

## Decision Summary RA21003

This document summarizes my reasons for issuing Approval RA21003 under the *Agricultural Operation Practices Act (AOPA)*. Additional reasons are in Technical Document RA21003. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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](http://www.nrcb.ca).

### 1. Background

On January 11, 2021, the Hutterian Brethren of Castor, operating as Castor Farming Co. Ltd. (Castor Colony), submitted a Part 1 application to the NRCB to expand their dairy CFO at an existing multi species CFO.

The Part 2 application was submitted on March 29, 2021. On April 8, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 90 to 200 milking cows (plus associated dries and replacements)
- Constructing a dairy barn (125 m x 53 m) which includes a manure collection pit (3.7 m x 3.7 m x 3.7 deep)
- Constructing a calf barn (24 m x 21 m) attached to the dairy barn

The application also notified the NRCB of the proposed construction of a wash bay attached to the calf barn. This facility is an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

#### a. Location

The existing CFO is located at NW 14-37-15 W4M in the County of Paintearth, roughly 10 km southwest of Castor. The terrain slopes down gradually toward Lanes Lake which is about 3 km east of the site.

#### b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA19051. That permit allowed the construction and operation of a multi-species CFO with:

- 90 milking cow dairy (plus associated dries and replacements)
- 30,000 chicken layers (plus associated pullets)
- 6,000 chicken broilers
- 500 ducks

- 300 turkeys
- 300 cow/calf.

The CFO's existing permitted facilities are listed in the appendix to the Approval RA21003.

## **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
- 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 one mile. (The NRCB refers to this distance as the "affected party radius.")

A copy of the application was sent to the County of Paintearth, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Castor Advance on April 8, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, one letter was sent to people identified by the County of Paintearth 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 Agriculture and Forestry (AF).

I received responses from AHS and AEP. (See Appendix B)

## **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 proposed CFO expansion is located.

## **5. Municipal Development Plan (MDP) consistency**

I have determined that the proposed CFO expansion is consistent with the land use provisions of the County of Paintearth's MDP. (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 CFO 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 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 Paintearth is an affected party (and directly affected) because the proposed CFO expansion is located within its boundaries.

Mr. Todd Pawsey, director of community services, provided a written response on behalf of the County of Paintearth. Mr. Pawsey stated that the application is consistent with the County of Paintearth's land use provisions of the municipal development plan (MDP). The application's consistency with the County of Paintearth's 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**

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. However, there may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, an approval officer may require monitoring for the facility. In this case a determination was made and monitoring is not required.

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, 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](http://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 Castor Colony's existing CFO facilities were assessed in 2019 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. 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.

Mr. Pawsey indicated that the application meets the setbacks in the county's land use bylaw.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments, and determined that these are acceptable.

I am not aware of any applicable statement of concern submitted under section 73 of the Environmental Protection and Enhancement Act or under section 109 of the Water Act, or any written decision of the Environmental Appeals Board or Director under the Water Act relating to the CFO site.

Finally, I considered the effects of the proposed CFO 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 CFO 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 because the application meets the land use requirements and setbacks in the County's MDP and LUB.

## 10. Terms and conditions

Approval RA21003 specifies the cumulative permitted livestock capacity as:

- 200 milking cow dairy (plus associated dries and replacements)
- 30,000 chicken layers (plus associated pullets)
- 6,000 chicken broilers
- 500 ducks
- 300 turkeys
- 300 cow/calf,

and permits the construction of the dairy and calf barns.

Approval RA21003 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 RA21003 includes conditions that generally address construction deadlines, document submission and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

For clarity, and pursuant to NRCB policy, I consolidated Approval RA19051 with Approval RA21003 (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 C discusses which conditions from the historical permits are or are not carried forward into the new approval.

## 11. Conclusion

Approval RA21003 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21003.

NRCB-issued Approval RA19051 is therefore superseded, and its content consolidated into Approval RA21003, unless Approval RA21003 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA19051 will remain in effect.

May 20, 2021

(Original Signed)  
Francisco Echegaray, P.Ag.  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Responses from referral agencies
- C. Explanation of conditions in Approval RA21003

## APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for 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.)

Castor Colony’s CFO is located in the County of Paintearth and is therefore subject to that county’s MDP. County of Paintearth adopted the latest revision to this plan in September 2004, under Bylaw 539-04.

Relevant sections of the MDP are in Volume 2 – Goals and Policies:

- Section 2 (Natural Environment Policies) refers to environmentally significant areas. It states that “the impact of any development near these areas needs to be considered.” This section is closely related to section 5(8), which also addresses environmentally significant areas. Therefore, section 2 is discussed below in the context of section 5(8).
- Section 5 (Intensive Agriculture (CFO) Policies), subsections 5(1), (2), and (3) include definitions and request that the NRCB “abide by” the policies in subsections 5(4)-(8), when considering a CFO application.
  - Subsection 5(2) gives the term “minimum distance separation” or MDS the same meaning as the Agricultural Operations Practices Act.
- Subsection 5(4), in turn, states that the NRCB should double the MDS. This MDP requirement is based on, but modifies, the MDS requirement under AOPA. Therefore, under NRCB policy, I cannot consider this MDP requirement for my MDP consistency determination. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) In any event, Castor Farming’s CFO meets the MDS requirements.
- Subsection 5(5) states that CFOs “shall not be located within an area of ‘very high risk’ of groundwater contamination as determined in the County of Paintearth Regional Groundwater Assessment 1999 or successor thereof.” However, subsection 5(6) qualifies this prohibition by stating that, “[i]n areas of ‘high risk’ of groundwater contamination, confined feeding operations should not be allowed unless it can be proven that any groundwater contamination risk has been minimized and the appropriate mitigative measures have been taken....”

Castor Farming's CFO appears to be in an area marked "low risk" for groundwater contamination in the county's regional groundwater assessment document. Therefore, subsections 5(5) and 5(6) are not relevant to this application.

As noted above and in Technical Document RA21003, the dairy and calf barns are located within the footprint of the existing CFO, and they meet AOPA's groundwater protection requirements. Therefore, sections 5(5) and 5(6) do not apply to this application.

- Subsection 5(7) lists areas where CFOs are not allowed. The list of exclusion areas includes setbacks from certain creeks, rivers, lakes, and parks, as well as "any other major recreational or tourist location as determined by the County on a site-specific analysis." Castor Farming's CFO is not located in any of the setback areas noted in 5(7). The nearby lake (Lanes Lake) is not a major recreational or tourist location. Therefore, the application is consistent with this subsection.
- Subsection 5(8) lists areas that are identified "environmentally significant" in a 1989 report. Lanes Lake is located near Castor Farming's CFO and is included in the list noted above. The subsection states that "[t]hese ESA's [environmentally significant areas] may potentially be affected by Confined Feeding Operations and all CFO applications should be evaluated on an individual basis. Confined Feeding Operations should not be allowed within Environmentally Significant Areas unless any environmental risks have been mitigated to the satisfaction of the County Council."

Subsection 5(8)'s "evaluat[ion] on an individual basis" requirement is a test or condition and not a land use provision (see NRCB Operational Policy 2016-7: *Approvals*, part 8.2.6), therefore, I cannot consider this subsection in my consistency determination. Regardless, as noted in Decision Summary RA21003, the existing CFO is not located in the ESA. As noted above, the proposed dairy and calf barns are located in the footprint of the existing CFO.

- Subsections 5(9) and 5(10) list additional CFO exclusion areas, next to urban areas and a reservoir). Castor Farming's CFO is not within any of these areas.
- Subsections 5(11) and 5(12) both deal with the application of manure to land. The former, states that injection should be used to apply all liquid manure produced by CFOs that need permits from the NRCB; the latter states that, for all other (non-liquid) manure, neighbours should be notified before the manure is land applied, or the regulations under AOPA followed.

I cannot consider either of these subsections in my consistency determination, because they deal with the land application of manure which AOPA requires me to ignore. Note that Castor Farming must follow all manure spreading requirements under AOPA.

- Subsection 5(13) states that nutrient management plans and soil testing are required for all CFOs and the plans must be submitted to the county. I cannot consider this subsection in my consistency determination, as it deals with the land application of manure.

Nutrient management plans are normally not required if sufficient manure spreading land is identified for land applying manure the first year after the application is granted. As indicated in section 5 of the decision summary RA21003, Castor Farming's meets the

AOPA requirements for land base available for disposal of manure.

I am not requiring the permit holder to submit nutrient management plans to the NRCB or to the county. However, AOPA requires soil testing of all manure spreading land (within the three previous years). The results of that soil testing must be made available to the NRCB upon request. AOPA also requires records to be kept of all manure that has been spread or transferred to another person. These records essentially constitute a nutrient management plan and should also be available to the NRCB upon request.

- Subsection 5(14) states that “[o]dor control devices and methods, such as covers and wind diffusers, shall be employed in all manure storage facilities of confined feeding operations. Natural crust formation does not constitute odor control.”

This is a test or condition and I therefore cannot consider it in my consistency determination. AOPA uses the minimum distance of separation (MDS) to mitigate odour nuisances from manure storage facilities. This application meets the MDS requirements and I am not requiring additional odour control devices or methods to be used at this CFO.

- Subsection 5(15) states that “[a]ny existing confined feeding operations which are located within areas which have been restricted by the above criteria may be allowed to continue and minor expansions may be allowed provided the operation does not contravene those values which have been identified as important by the community.”

“Minor expansion” is not defined in the MDP, so I cannot determine whether this application falls under this part of the subsection. Regardless, the CFO is not located within any of the restricted areas in the MDP.

- Subsection 5(16) requests that the NRCB add a condition requiring the applicant to enter into a road use agreement with the county.

The NRCB does not have direct responsibility for regulating road use. By contrast, under section 18 of the *Municipal Government Act*, counties generally have “direction, control and management” of all roads within their borders. This broad authority includes the authority to require road users to enter into road use agreements. Therefore, it is impractical and inefficient for the NRCB to attempt to manage road use through AOPA permits. For these reasons, and as per NRCB policy, approval officers do not include conditions in permits requiring operators to enter into road use agreements with counties. (See Operational Policy 2016-7: *Approvals*, part 8.9.) The permit holder is reminded that they are responsible to obtain any other permits or agreements that are required for their operation.

Based on my analysis of the application in the context of these subsections of the County of Paintearth’s MDP, I conclude that the application is consistent with the relevant land use provisions of the MDP. The county’s response to the application notice supports this conclusion.

In my view, under section 1.2 (3) General policies, the County of Paintearth’s MDP provides a clear intent to adopt provisions from the land use bylaw # 593-09. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered the County of Paintearth’s LUB. Under that bylaw, the subject land is currently zoned as Ag District. CFOs are a discretionary use under this zoning.

Sections of the land use bylaw that are relevant to this application include:

- Section 7, which lists items that a development officer or the municipal planning commission “may” request in an application for a development permit for an “intensive livestock operation.”

As no municipal development permit is needed for this facility, this section is not relevant to this application. However, most of the items listed in section 7 (except for the tests for soil structure suitability and the groundwater quantity availability) were required for this (or a previous) NRCB application.

- Part VII – General Land Use Regulations, section 32 (Development near water), lists setbacks to water bodies and flood zone exclusion areas for development.

Castor Farming’s does not fall within any of these setbacks and exclusion zones.

- Part VII – General Land Use Regulations, section 45 (Intensive agriculture and the confinement of animals), contains four parts:
  - Part 1 lists the criteria that the county will use to decide whether to support NRCB applications. This part is therefore for the county’s use.
  - Part 2 states that the county “encourages the use of the most current technology and encourages operators to keep up-to-date on technological changes, especially with regards to odour control and manure disposal.”

This section is hereby brought to the applicant’s attention.

- Parts 3 and 4 are for county use when issuing residential permits near CFOs, and therefore are not relevant to this application.

For the above reasons, this application is also consistent with the County of Paintearth’s land use bylaw. The county’s response to the application notice supports this conclusion.

## **APPENDIX B: Responses from referral agencies**

### **a. Alberta Health Services (AHS)**

I received a response from Mr. Balraj Deol, a public health inspector, on behalf of AHS. In his letter, he summarized the scope of the application. He further included a few comments for consideration. Mr. Deol concluded that AHS has no objections to the proposed development.

### **b. Alberta Environment and Parks (AEP)**

Ms. Laura Partridge, a water administrator technologist at AEP sent an email, to the applicant and the NRCB, with information related to water licencing under the *Water Act*. The applicant is reminded that they need to obtain and maintain water license in accordance with the *Water Act*.

## **APPENDIX C: Explanation of conditions in Approval RA21003**

Approval RA21003 includes several conditions, discussed below, and carries forward a number of conditions from Approval RA19051 (see section 2 of this appendix). Construction conditions from historical Approval RA19051 that have been met are identified in the appendix to Approval RA21003.

### **1. New conditions in Approval RA21003**

#### **a. Construction Deadline**

Castor Colony proposes to complete construction of the proposed new dairy and calf barns by December 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2023 is included as conditions in Approval RA21003.

#### **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 RA21003 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy and calf barns must have a minimum 56-day strength of 32 MPa, have used type 50 cement, have a thickness of 15 cm and used a rebar spacing of 12" and 14" on center,
- b. Castor Colony to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area meets the required specifications.

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 RA21003 includes conditions stating that Castor Colony shall not place livestock or manure in the manure storage or collection portions of the new dairy and calf barns until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

### **2. Conditions carried forward from Approval RA19051**

Approval RA2003 includes all existing terms and conditions in Approval RA19051. Construction conditions that are being carried forward and that have been met are identified and included in an appendix to the new Approval RA21003.