



Decision Summary LA21003

This document summarizes my reasons for issuing Approval LA21003 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21003. 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 3, 2021, Wolf Creek Farming submitted a Part 1 application to the NRCB to expand an existing multi species CFO. On February 26, 2021 an updated Part 1 application was submitted for increasing dairy cows (plus associated dries and replacements) numbers to a total of 150, chicken layer numbers to a total of 20,800, and chicken pullet/broiler numbers to a total of 18,000. The increase in poultry numbers can be accommodated in existing barns. The applicant proposes construction of:

- new dairy barn (92.4 m x 43.9 m x 2.5 m deep pits)
- calf barn (31.4 m x 14.2 m)
- dry cow/heifer barn (66 m x 33 m),
- earthen liquid manure storage (66 m x 66 m x 5 m)

The Part 2 application was submitted on March 2, 2021. On March 12, 2021, I deemed the application complete.

a. Location

The existing CFO is located at SE 29-5-19 W4M, SW 28-5-19 W4M, NW 21-5-19 W4M and NE 20-5-19 W4M in the County of Warner, roughly 10 km southeast of Raymond, Alberta. The terrain is mostly level, sloping slightly to the south towards a tributary to Knee Creek.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA14024. That permit allowed the construction and operation of a multi species livestock CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA21003. The existing permitted capacity of the CFO (LA14024) is:

- 50 Milking Cows (plus associated dries and replacements)
- 200 Beef Finishers
- 260 Sows Farrow to Finish
- 20,800 Chicken Layers
- 3,000 Chicken Broilers
- 100 Turkey Broilers
- 800 Ducks
- 400 Geese
- 4 Horses

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

The NRCB gave notice of the application by public advertisement in the Prairie Post on March 12, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, seven letters were sent to people identified by the County of Warner 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 Agriculture and Forestry (AF), Alberta Transportation, and the Raymond Irrigation District. The response received from AEP was forwarded to Wolf Creek Colony for their consideration and action. Wolf Creek Colony is reminded it is their responsibility to secure adequate water for their operation prior to increasing livestock numbers. No other concerns were raised by the other agencies.

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 Warner'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

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 Warner is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. Tyler Nelson, a development officer with the County of Warner, provided a written response on behalf of the County of Warner. Mr. Nelson stated that the application is consistent with the County of Warner's planning documents and that the application meets the municipal setbacks. The application's consistency with the County of Warner's municipal development plan is addressed in Appendix A, attached.

Apart from the municipality, any member of the public may request to be considered "directly affected." The NRCB received no other responses to the application notice.

8. Environmental risk of CFO facilities

As part of my review of this application, I assessed the risk to the environment posed by the CFO's existing manure storage facilities and manure collection areas. I used the NRCB's environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 8.13). The tool provides for a numeric scoring of risks, which can fall within 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.)

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 Wolf Creek's existing CFO facilities were assessed in 2010, 2014, and in 2016-2017. These assessments indicated that the potential risks to surface water and groundwater were low.

Since the 2016-2017 risk assessment, there have been no changes at the site. I did however review the available information to ensure the last risk assessment was still valid. In my determination, the past risk screening is still valid and if anything, was completed with highly conservative assumptions. I therefore agree with the assessment that all existing 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. Nelson stated the application meets the setbacks as required by the County of Warner's land use bylaw (LUB).

I 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 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. In my view, this presumption is not rebutted.

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.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA21003 specifies the cumulative permitted livestock capacity as 150 milking cows (plus associated dries and replacements), 200 beef finishers, 260 sows farrow to finish, 30,000 chicken layers, 18,000 chicken pullets/broilers, 100 turkey broilers, 800 ducks, 400 geese, and 4 horses. Approval LA21003 also permits the construction of the dairy barn, a calf barn, a dry cow/heifer barn and an earthen liquid manure storage.

Approval LA21003 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 LA21003 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 Approval LA14024 with Approval LA21003 (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 which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA21003 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21003.

Wolf Creek's Approval LA14024 is therefore superseded, and its content has been consolidated into Approval LA21003, unless Approval LA21003 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA14024 will remain in effect.

May 3, 2021

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21003

APPENDIX A: Consistency with the municipal development plan

Under section 20 of the *Agricultural Operation Practices Act* (AOPA), an approval officer may grant 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).

Wolf Creek's confined feeding operation (CFO) is located in the County of Warner and is therefore subject to that county's MDP. The county adopted the latest revision to this plan in November, 1999, under Bylaw #804-99, which pre-dates Part 2 of AOPA that came into force in 2002.

As relevant here, section 4.1.5 of the MDP states that, "[i]n general, [land] uses will be encouraged to locate in areas discussed below...." Sub-section 4.1.5(c) then states that "intensive agriculture":

- [Is]generally accepted everywhere in the county within the principles of minimum distance separation and the land use bylaw, particularly in the irrigated areas of the county,
- [Should]have regard for the minimum distance separation calculation,
- [Should]ensure compliance with land use bylaw and any other regulation.

Section 4.1.5(c) relies on the county's land use bylaw (LUB), which is Bylaw #866-08 and which post-dates Part 2 of AOPA. Due to the age of the MDP, it is necessary to consider the LUB in order to interpret the municipalities planning documents. Under that bylaw, the subject land is currently zoned as Extensive Agriculture. CFOs are not listed as either a permitted, discretionary or prohibited land use under this zoning category.

Under sections 14 and 42 of the LUB, a land use is prohibited if it is not listed as either permitted or discretionary and is not "reasonably similar" to a listed permitted or discretionary land use. In fact, the LUB does not list CFOs as permitted or discretionary land uses in any other district, and the LUB expressly prohibits CFOs in four zoning districts. (See Schedule 2, prohibited uses for the following districts: Grouped Country Residential; Urban Fringe; Urban Fringe – Agriculture; and Hamlet Transitional/Agricultural.)

The LUB does not expressly allow CFOs (above the AOPA permit threshold) anywhere in the county, though several LUB provisions address the suitability of developments near existing CFOs and of dwellings on and subdivisions of, CFO lands. (See LUB, ss. 28(l), 47(c), and Sched. 4, s. 2.) This is likely because after Part 2 of AOPA came into effect in 2002, the county recognized it no longer had permitting authority. Two other LUB provisions refer to the NRCB's authority over CFOs above the AOPA permit threshold. (LUB Sched. 13, ss. 2(b) and 3(a). Wolf Creek's proposed construction is not precluded by any of these CFO-specific provisions, and it meets the LUB setbacks that are applicable to any type of development.)

Viewed together, these LUB omissions and references to CFOs suggest that the county did not intend to preclude CFOs in the Extensive Agriculture district. Rather, the county omitted listing CFOs as either permitted/discretionary or prohibited, simply due to the county's recognition that, after AOPA came into effect, the county no longer had permitting authority over CFOs. This interpretation is supported by the first bullet in section 4.1.5(c) of the MDP which states that "intensive agriculture" is generally "accepted everywhere in the county..." This statement would

be meaningless if the county had meant to preclude CFOs in the Extensive Agriculture district, because that district comprises the vast majority of the lands in the county.

Two of the bullets in section 4.1.5(c) of the MDP refer to the “minimum distance separation” (MDS). The MDP does not define this term, so it is reasonable to define it by reference to the MDS requirements under AOPA. As noted in part 6 above, the colony’s proposed construction meets these MDS requirements.

The third bullet in section 4.1.5(c) refers to compliance with “any other regulation.” This is likely not a “land use provision,” for purposes of the MDP consistency requirement under AOPA. At any rate, no party, including the county, has identified “any other regulation” that has not been met.

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

APPENDIX B: Explanation of conditions in Approval LA21003

Approval LA21003 includes several conditions, discussed below, and carries forward all conditions from Approval LA14024. Construction conditions from Approval LA14024 that have been previously met are identified in the appendix to Approval LA21003.

1. New conditions in Approval LA21003

a. Construction above the water table

Sections 9(3) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on this information, the proposed earthen manure storage may not meet the one metre requirement of sections 9(3). However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in Wolf Creek's report does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included requiring Wolf Creek Colony to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

Wolf Creek proposes to complete construction of the proposed new dairy barn, calf barn, dry cow/heifer barn and earthen manure storage by March 17, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of March 17, 2024 is included as a condition in Approval LA21003.

c. 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 LA21003 includes conditions requiring:

- a. Wolf Creek to provide documentation certifying that the EMS was constructed according to the proposed procedures and design specifications as specified in Technical Document LA21003.
- b. the concrete used to construct the liner of the manure collection and storage portion of the facilities to meet the specification for either category B (liquid manure shallow pits); category C (solid manure – wet); and category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” As outlined in Approval LA21003.
- c. Wolf Creek to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the proposed facilities.

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 LA21003 includes conditions stating that Wolf Creek shall not place livestock or manure in any manure storage or collection portions of the proposed facilities until NRCB personnel have inspected each facility and confirmed in writing that they meets the approval requirements.