. Therefore, under these circumstances, I find that the LUO is equivalent to a MDP for the purposes of AOPA’s MDP consistency requirement.

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.”)

Wind River Hutterian Brethren’s CFO is located in Special Area #3 and is therefore subject to that the Special Areas Board LUO. (The Special Areas Board adopted the latest revision to this order on March 3, 2015, under Ministerial order No. MSL: 007/15).

Under the LUO, the subject land is currently zoned as Agricultural District. Section 19 of the order states that the “purpose and intent” of this District is to “provide for extensive agriculture, while accommodating similar and compatible uses.” CFOs do not fall within the LUO’s definition of “extensive agriculture.” Nor does the LUO’s list of permitted or discretionary uses for the Agricultural District, in section 19, include CFOs. However, Appendix 2 of the LUO states that CFOs “may be located only within the Agricultural District,” which logically implies that CFOs may be located within that District. Appendix 2 of the LUO also includes four sections that provide further guidance regarding locating CFOs within the Agricultural District.

Section 1. States that “confined feeding operations shall be excluded” from numerous named locations, from provincially recognized “Historical or Cultural sites,” and from an 800 metre zone adjacent to the banks of the Red Deer and South Saskatchewan Rivers.

The LUO is unclear as to whether these exclusion areas were intended to apply to expansions of existing CFOs as well as to proposed new CFOs. At any rate, the applicant’s existing CFO, as well as the proposed expansion, is not located within any of these exclusion areas.

Section 2. Areas requiring mitigation – Indicates areas within Special Areas where mitigation is required if CFOs are located there.

The LUO is unclear as to whether these areas requiring mitigation were intended to apply to expansions of existing CFOs as well as to proposed new CFOs. At any rate, the applicant's existing CFO, as well as the proposed expansion, complies with the environmental protection requirements set out in AOPA which do address these recommendations and mitigation.

Section 3. Recommended Facility Setback – Specifies distances that CFO facilities must be setback from neighbouring residences, towns, villages and hamlets.

The LUO is unclear as to whether these municipal setbacks were intended to apply to expansions of existing CFOs as well as to proposed new CFOs. At any rate, the applicant's existing CFO, as well as the proposed expansion, complies with the municipal setbacks, as well as all of AOPA's technical requirements, which include MDS under AOPA.

Section 4. Recommended Setback for Manure Disposal - Discusses required setbacks for manure spreading from neighbouring residences, using category 4 Minimum Distance Separation. A minimum manure disposal setback of 1 mile for occupied residences is included. A minimum manure disposal setback of 1.5 to 2 miles (depending on direction) for hamlets with multiple residences and community recreation facilities is also included.

Section 20(1.1) of AOPA states: "In considering ... whether an application is consistent with the municipal development plan land use provisions, an approval officer shall not consider ... any provisions respecting tests or conditions related to the construction of or the site for a confined feeding operation...nor... the application of manure, composting materials or compost." I have reviewed parts of section 3 and all of section 4 of Appendix 2 of the Special Areas LUO and I have determined them to be land use provisions respecting tests or conditions related to the construction of a CFO or the application of manure; and therefore, these sections will not be considered. Irrespective, the operator is required to meet the environmental protection requirements set out in AOPA which do address these recommendations.

In their response letter, the Development Officer, on behalf of Special Areas #3 indicated that The Special Areas Municipal Planning Commission has reviewed the application and has submitted some recommendations on the premise that the NRCB is ensuring that the applicant will adhere to all other regulations and legislation, as set out by other government bodies, including, the recommendation to ensure that there is sufficient water for this development and that all licensing will be in place.

As for the municipality's "premise" that the NRCB is ensuring compliance with other regulators' requirements, the NRCB regulates CFOs only under AOPA and its regulations. The NRCB does not have the mandate or authority to directly enforce other regulations and legislation that are implemented by other government bodies. However, the applicant is reminded that they are responsible to ensure that they adhere to all applicable legislation and requirements, including obtaining the applicable water licences.

For these reasons, I conclude that the application is consistent with the relevant land use provisions of the Special Areas Board LUO.

APPENDIX B: Explanation of conditions in Approval RA20021

Approval RA20021 includes several conditions, discussed below, and carries forward one condition from Approval RA14012.

1. New conditions in Approval RA20021

a. Construction Deadline

Wind River Hutterian Brethren proposes to complete construction of the proposed new barns by December 2025. This time-frame is considered to be reasonable for the proposed scope of work, since the applicants are building a new colony. The deadline of December 31, 2025 is included as a condition in Approval RA20021.

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 RA20021 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the two poultry barns and the multi-species 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.”
- Wind River Hutterian Brethren to provide written confirmation 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 RA20021 includes conditions stating that Wind River Hutterian Brethren shall not place livestock or manure in the manure storage portions of the new poultry barns and the multi-species barn until NRCB personnel have inspected them and confirmed in writing that they meet the approval requirements.

2. Conditions carried forward from Approval RA14012

Ongoing condition number # 3, from Approval RA14012 will be updated and carried forward into the new Approval RA20021. This ongoing condition relates to the reporting of water well testing. The condition is written using an old drafting; and therefore, it will be updated to reflect current drafting of conditions.