

Decision Summary LA20042

This document summarizes my reasons for issuing Authorization LA20042 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20042. 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 October 13, 2020, Hutterian Brethren of Spring Valley (Spring Valley Colony) submitted a Part 1 application to the NRCB to relocate the existing duck/mixed poultry barn (duck barn) (32 m x 16 m) at an existing multi species CFO. The Part 2 application was submitted on October 21, 2020 and I deemed the application complete the same day.

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization.

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.

a. Existing permitted facilities

Spring Valley Colony is currently approved under Approval LA20031 which allows the operation of a CFO with:

- 150 dairy cows (plus associated dries and replacements)
- 600 sheep (ewes with lambs)
- 300 sows farrow to finish
- 10,000 chicken layers
- 30,000 chicken broilers
- 800 ducks
- 200 geese

All existing and approval facilities are listed in the appendix of Approval LA20031.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets

section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Cardston County is both an affected and directly affected party because the proposed facility is located within its boundaries.

On October 21, 2020, the NRCB emailed referral letters and a copy of the application to Cardston County; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); Alberta Transportation; and the Blood Tribe.

3. Responses from the municipality and referral agencies

I received responses from AEP and Alberta Transportation. No response was received from Cardston County and AHS.

The NRCB received a written response from Leah Olson, development/planning technologist with Alberta Transportation, and Jeff Gutsell, hydrogeologist with AEP.

Ms. Olson stated in her response that a permit from her department is not required and that there are no concerns with this application.

Mr. Gutsell stated in his response that his department has no concerns with this application.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new authorization 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 and 2020. 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 duck barn, 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 6.¹

In addition, the proposed construction 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 construction:

- 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 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.

6. Terms and conditions

Authorization LA20042 permits the construction of the relocated duck barn.

Authorization LA20042 also contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization LA20042 includes conditions that:

- Set a deadline of December 31, 2023 for the approved construction to be completed
- Require the concrete used to construct the liner of the duck 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 from a qualified third party that the concrete used for the duck barn meets the required specifications.
- Prohibit Spring Valley from placing manure or livestock in the duck barn until the facility has been inspected by the NRCB following its construction
- Require the existing duck barn to be decommissioned according to Technical Guideline Agdex 096-90 Closure of Manure Storage Facilities.

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

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](#), available on the NRCB website at www.nrcb.ca/about/documents.

7. Conclusion

Authorization LA20042 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20042.

Authorization LA20042 should be read in conjunction with Approval LA20031 which remains in effect.

November 24, 2020

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20042

APPENDIX A: Consistency with the municipal development plan

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

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 Authorization LA20042

a. Construction Deadline

Spring Valley proposes to complete the relocation of the duck barn 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 Authorization LA20042.

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, Authorization LA20042 includes a condition requiring:

- the concrete used to construct the liner of the duck 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.”
- Spring Valley to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the duck barn.

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. Authorization LA20042 includes a condition stating that Spring Valley shall not place livestock or manure in the manure storage portions of the relocated duck barn until NRCB personnel have inspected the relocated duck barn and confirmed in writing that it meets the authorization requirements.

c. Closure of the existing duck barn

The existing duck barn shall be decommissioned in accordance with Technical Technical Guideline Agdex 096-90 Closure of Manure Storage Facilities – for facilities with solid manure posing a low risk to the environment.