

Decision Summary LA20031

This document summarizes my reasons for issuing Approval LA20031 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20031. 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 July 22, 2020, Hutterian Brethren of Spring Valley (Spring Valley Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO and to construct an earthen liquid manure storage (100 m x 40 m x 4 m deep). The expansion involves the increase in:

- milking cows (plus associated dries and replacements) numbers from 90 to 150,
- sheep (ewes with lambs) numbers from 450 to 600,
- sows farrow to finish numbers from 250 to 300, and
- chicken layers numbers from 5,000 to 10,000.

The additional livestock will be housed in existing facilities. The Part 2 application was submitted on August 11, 2020. On August 20, 2020, I deemed the application complete.

Under AOPA, this type of application requires an approval.

a. Location

The existing CFO is located at SE 5 and E ½ 4 - 5 - 23 W4M in Cardston County, roughly 2 km northwest of the Village of Spring Valley. The landscape is relatively flat with a sharp drop towards an old riverbed of the St. Mary River in the north and to Pinepound Creek to the west.

b. Existing permitted facilities.

Spring Valley Colony has Approval LA10056A and Authorization LA10058. Together, these permits allow the operation of a CFO with:

90 dairy cows (plus associated dries and replacements)

- 450 sheep (ewes with lambs)
- 250 sows farrow to finish
- 5,000 chicken layers
- 30,000 chicken broilers
- 800 ducks
- 200 geese

All existing and approval facilities are listed in the appendix of Approval LA10056A and Authorization LA10058 and are repeated in the appendix of this permit (Approval LA20031).

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. Cardston County 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 Lethbridge Herald on August 20, 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 Cardston County, the Blood Tribe, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Agriculture and Forestry (AF), Alberta Transportation, Magrath Irrigation District (MID) and the St. Mary River Irrigation District (SMRID). Forty nine courtesy letters were sent to people identified by Cardston County as owning or residing on land within the affected party radius.

3. Responses from the municipality, referral agencies, and directly affected parties

I received responses from Cardston County, AHS, and AEP. No response was received from the Blood Tribe, AF, SMRID, the MID, from individuals or other non-government parties.

Mr. Joe Thomas, a project manager/development officer with Cardston County, provided a written response on behalf of Cardston County. As noted in section 2, Cardston County is a directly affected party.

Mr. Thomas stated that the application meets the county's guidelines. The application's consistency with Cardston County's municipal development plan, are addressed in Appendix A, attached.

The NRCB also received written responses from Mr. Robert Rippin, executive officer/public health inspector with AHS, Ms. Leah Olsen, a development/planning technologist with Alberta Transportation, and Jeff Gutsell, hydrogeologist with AEP.

Ms. Olsen stated that a permit from her department is not required and that her department has no concerns with this application.

Mr. Rippin pointed out that CFOs typically lack proper dust control and that dust particles can cause pulmonary issues and may contain pathogens. He therefore recommends a condition prescribing dust control measure. Because this condition is already included in the first paragraph of this approval, requiring the permit holder to adhere to all applicable regulations, including section 20 – Fly and dust control – this request will not be further discussed in this decision summary. Mr. Rippin also recommended that all necessary water licenses are in place prior to increasing animal numbers. Water licensing is out of the jurisdiction of the NRCB and entirely regulated by AEP. I will therefore not expand on this issue. However, I would like to remind the applicant to acquire all applicable licenses prior to increasing animal numbers. The applicant was notified of this request.

Mr. Gutsell stated in his response that he has not received an application for a water license yet but acknowledged that Spring Valley Colony might have access to irrigation water. He requested proof from Spring Valley Colony that adequate water allocations are available for the increase in animal numbers. The applicant was made aware of this request.

4. 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 Spring Valley'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 EMS, using the NRCB's risk screening tool, and determined that it poses a low risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.

In addition, the proposed expansion is consistent with the land use provisions of Cardston County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

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

As required by section 4(1) of the South Saskatchewan Regional Plan (SSRP), I considered that document's Strategic Plan and Implementation Plan and determined that the application is consistent with those plans. In addition, there are no notices or orders under the Regulatory Details portion of the SSRP that apply to this application.

In addition, I assessed the effects of the proposed 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 and the directly affected parties' concerns have been adequately addressed. I also determined 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 determinations are based on the application's consistency with the municipal development plan. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

6. Terms and conditions

Approval LA20031 specifies the new permitted livestock capacity as 150 dairy cows (plus associated dries and replacements), 300 sows farrow to finish, 600 sheep (ewes with lambs), 10,000 chicken layers, 30,000 chicken broilers, 800 ducks, 200 geese and permits the construction of the earthen liquid manure storage.

Approval LA20031 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 LA20031 includes conditions that:

- Set a deadline of December 31, 2023 for the approved construction to be completed
- Prohibit Spring Valley Colony from placing manure in the earthen liquid manure storage until the facility has been inspected by the NRCB following its 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 the following permits with Approval LA20031: Approval LA10056A and Authorization LA10058 (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 LA20031 includes all existing terms and conditions from Approval LA10056A and Authorization LA10058. Construction conditions that have been met are included in an appendix to Approval LA20031.

7. Conclusion

Approval LA20031 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20031.

Spring Valley's Colony's Approval LA10056A and Authorization LA10058 are therefore cancelled, unless Approval LA20031 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA10056A and Authorization LA10058 will remain in effect.

October 8, 2020

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20031

APPENDIX A: Consistency with the municipal development plan

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).

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.”)

Spring Valley Colony’s CFO is located in Cardston County and is therefore subject to that county’s MDP. Cardston County adopted the latest revision to this plan in December 1999, under Bylaw # 448/99.

Section 4 of the MDP – titled ‘Municipal Planning Policy’ – establishes the land use policies that serve as guidance for development within the county’s boundaries. The introductory statement of section 4.1 states that agriculture is the predominant land use in the county and that it is imperative to protect agricultural endeavours. It then continues to discuss other, non-CFO related planning issues. The MDP’s only direct reference to CFOs (which the MDP refers to as “intensive livestock operations”) is in terms of CFO subdivisions and limiting development near existing CFOs, rather than vice versa (section 4.6.20).

Section 4.8 (Environmental considerations) does not specifically refer to CFOs, but it provides guidance for all types of developments in environmentally sensitive or significant areas. The colony’s CFO is not within an environmentally sensitive or significant area, so this section does not apply.

Section 4.10 (Fringe areas) provides guidance for development within fringe areas identified in that section. Spring Valley Colony’s CFO is not located within any of these fringe areas. All other policies in this section relate to annexation, municipal services, subdivisions and dispute resolution and therefore are not relevant to my MDP consistency determination.

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

APPENDIX B: Explanation of conditions in Approval LA20031

a. Construction Deadline

Spring Valley Colony proposes to complete construction of the proposed new earthen liquid manure storage by December 31, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2023 is included as a condition in Approval LA20031.

b. Post-construction inspection and review

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 LA20031 includes a condition stating that Spring Valley Colony shall not place manure in the new earthen liquid manure storage until NRCB personnel have inspected the earthen liquid manure storage and confirmed in writing that it meets the approval requirements.