



Decision Summary RA13033A

This document summarizes my reasons for issuing Approval RA13033A (an amended version of Approval RA13033) under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA13033A. 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 October 2, 2020, Neudorf Hutterian Brethren, operating as Neudorf Colony Farming Co. Ltd. (Neudorf Colony) submitted an application to the NRCB to amend an operating condition at an existing multi species CFO. On October 13, 2020, I deemed the application complete.

The NRCB issued Approval RA04011 to Neudorf Colony on October 4, 2004. Condition 13 (c) of RA04011 states that “a straw cover must be spread on the EMS as soon as the ice leaves the surface in the spring of each year”. During the application for RA04011, the colony proposed to place a straw cover on the earthen manure storage (EMS) for odour control, in response to the NRCB’s requirements at the time for coverage on manure storage facilities. The condition was also added in response to a condition placed by Mountain View County on Development Permit 96-045 (issued on August 6, 1996) “straw shall be spread over the surface of the lagoon in order to establish and maintain a surface crust”, and a 2003 NRCB warning, reminding the Colony of the Development Permit condition. The straw cover condition has been carried forward to the most recent Approval, RA13033, which was issued on March 17, 2014.

In recent years, Neudorf Colony has been utilizing new odour-management technology in the EMS by the use of various commercially produced additives. The Colony reports that they have noticed a significant decrease in the odour from the EMS. This decrease, as well as the challenges in applying and maintaining a straw cover (difficulties in agitating the EMS prior to spreading, and maintaining an even straw cover), prompted the Colony to apply to remove the condition.

No construction, nor changes in livestock numbers or manure production are proposed in this amendment application.

a. Location

The existing CFO is located at E 1/2 7-29-27 W4M in Mountain View County, roughly 12 km east and 7 km south of the Town of Carstairs. The terrain on the site is relatively flat. The Rosebud River flows from the northwest quarter to the southeast quarter of section 7-29-27-W4, and is approximately 114 metres from the nearest manure storage facility.

b. Existing permits

To date, the NRCB has issued Approvals RA04011, RA04011A, RA04011B, RA04011D, and RA13033, and Authorizations RA05026, RA12036, and RA16022. Collectively, these NRCB permits allow Neudorf Colony to construct and operate a multi-species CFO, comprised of 400 sows farrow to finish, 85 milking cow dairy (with associated dry cows and replacement stock), 2000 poultry broilers, 22,600 laying hens, 11,000 pullets, 300 turkeys, and 900 ducks . The CFO's existing permitted facilities are listed in the appendix to the Approval RA13033A.

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 1.5 miles. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to Mountain View County, which is the municipality where the CFO is located, and to Rocky View County which has a boundary within the affected party radius.

The NRCB gave notice of the application by public advertisement in the Mountain View Gazette and the Rocky View Weekly on October 13, 2020. The full application was posted on the NRCB website for public viewing. As a courtesy, sixty five letters were sent to people identified by Mountain View County and Rocky View County as owning or residing on land within the affected party radius.

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 Health Services (AHS), and Alberta Environment and Parks (AEP). No responses were received from either party.

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 CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed amendment is consistent with the land use provisions of Mountain View County'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 amendment:

- Exceeds the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS)

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

7. Responses from municipalities 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." Mountain View County is an affected party (and directly affected) because the CFO is located within its boundaries.

Ms. Peggy Grochmal, a permitting and development officer with Mountain View County, provided a written response on behalf of Mountain View County. Ms. Grochmal stated that the Municipal Planning Commission (MPC) reviewed the application; however, the MPC required additional information from the NRCB regarding "the alternate method for odour control". Ms. Grochmal indicated that once this information was provided to the MPC, a response would be sent back to the NRCB. Ms. Grochmal also included the MPC's notes that discuss the application's consistency with Mountain View County's planning documents.

The application's consistency with Mountain View County's municipal development plan is addressed in Appendix A, attached.

I interpret the MPC's request for odour control methods as a concern about odour. I will address this concern in Appendix C, attached.

Rocky View County is also an affected party because the municipality's border is within the notification radius.

Ms. Jessica Anderson, a senior planner with Rocky View County, provided a written response on behalf of Rocky View County. Ms. Anderson stated that the County has no concerns with the proposed changes.

Apart from municipalities, any member of the public may request to be considered “directly affected.” The NRCB received a response from one individual.

This individual owns or resides on land within the 1.5 mile notification radius for affected persons. Because of his location within this radius, and because he submitted a response, he qualifies for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected party raised a concern regarding the level of odour, if a straw cover is not in place. This concern is addressed in Appendix C.

8. Environmental risk of CFO facilities

When reviewing an amendment application of an approval 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 8.13.

In this case, the risks posed by Neudorf Colony’s existing CFO facilities were assessed in 2014 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since that assessment was done. The proposed removal of the straw cover condition does not impact previous risk assessments. As a result, a new assessment of the risks posed by the CFO’s existing facilities is not required.

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. Grochmal also listed the setbacks required by Mountain View County’s land use bylaw (LUB) and noted that the application meets these setbacks.

I considered the effects of the proposed amendment on the environment, the economy, and the community, and the appropriate use of land.

Consistent with NRCB policy (Approvals Policy 8.7.3), I presumed that the effects in 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 policy (Approvals Policy 8.7.3), if the application is consistent with the MDP, then the proposed development is presumed to have an acceptable effect on the economy and community. I also considered the directly affected party's concerns regarding odour. In my view, this presumption is not rebutted and the directly affected party's concern has been addressed because Neudorf Colony has provided additional odour control methods, as discussed in Appendix C.

I also presumed that the proposed amendment 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 8.7.3.). In my view, this presumption is not rebutted because the CFO meets the required setbacks, and is on agriculturally designated land.

10. Terms and conditions

Rather than issuing a separate "amendment" to Approval RA13033, I am issuing a new Approval with the required amendment. Approval RA13033A therefore contains all the relevant terms and conditions in RA13033, with the exception of the straw cover condition, and other conditions I amended under section 23 of AOPA, as discussed below.

Approval RA13033A specifies the cumulative permitted livestock capacity as 400 sows farrow to finish, 85 milking cows (plus associated dries and replacements), 2,000 chicken broilers, 22,600 chicken layers, 11,000 chicken pullets, 300 turkeys, and 900 ducks (the livestock categories have been updated to reflect current terms in AOPA).

Approval RA13033A 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.

For clarity, and pursuant to NRCB policy, I consolidated Authorization RA16022 with Approval RA13033A (see NRCB Operational Policy 2016-7: Approvals, part 10.5). 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. Appendix D discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval RA13033A is issued for the reasons provided above, in the attached appendices, and in Technical Document RA13033A.

Neudorf Colony's Approval RA13033 and Authorization RA16022 are therefore cancelled, and their content consolidated into Approval RA13033A, unless Approval RA13033A is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA13033 and Authorization RA16022 will remain in effect.

March 30, 2021

(original signed)
Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Concerns raised by directly affected parties
- D. Explanation of conditions in Approval RA13033A

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for an approval or amendment of an approval 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 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.”) “Land use provisions” also do not impose procedural requirements on the NRCB. (See NRCB Operational Policy 2016-7: Approvals, part 8.2.5.)

Neudorf Colony’s CFO is located in Mountain View County and is therefore subject to that county’s MDP. Mountain View County adopted the latest revision to this plan on December 9, 2020 under Bylaw #20/20.

As relevant here, section 2.0 of the MDP provides a “growth management strategy” that is reflected in the land use map in Figure 3 of the MDP. Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” based on these designations is not considered to be a “land use provision”, rather it helps to identify where the location of CFO’s would be considered to be more suited within the county. Because of this I do not consider it to be relevant to my MDP consistency determination.

At any rate, Neudorf Colony’s CFO is within the “Agricultural Preservation Area” marked on Figure 3. Section 2 of the MDP explains that the “majority” of this area is subject to the “applicable Land Use Policies outlined in section 3.0 of the MDP....”

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified growth centre or an IDP with adjacent urban municipalities. Neudorf Colony is an existing CFO so this policy is not relevant to my MDP consistency determination.

Sub-section 3.3.17 states that applications for new or expanding CFOs “shall meet all Provincial standards.” This sub-section likely isn’t a “land use provision” and therefore is not relevant to my MDP consistency determination. Regardless, Neudorf Colony’s application meets AOPA requirements.

Sub-section 3.3.18 states that after provincial approval is obtained for new or expanding CFOs, the construction shall be subject to Mountain View County Road Use Agreement Policy. The NRCB Board has previously stated that road use agreements are between the developer and the municipality, not the NRCB (see *Zealand Farms*, RFR 2011-02 at 5, *Faberdale*, RFR 2018-12 at 3). Furthermore, this is not a land use provision, so I am precluded from considering this policy. Regardless, Neudorf Colony is proposing a change to a condition, which does not include construction activity.

No other policies in section 3.0 preclude Neudorf Colony's application. Therefore, their proposed CFO conversion and expansion is an acceptable land use within the Agricultural Preservation Area of the MDP. Thus, the CFO is consistent with the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of Mountain View County's MDP that I may consider.

In my view, under sections 3.3.5, 3.3.14, 13.3.1 and 13.3.2, amongst others, Mountain View County's MDP provides a clear intent to adopt provisions from the land use bylaw # 16/18 (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered Mountain View County's LUB. Under that bylaw, the subject land is currently zoned as Agriculture. CFOs are not listed as permitted or discretionary use in this district. Section 9.5 of the LUB states that CFOs are regulated by the NRCB under provincial regulations, and are therefore exempt from municipal control under the land use bylaw.

Section 9.5.1 (b)(i) of the LUB relates to required CFO (new and expanding) setbacks (0.5 miles) from multi-parcel residential development, any urban centre, school, or hospital. This CFO is not located near any of these and meets this setback requirement. Section 9.5.1 (b)(ii) relates to MDS requirements in AOPA. As noted in this Decision Summary, the CFO meets the MDS requirements.

Neudorf Colony's site is located near the border between Mountain View County and Rocky View County. Accordingly, I considered if an IDP was in place. Mountain View County and Rocky View County have determined by motions of Councils that an IDP between the two municipalities is not required (as approved by Mountain View County Council on February 12, 2020).

APPENDIX B: Determining directly affected party status

Blaine Gatez (NW-33-28-27-W4) qualifies for directly affected party status because he submitted a response to the application and they own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation (See NRCB Operational Policy 2016:7 – Approvals, part 6.2).

No other responses from other individuals or parties were received.

APPENDIX C: Concerns raised by directly affected parties

Concerns from directly affected parties

A directly affected party (Mr. Gatez) raised concerns regarding a potential increase in odour if the straw cover was removed. The directly affected party stated that they would entertain other options for odour management.

Mountain View County's response requested further information on odour control methods. As discussed in Section 7 above, I interpret the MPC's request as a concern about odour.

Given that both parties have the same concerns, I will address them together, below.

AOPA utilizes the minimum distance separation (MDS) as a method for minimizing the effects of odour. As discussed in TD RA13033A, the residence closest to a manure storage facility is located approximately 1504 m away; more than double the required 658 m for residences located on agriculture land (category 1). I also assessed Mr. Gatez's location and found that the nearest residence on his property is approximately 3,310 metres from the EMS (the closest MSF), which is approximately 5 times the required MDS.

Given that the distance between the Gatezs' residence and the CFO exceeds the MDS, AOPA's requirements have been met. However, I can appreciate that due to the weather patterns and topography of the site, the Gatezs' may still experience some odours from time to time. These should be relatively infrequent events.

Neudorf Colony has submitted a response to Mr. Gatez's letter. In it, they state the following:

- They respect the neighbors' concerns regarding odour. The Colony wants to better manage the odour as they experience it as well, depending on the wind direction.
- The Colony has struggled with applying straw to the EMS. Depending on the wind speed and direction, straw often piles up on 1/2 to 2/3 of the EMS's surface area after application. They often need to reapply straw.
- In wet years, straw gets waterlogged and sinks, causing open surface areas.
- The presence of the straw cover means that the Colony needs to agitate the EMS longer, and more aggressively when they are emptying the EMS. This extra agitation increases odour.
- In the new barns, the pits are larger, requiring that the Colony need to drain them less frequently (note, this was completed under NRCB Authorization RA16022). This reduces odour.
- The Colony has been using commercially available additives in the in-barn pits to reduce odour, and to reduce the amount of water required to keep the pits flowing.
- The Colony has been using commercially available additives in the EMS that are designed to reduce odour and agitation time. The Colony reports that they have noticed significantly less odour as a result of using these products.
- The Colony states that the commercial additives are considerably more expensive than the straw cover. However, the Colony feels that the additives are much more effective at reducing odour.

Given that MDS has been met by more than double the required setback, and the additional odour management strategies the Colony has implemented, I am of the opinion that the directly affected parties' concerns have been addressed.

APPENDIX D: Explanation of conditions in Approval RA13033A

1. Operating Conditions carried forward from RA13033

4. Unless otherwise directed in writing by the NRCB, the operator must maintain and make available to the NRCB, upon request, an ongoing record of the number of milking cows to demonstrate that the number remains at or below 85 milking cows (associated replacements and dries also allowed on site).
5. Drinking water quality tests for chlorides and nitrates must be conducted annually on the water well(s) within 100m of the confined feeding operation with the results submitted annually to the NRCB by September 30, beginning in 2014, unless otherwise directed in writing by the NRCB.
6. The owner/operator shall conduct leak detection monitoring for the EMS according to a groundwater monitoring system prescribed and authorized in writing, and as amended from time to time where appropriate, by the NRCB.
7. (b) As proposed by the applicant, manure hauling trucks will not travel within ½ mile of the residence at NE 8-29-27-W4 at night (10:00 pm – 7:00 am)

2. Conditions not carried forward from RA13033

Approval RA13033A includes the terms and conditions in Approval RA13033 and Authorization RA16022, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that the following conditions from Approval RA13033 should be deleted and therefore are not carried forward to Approval RA13033A. This amendment has been done on my own motion. My reasons for deleting these conditions are listed below:

Construction conditions 1, 2, and 3 from RA13033 have been met, and are listed in an appendix to Approval RA13033A.

Condition # 7 (a) from RA13033 states that “As proposed by the applicant, manure must be incorporated within 48 hours of manure spreading.” This condition is redundant, as this is already a requirement under section 24(1) of AOPA’s Standards and Administration Regulation.

Condition #8 (a) from RA13033 states that “The owner or operator of the CFO must maintain the physical integrity of the liner or protective layer of the EMS.” This condition is redundant, as section 15 (2) (b) of AOPA’s Standards and Regulations already states this.

Condition #8 (b) from RA13033 was amended out as in application RA13033A.

Condition #8 (c) from RA13033 states that “The EMS must be regularly inspected and straw must be added where required to maintain the surface crust”. Given that this amendment application removes the requirement for a straw cover, this condition is no longer applicable.

Condition #9 from RA13033 states that “Compliance to all regulations of Alberta Environment, Alberta Agriculture, Mountain View Health Unit, and all other pertinent government agencies.”

This condition is redundant, as other regulatory agencies have their own pieces of legislation that CFO operators are required to abide by. It is also vague, which makes it challenging to enforce. For clarity and consistency, this condition will be removed.

Condition #10 from RA13033 states that “Approval by the approving authority does not exclude the need and/or requirements of the Permittee to obtain any and all other permits as may be required by this or any other legislation, bylaws or regulations.” This condition was originally carried forward from a municipal development permit, and reflects the regulatory requirements at that time. However, NRCB permits state that permit holders must be in compliance with AOPA, and the regulations associated with that act. Therefore, this condition is redundant. Additionally, the NRCB does not have regulatory authority over other pieces of legislation, and therefore cannot enforce the condition.

Condition #11 from RA13033 states that “No spreading of manure is allowed on frozen or snow covered ground unless otherwise directed in writing by the NRCB.” This condition is redundant, as it is already stated in AOPA’s Standards and Administration Regulation section 24(6).

Condition #12 from RA13033 states that “The NRCB may, by notice in writing, suspend a Development Permit where development has occurred in contravention to the terms and conditions of the permit.” This condition is no longer relevant, as the original Development Permits have been cancelled and replaced by NRCB-issued permits.