



Decision Summary LA21010

This document summarizes my reasons for issuing Approval LA21010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21010. 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 11, 2021, Rosedale Hutterian Brethren (Rosedale Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on February 17, 2021. On March 2, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken layer numbers from 11,905 to 30,000
- Increasing chicken pullet numbers to 25,000
- Constructing a chicken layer and pullet barn – 140 m x 38 m

a. Location

The existing CFO is located at SW 26-4-9 W4M and NW 23-4-9 W4M in the County of Forty Mile, roughly 18 km south of Etzikom, Alberta. The topography at the site is mostly flat, with an intermittent creek circling the north side of the CFO. This creek eventually flows into Pakowki Lake, which is 9 km east of the CFO.

b. Existing permits

As the CFO existed on January 1, 2002, the CFO is grandfathered with a deemed approval under section 18.1 of AOPA. The CFO's deemed capacity was determined in Authorizations LA11019 and LA12011. This deemed approval together with the past NRCB authorizations allows for the construction and operation of a mixed livestock CFO with the capacity for:

- 375 sows farrow to finish,
- 100 milking cows (plus associated dries and replacements),
- 11,905 chicken layers,
- 2,000 chicken broilers,
- 120 turkeys and
- 550 ducks.

The determination of the CFO's deemed permit status under section 18.1 of AOPA is explained in Decision Summary LA12011. The deemed facilities are listed in the appendix to the Approval LA21010.

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 a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Forty Mile Commentator on March 2, 2021. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, 14 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.

I received responses from AEP and Alberta Transportation. Alberta Transportation raised no concerns with the application while AEP requested confirmation of the water source for the operation. The AEP response was forwarded to Rosedale Colony for its information and follow up. Rosedale confirmed that they hold 16 shares on the South East Water Co-op. Rosedale is reminded it is their responsibility to ensure they have adequate water allocation prior to increasing livestock numbers.

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 expansion is 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 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/protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements. An exemption for an existing water well located within 100 m of the grandfathered calf barn was granted by Authorization LA11019. Discussion regarding this well can be found in the decision summary which accompanied Authorization LA11019.

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 expansion is located within its boundaries.

Mr. Nathan Ogden, a development officer with the County of Forty Mile, provided a written response on behalf of the County of Forty Mile. Mr. Ogden stated that the application is consistent with the County of Forty Mile's land use provisions of the municipal development plan. The application's consistency with the County of Forty Mile's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received one response from two individuals.

The individuals who submitted responses own or reside on land within the 1.5 mile notification radius for affected persons. Because of their location within this radius, and because they

submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 6.2)

The directly affected parties raised concerns regarding the volume of manure to be generated at the site and how the manure will be handled. These concerns are addressed in Appendix B.

8. Environmental risk of CFO facilities

When reviewing a new approval 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 Rosedale Colony's existing CFO facilities were assessed in 2011. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2011 risk assessment, the NRCB has updated its risk screening tool. For this reason, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that all existing and proposed facilities pose a low risk to groundwater and surface water.

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.

Mr. Nathan Ogden also listed the setbacks required by the County of Forty Mile's land use bylaw (LUB). The application appears to meet these setbacks.

I also considered the effects of the proposed expansion 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 on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted and the directly affected parties' concerns have been addressed because the permit holder must abide by AOPA and all of its regulations.

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 expansion 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.).

10. Terms and conditions

Approval LA21010 specifies the cumulative permitted livestock capacity as 375 sows farrow to finish, 100 milking cows (plus associated dries and replacements), 30,000 chicken layers, 25,000 chicken pullets, 2,000 chicken broilers, 120 turkeys and 550 ducks and permits the construction of the chicken layer and pullet barn.

Approval LA21010 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 LA21010 includes conditions that generally address a construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated Authorizations LA12011 and LA11019 with Approval LA21010 (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.

11. Conclusion

Approval LA21010 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21010.

Rosedale Colony's deemed permit, and NRCB-issued Authorizations LA12011 and LA11019 are therefore superseded, and their content consolidated into this Approval LA21010, unless Approval LA21010 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the existing permits will remain in effect.

April 15, 2021

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by directly affected parties
- C. Explanation of conditions in Approval LA21010

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).

Rosedale Colony’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. The portions of that MDP that are applicable to this application are discussed below.

Part 3.2 of the MDP, titled “Intensive Agriculture”, is most 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. Rosedale Colony’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 a method of 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.

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: Concerns raised by directly affected parties

Concerns from directly affected parties

Wayne and Erika Street, who own land within the 1.5 mile directly affected party radius (NW and SW 25-4-9 W4M, and NE 26-4-9 W4M) submitted a joint written response to the application notice. The directly affected parties raised concerns with the potential for manure management changes due to the increase in livestock and corresponding increase in manure production. Mr. and Mrs. Street had concerns that manure could end up overflowing onto their land.

The concerns raised in their response are addressed under the Agricultural Operation Practices Act (AOPA). AOPA requires all CFO operators to adhere to manure spreading setbacks, and nutrient loading limits. Rosedale also provided evidence to show that they have sufficient land base to support the land application of manure produced by their CFO including proposed additional livestock (see Technical Document LA21010). If a neighbor ever has concerns regarding the operator of a CFO not following AOPA or its regulations, they are encouraged to call the NRCB response line at 1-866-383-6722.

APPENDIX C: Explanation of conditions in Approval LA21010

Approval LA21010 includes several conditions, discussed below, and carries forward all conditions from Authorizations LA12011 and LA11019.

1. New conditions in Approval LA21010

a. Construction Deadline

Rosedale Colony proposes to complete construction of the proposed new chicken layer and pullet barn by November 30, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2023 is included as a condition in Approval LA21010.

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 LA21010 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer and pullet 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.”
- b. Rosedale Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the chicken layer and pullet barn.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21010 includes a condition stating that Rosedale Colony shall not place livestock or manure in the manure storage or collection portions of the new chicken layer and pullet barn until NRCB personnel have inspected the chicken layer and pullet barn and confirmed in writing that it meets the approval requirements.