

Decision Summary LA21009

This document summarizes my reasons for issuing Approval LA21009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21009. 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 9, 2021, Clearview Hutterian Brethren (Clearview Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO. The Part 2 application was submitted on March 1, 2021. On March 10, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken layer numbers from 17,000 to 32,400
- Adding 28,080 chicken pullets
- Constructing a chicken layer barn (the dimensions include a manure storage area and an egg handling area) – 113.1 m x 38.7 m (371 ft. x 127 ft.)
- Constructing a chicken pullet barn (including a manure storage area) – 102.4 m x 12.8 m (336 ft. x 42 ft.)

Clearview Colony also ceased the operation of a 110 milking cow (plus associated dries and replacements) dairy and a 200 beef finisher feedlot. The feedlot pens have already been decommissioned and the dairy barn has been converted into a manufacturing plant. Because of this, Clearview Colony proposed to adjust the animal numbers to reflect these changes. Because these CFO facilities have already be decommissioned, a condition to decommission these facilities according to the technical guideline is therefore not required. However, the permit holder is reminded that the 'old' dairy barn is not permitted to house livestock and that the establishment of any new CFO facilities, including a dairy or feedlot, will require a permit under AOPA.

a. Location

The existing CFO is located at SW 28 & NW 21-23-18 W4M in the County of Newell, roughly 13 km southeast of Hussar, Alberta. The topography of the area is generally flat to gently rolling with a general slope to the south at the immediate site. The closest common body of water is an irrigation canal, 3 km to the southeast.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA06007. That permit allowed the construction and operation of a multi species CFO with 600 sows farrow to finish, 110 cow dairy (plus associated dries and replacements), 200 beef finishers, 17,000 chicken layers, 1,000 chicken broilers, 250 turkeys, 1,000 ducks, and 250 geese and includes a determination of the CFO's grandfathered status. The CFO's existing permitted facilities are listed in the appendix to the Approval LA21009.

2. Notice

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 the County of Newell, which is the municipality where the CFO is located.

The NRCB provided notice of the application by public advertisement in the Brooks Bulletin on March 10, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, six letters were sent to people identified by the County of Newell 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), Alberta Transportation, the Eastern Irrigation District, and TC Energy.

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 Newell'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

7. Responses from the 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 Newell is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Maria Jackson, a development officer with the County of Newell, provided a written response on behalf of the County of Newell. Ms. Jackson stated that the application is consistent with the County of Newell's land use provisions of the municipal development plan. The application's consistency with the County of Newell's municipal development plan is addressed in Appendix A, attached.

The NRCB received a response from Leah Olson, development/planning technologist with Alberta Transportation. Ms. Olsen stated that a permit from her department is not required and that they have no concerns.

The NRCB also received a response from TC Energy. The B&A Planning Group, who is the land use planning consultant for TC Energy, responded on behalf of TC Energy and stated that TC Energy has no comments or concerns with this proposal.

No responses were received from any other referral agency, person, or member of the public.

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 Clearview Colony's existing CFO facilities were assessed in 2006. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2006 risk assessment, the ERST was developed to facilitate the assessment of facilities in respect to their potential to pose to surface water and groundwater. For these reasons, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that all facilities at this CFO pose a low risk to surface water and groundwater. Because the proposed facilities meet all AOPA requirements, I assume that they pose a low risk to surface water and groundwater.

9. Terms and conditions

Approval LA21009 specifies the cumulative permitted livestock capacity as 600 swine farrow to finish, 32,400 chicken layers, 1,000 chicken broilers, 28,080 chicken pullets, 250 turkeys, 1,000 ducks and 250 geese and permits the construction of the chicken layer barn and a chicken pullet barn.

Approval LA21009 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 LA21009 includes conditions that generally address construction deadlines, document submission, construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval LA21009: Approval LA06007 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbours and other parties to 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 which conditions from the historical permits are or are not carried forward into the new approval.

10. Conclusion

Approval LA21009 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21009.

Clearview Colony's NRCB-issued Approval LA06007 is therefore superseded, and its content consolidated into this Approval LA21009, unless Approval LA21009 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA06007 will remain in effect.

April 14, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21009

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.)

Clearview Colony’s CFO is located in the County of Newell and is therefore subject to that county’s MDP. The County of Newell adopted the latest revision to this plan on February 2013, under Bylaw # 1705-10, consolidated to Bylaw 1761-13.

The MDP policies relating to CFOs are in part 7. Section 7.1 states that the County “shall restrict the development of CFOs within the established urban fringe areas ...”

Clearview Colony’s CFO is not located in any of the urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 7.2 states that the NRCB “should also consider” the following:

- Proximity to water bodies to minimize negative impact on drinking water supplies;
- The “cumulative effect of a new approval” on any area new other CFOs;
- Environmentally sensitive areas as shown on the report “environmentally Significant Areas of the County of Newell (1991)”;
- Giving notice to adjacent landowners even in case of application for authorizations.

Clearview Colony’s CFO is not close to a common body of water.

The second of these four items does not apply because this permit is an expansion of an existing operation and therefore not a “new approval”. In addition, this provision is likely not a land use provision as it calls for site-specific discretionary judgements (viewed cumulatively with other existing CFOs), so it is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.)

As for the third item, the CFO is not located in an environmentally significant area as listed in the report and is therefore consistent with this policy.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on process and therefore does not need to be considered in my MDP consistency determination. As explained above, the NRB did notify the County of Newell, several referral

agencies, as well as all land owners within a 1.5 mile radius in addition to placing a notice in the Brooks Bulletin newspaper (see also Operational Policy 2016-7: approvals, part 7.5) The notification requirements under AOPA have been met.

Section 7.3 of the MDP states that the county “may use the MDS method to establish separation distances between proposed developments and CFOs.” This policy appears to refer to the “minimum distance separation” (MDS) requirements under OPAA. However, in several review decisions, the NRCB’s board members have made it clear that approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. That said, the county may still rely on this policy for developments that the county regulates.

Section 7.4 of the MDP states that the county “will impose a CFO exclusion zone” around the City of Brooks shown on the map in Appendix C. The applicant’s CFO is not located in the designated CFO exclusion area, so the application is consistent with this part of the plan.

Finally, section 7.5 of the MDP states that, as a “general guideline”. The county will use an 800 meter development setback from all reservoirs. However, this setback can be adjusted on a case-by-case basis depending on topography and other factors. As proposed, the barns meet this suggested setback of 800 meter to a reservoir and is therefore consistent with this policy.

For this reason, I conclude that the application is consistent with the land use provisions of County of Newell’s MDP.

APPENDIX B: Explanation of conditions in Approval LA21009

Approval LA21009 includes several conditions, discussed below, and carries forward a number of conditions from Approval LA06007 (see section 2 of this appendix). Construction conditions from Approval LA06007 are carried forward and included in the appendix to Approval LA21009.

1. New conditions in Approval LA21009

a. Construction Deadline

Clearview Colony proposes to complete construction of the proposed new chicken layer barn and chicken pullet barn by December 31, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2024 is included as a condition in Approval LA21009.

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 LA21009 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer barn 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. Clearview Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the chicken layer barn 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 LA21009 includes conditions stating that Clearview Colony shall not place livestock or manure in the manure storage or collection portions of the new chicken layer barn and pullet barn until NRCB personnel have inspected the chicken layer barn and pullet barn and confirmed in writing that they meet the approval requirements.

2. Conditions not carried forward from Approval LA06007

Approval LA21009 includes the terms and conditions in Approval LA06007, except the one noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #1 from Approval LA06007 should be deleted and therefore is not carried forward to Approval LA21009.

Condition 1 states: *“The operator must maintain manure application records as identified in AOPA and its associated regulations.”*

This condition is redundant in that it is included in the opening paragraph of this Approval LA21009 which states that the permit holder shall comply with the requirements of the *Agricultural Operation Practices Act* (AOPA) and the regulations passed pursuant to that act. This condition will therefore not be carried over into the new approval.