

Decision Summary LA18026A

This document summarizes my reasons for issuing Approval LA18026A, an amended version of Approval LA18026 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA18026 and LA18026A. 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 February 4, 2021, the Hutterian Brethren of Plainview (Plainview Colony) submitted an Application for Amendment to the NRCB to change the liner type of the proposed pens and catch basin and relocate the proposed location of a catch basin at an existing multi species CFO. Plainview proposes to use the naturally occurring soils as a liner as opposed to the concrete that was originally proposed.

On February 16, 2021, I deemed the application complete. This application does not include any other changes to permitted livestock numbers or any other CFO facilities.

a. Location

The existing CFO is located at N½ 23-4-13 W4M and SW 26-4-13 W4M in the County of Forty Mile, roughly 23 km southwest of Foremost, Alberta. The building site is relatively flat.

b. Existing permits

The CFO is currently permitted under Approval LA18026. This NRCB permit allows Plainview Colony to construct and operate a mixed livestock CFO. The CFO's existing facilities are listed in the appendix of LA18026A.

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 County of Forty Mile, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Forty Mile Commentator on February 16, 2021. The full application was also posted on the NRCB website for public viewing. As a courtesy, 8 letters were sent to people identified by the County of Forty Mile 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), Alberta Environment and Parks (AEP), and Alberta Transportation.

The only concern raised by a referral agency was from AHS which reiterated comments made in response to the original application for Approval LA18026. As there are no changes in terms of distance of facilities to water wells (aside from the catch basin moving further away), the response provided in Decision Summary LA18026A still applies. Please refer to Appendix B and C of Decision Summary LA18026 for further discussion regarding the water wells at the site.

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.

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.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed permit changes are consistent with the land use provisions of the County of Forty Mile’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 permit amendment:

- 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, 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/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 11, the application meets all relevant AOPA requirements. The exemption which was required to address the setbacks to an existing water well at the site is discussed in section 9 below.

7. Responses from municipality 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." The County of Forty Mile is an affected party (and directly affected) because the proposed facilities are located within its boundaries.

Mr. Nathan Ogden, a planning advisor, provided a written response on behalf of the County of Forty Mile. As noted in section 2, the County of Forty Mile is a directly affected party.

Mr. Ogden stated that the county had no concerns with the application. The application's consistency with the County of Forty Mile's municipal development plan (MDP) is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." No responses were received from any other person, organization, or member of the public.

8. Environmental risk of CFO facilities

When reviewing an application 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, 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 Plainview Colony's existing CFO facilities were assessed in 2018. That assessment indicated that the potential risks to surface water and groundwater were low.

As part of the risk assessment for Approval LA18026A, the location and liner type of the proposed catch basin has been changed. For this reason, I reassessed the risks posed by the CFO's proposed catch basin. My reassessment found that the catch basin as proposed in LA18026A poses a low risk to groundwater and surface water.

9. Exemptions

An exemption to the 100 metre water well setback was granted as part of Approval LA18026. As the distance of the proposed pens to the water well is not changed by issuance of Approval LA18026A, this exemption is still applicable. Please refer to Decision Summary LA18026 for further discussion of the water wells at the site.

10. 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. No concerns were identified that would require further consideration.

I considered the effects of the project amendments 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.

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 presumed that the proposed amendments to the proposed construction 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.).

11. Terms and conditions

Approval LA18026A specifies the cumulative permitted livestock capacity as 175 milking cows (plus associated dries and replacements), 80 beef feeders, 450 swine farrow to finish, 21,000 chicken layers, 21,000 chicken pullets, 1,000 chicken broilers, and 600 ducks and permits the construction of the propose pens and catch basin.

Approval LA18026A 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 LA18026A includes the same conditions which were included in Approval LA18026 aside from those that are no longer applicable due to

the permit changes discussed above and in TD LA18026A. For an explanation of the reasons these conditions were not carried forward, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Approval LA18026 with Approval LA18026A: (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 B discusses the conditions which are carried forward into the new approval.

12. Conclusion

Approval LA18026A is issued for the reasons provided above, in the attached appendices, and in Technical Document LA18026A.

Plainview Colony's existing Approval LA18026 is therefore superseded, and their content consolidated into this Approval LA18026A, unless Approval LA18026A is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA18026 will remain in effect.

April 9, 2021

(original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA18026A

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may grant 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).

Plainview’s confined feeding operation (CFO) is located in the County of Forty Mile and is therefore subject to that county’s MDP (The county adopted the latest revision to this plan on September 2009 under Bylaw 9/2009.).

Part 3.2 of the MDP, titled “Intensive Agriculture”, is relevant to CFOs. As relevant here, section 3.2(b) of the MDP states that, pursuant to AOPA, the county “may designate areas where confined feeding operations are to be encouraged or discouraged”. Section 3.2(c) then states that CFOs “will be excluded from the areas shown on Figure 3.1 unless otherwise approved by the County”. This section likely refers to *Map 3.1*, titled: Confined Feeding Operation Exclusions Area Map. Plainview’s CFO is not within any of the exclusion zones marked on this map.

One other relevant section is 3.2(d) which states: “The County expects developers to implement those technologies that are most effective at reducing adverse effects on the environment, especially with respect to odour and groundwater contamination.” By referring to acceptable technologies rather than acceptable land uses, this section is likely not a “land use provision” and therefore is likely not relevant to my MDP consistency determination. At any rate, regulations under AOPA require a minimum distance separation to nearby residences, which is effective at reducing conflicts due to nuisance and odour. The regulations also include several requirements to protect groundwater. The application meets or exceeds all AOPA requirements and I therefore conclude that it is consistent with section 3.2(d) of the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of the county’s MDP. This conclusion is supported by the county’s written response to the application notice.

The CFO is also subject to the County of Forty Mile Land Use Bylaw #10/2009 (LUB) which is referenced in the MDP. Under that bylaw, the subject land is currently zoned as Agricultural District. CFOs are not listed as either a permitted or discretionary use under this zoning. However, the general purpose of this district is “to permit activities associated with the primary production of agricultural goods and services,” which implicitly includes CFOs. In addition, Schedule B of the LUB, titled “Protection of existing confined feeding operations,” makes it clear that the county contemplates the occurrence of CFOs within the Agricultural District. Based on these provisions, I conclude that the county considered CFOs to be an acceptable land use within the Agricultural District, notwithstanding that CFOs are not expressly listed as either permitted or discretionary land uses.

APPENDIX B: Explanation of conditions in Approval LA18026A

Approval LA18026A includes several conditions, discussed below, which are all carried forward from Approval LA18026. Construction conditions from historical permits that have already been met are identified in the appendix to Approval LA18026A while conditions not carried forward are discussed below.

1. Conditions not carried forward from Approval LA18026

The following conditions from Approval LA18026 will not be carried forward as the amendment renders them either redundant or no longer applicable to the scope of work:

Dairy corrals

5. The concrete used to construct the manure storage portion of the dairy corrals must have a minimum 56-day strength of 30 MPa and a maximum water to cement ratio of 0.50. The permit holder shall provide proof to the NRCB to confirm the specifications of the concrete used in the construction. This document must be provided to the NRCB prior to the inspection referenced in condition #6 below, or by a later date stated by the NRCB.

Concrete catch basins

7. The permit holder shall complete construction of the catch basins prior to November 30, 2021. Upon request, this deadline may be extended by the NRCB in writing.
8. The concrete used to construct the catch basins must have a minimum 56-day strength of 32 MPa and a maximum water to cement ratio of 0.45. The permit holder shall provide proof to the NRCB to confirm the specifications of the concrete used in the construction. This document must be provided to the NRCB prior to the inspection referenced in condition #10 below, or by a later date stated by the NRCB.
9. The permit holder must provide written proof prepared by a qualified third party confirming the storage volume of the catch basins prior to the inspection referenced in condition #10 below, or by a later date stated by the NRCB.
10. The permit holder shall not allow runoff or manure to enter the catch basins until the facilities have been inspected by NRCB personnel and determined by them, in writing, to have been constructed in accordance with the terms and conditions of this permit.