

Decision Summary FA21001

This document summarizes my reasons for issuing Approval FA21001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document FA21001. 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 January 7, 2021, Hutterian Brethren Church of Grandview (Grandview Colony) submitted a Part 1 application to the NRCB to expand an existing multi-species CFO.

The Part 2 application was submitted on January 13, 2021. On February 11, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 8,000 chicken layers to 15,000 chicken layers
- Constructing a new chicken layer barn – 105 m x 25 m
- Increasing livestock numbers from 3,200 chicken pullets to 7,500 chicken pullets (to be housed in the existing layer barn)

The application also notified the NRCB of the proposed construction of an egg grading room (25 m x 25 m). 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

Grandview Colony’s existing CFO is located at NW 21-72-7 W6M in the County of Grande Prairie, roughly 12 km northwest from the City of Grande Prairie, Alberta. The CFO is on a northeast facing slope next to the west shoreline of Bear Lake. The proposed barn is to be located directly south of the hog barn and will be approximately 190 m from this shoreline. The proposed layer barn is proposed to be located on the N½ of the SW 21-72-7 W6M directly south of the hog barn which is constructed on the property line between the NW and SW quarter.

b. Existing permits

The CFO is grandfathered, with a deemed approval under section 18.1 of AOPA. Since AOPA came into effect on January 1, 2002, the NRCB has issued the CFO the following permits: Approval FA02002B, Authorization FA14004, and Authorization FA18002. (The NRCB determined the CFO’s grandfathered status when it issued Approval FA02002B. The determination is in decision summary FA02002B). Collectively, these NRCB permits and the

CFO's deemed approval allow Grandview Colony to construct and operate a multi-species CFO with the following livestock:

- 450 sows farrow to finish
- 8,000 layer chickens
- 3,200 pullets
- 2,000 broiler chickens
- 1,100 ducks
- 300 geese
- 10 dairy cattle

The CFO's deemed and NRCB-permitted facilities are listed in the Appendix to Approval FA21001.

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

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

The NRCB gave notice of the application by public advertisement in the Town and County News on February 11, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, 1 courtesy letter was sent to persons identified by the county 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) and Alberta Environment and Parks (AEP).

Comments relating to water allocation were raised by AEP. Grandview Colony was reminded that they may need additional water licensing and should contact AEP. Additionally AEP

enquired about waste water and requested that if Grandview Colony requires Water Act approval they contact the AEP office for additional information. As the proposed chicken layer barn operates on a solid manure system, runoff from the facility will be controlled as this is required. Grandview Colony is reminded that following issuance of this permit, they should not increase livestock numbers at the CFO until they have ensured adequate water allocation has been secured for their CFO.

I did not receive a response from AHS nor from other persons or organizations.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the County of Grande Prairie's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

5. 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 9, the application meets all relevant AOPA requirements.

6. 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 Grande Prairie is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

I did not receive a response to the initial request for the application from the County of Grande Prairie. In a follow-up email after the deadline I received an acknowledgment of my communication from a county representative, but ultimately did not receive a response to the application. By the time of this decision I have not received an official response to the application. The application's consistency with the county's municipal development plan is addressed in Appendix A, attached.

7. 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, 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.) 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 Grandview Colony's existing CFO facilities were assessed in 2016 and 2018 using the ERST. According to those assessments, 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.

I assessed the proposed chicken layer barn using the ERST and determined that it poses a low potential risk to groundwater and surface water. The existing previously permitted liquid manure storage is considered the highest risk facility at this CFO. The most recent risk scoring assessment of this facility indicated that it poses a low potential risk to both surface and groundwater. The existing CFO is located next to Bear Lake and in this case the location of the proposed layer barn is further away from Bear Lake than the other existing CFO facilities. If constructed as proposed the new barn will meet AOPA's setback requirements to common body of water. It will also be built in a way that will not pose a significant risk to groundwater or surface water. .

8. 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.

The property line setbacks required by Grand Prairie County's land use bylaw (LUB) are 30.0 m from side, rear, and front yards. The application meets these setbacks.

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 because the application is consistent with County of Grande Prairie's MDP.

I have considered the effects the proposed CFO facility may have on natural resources administered by provincial departments. In addition to meeting the AOPA requirements, I am not aware of any adverse effects that the proposed development would have on other provincially administered natural resources. In regard to the application, and furthermore the application meets AOPAs technical requirements.

Finally, 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 on 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, and to be and appropriate use of land. In my view, this presumption is not rebutted.

9. Terms and conditions

Approval FA21001 specifies the cumulative permitted livestock capacity as:

- 450 sows farrow to finish
- 15,000 layer chickens (plus associated pullets)
- 2,000 broiler chickens
- 1,100 ducks
- 300 geese
- 10 dairy cattle

Approval FA21001 also permits the construction of the new chicken layer barn 105 m x 25 m.

Approval FA21001 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 FA21001 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated Approval FA02002B, Authorization FA14004 and, Authorization FA18002 with Approval FA21001 (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 discussed which conditions from the historical permits are not carried forward into the new approval.

10. Conclusion

Approval FA21001 is issued for the reasons provided above, in the attached appendices, and in Technical Document FA21001.

Grandview Colony's deemed Approval, as well as NRCB-issued Approval FA02002B, Authorization FA14004, and Authorization FA18002, are therefore superseded, and their content consolidated into this Approval FA21001, unless Approval FA21001 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the old permits will remain in effect.

May 19, 2021

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval FA21001

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.)

Grandview Colony’s CFO is located in the County of Grande Prairie and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on September 25, 2017, under Bylaw # 3074. No Intermunicipal development plans or area structure plans apply to this area.

The MDP policies related to CFOs are in Section 6, which is titled “Rural Development,” and Section 11, titled “Environment.” The parts of those sections relevant to this application/CFOs are discussed below.

The introduction of Section 6.0 identifies Rural Development area as land best suited for extensive agriculture and that CFOs may also be considered lands subject to provincial approvals and locational criteria found in the MDP.

Sections 6.20 and 6.21 indicate that medium and large CFOs (6.20) and small CFOs (6.21) may be permitted in the rural area subject to the policies of this section.

Policy 6.24 contains several setbacks and requirements however this policy clearly states it applies to “new Confined Feeding Operations”. Despite the policy states it’s for “new Confined Feeding Operations” several of the sub policies appear to apply to expanding CFOs as well. For example:

- Policy 6.24(e) requires new and expanding sites to be located on lands at least 60 ha in size. This is likely not a land use provision because it refers to specifics in respect to a site of a CFO, rather than the use of a specific land.

6.24(n) requires the cumulative effects from CFOs in the area to be assessed. This is not considered a valid land use provision as AOPA does not require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area. 6.24(p) requires the applicant to have a public meeting prior the NRCB application. Section 20(1)(b)(iv) of AOPA allows approval officers to hold “meetings and other proceedings” with respect to an approval application. Approval officers do not routinely convene public meetings even on applications that may be likely to generate public interest, as approval officers must be neutral, and there is a Board review mechanism available already.

However, approval officers regularly provide information, and have conversations with parties, including municipalities, CFO operators, and neighbors to CFOs to provide information on the AOPA permit application process. Policy 6.25(b) states that the county will support expansions of existing operations that are within a 50% increase in the operations' approved capacity. In this case, the applicant is not increasing the CFO by 50%. At any rate, 6.25(a) states that the expansion of a CFO previously identified by the county will be supported. Map 7, which identifies existing "registered" CFOs, does not label Grandview Colony as a CFO. It is unclear if by not being labeled on the map if section 6.25(a) is met. Grandview Colony has been openly operating for many years prior to the current MDP and. Further, the county has replied to all previous AOPA applications for this CFO (Approval FA02002, Authorization FA14004, and Authorization FA18002). As such, I am of the opinion that the omission of the colony's CFO from this map is an oversight.

Subsection 6.25(c) adds that, "[i]n supporting the right to expand, the County may consider any or all of the criteria outlined in Policy 6.23." It is unclear how Policy 6.23 applies and I believe they are actually referring to Policy 6.24, as this is where several setbacks and requirements are listed. At any rate, as detailed above, 6.24 is likely not a "land use provision," and therefore not relevant here, because it calls for a development-specific evaluation and is procedural in nature. It also states that existing operations may be exempt from this policy and is unclear what may or may not exclude CFOs from these tests and conditions.

Policy 6.25 (duplicate number in MDP is believed to be an error) states that all applications may be subject to an independent peer review to ensure the requirements have been adequately addressed. As this requires site specific requirements above AOPA, and focuses on procedure, it is not considered a valid land use provision which AOPA directs that I must not consider.

Section 6.26 states that building permits for medium or large CFOs will not be issued unless a nutrient management plan has been prepared to the county's satisfaction. Under AOPA section 20(1.1) I cannot consider this requirement. At any rate the applicant has submitted more than adequate manure spreading lands for the CFO that meets the AOPA requirements and therefore I consider this met. They are also required to comply with all AOPA's manure land application requirements. Under the *Municipal Government Act*, as the NRCB is the permitting authority, not the County, this provision does not apply.

Section 6.27 requires a 30m buffer from all public roads and right-of-way's from medium and large CFOs. The application meets this requirement.

Several policies in part 11 titled Environment (sections 11.15 – 11.18) prohibit CFOs within or adjacent to several specified areas, including recreation lakes, which include Bear Lake. In general, section 11 refers to "CFOs" without specifying new or expanding. However, the background to this section specifically states "the County will not permit new or expanded CFO's adjacent to significant recreation lakes." Section 11.19 lists several recreational lake, including Bear Lake. These policies are not expressly limited to "new" CFOs, but in my opinion these limitations are implied based on the background discussed above.

As mentioned above, the MDP also includes Map 7, titled "Confined Feeding Operation Exclusion Areas." This map provides additional guidance as to where CFOs are and are not permitted. The colony's CFO is not located in any exclusion area (pink circles) identified on this map including the CFO exclusion area identified for Bear Lake. It is my assessment that this map was developed and included in the MDP to add additional clarity to the more general CFO exclusion requirements in policy 11 of the MDP. Map 7 appears to support section 11 in

designating portions of the county as CFO exclusions zones, Grandview Colony falls outside of these areas shown on Map 7.

Given the history of past NRCB permits and the County's involvement (and support) on those previous application, the spirit of "identified by the County" in 6.25(a) suggests that Grandview Colony's is considered an existing CFO that would be supported under the MDP. Based on Map 7 in collaboration with Policy 6.25 and Section 11 I'm of the opinion that the application is consistent with the land use provisions of the County of Grande Prairie's MDP.

APPENDIX B: Explanation of conditions in Approval FA21001

Approval FA21001 includes several conditions, discussed below, and carries forward a number of conditions from FA02002B (see sections 2 and 3 of this appendix). Construction conditions from historical permits that have been met are identified in the appendix to Approval FA21001.

1. New conditions in Approval FA21001

a. Construction Deadline

Grandview Colony proposes to complete construction of the proposed new facilities by the end of 2023. Therefore, the deadline of December 1, 2023 is included as a condition in Approval FA21001.

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 FA21001 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the chicken layer 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. Grandview 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.

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 FA21001 includes a condition stating that Grandview Colony shall not place livestock or manure in the manure storage or collection portions of the new chicken layer barn until NRCB personnel have inspected the facility and confirmed in writing that it meets the approval requirements.

2. Operating Conditions carried forward from FA02002B

1) Groundwater Monitoring

- a) All existing monitoring wells are to be maintained.
- b) The monitoring wells and the water well closest to the hog barn are to be tested and the results reported to the NRCB on an annual basis until such time as the NRCB adjusts the monitoring frequency.

The parameters to be tested include pH, electrical conductivity, total dissolved solids, sodium absorption ratio, dissolved organic carbon, nitrate, ammonium chloride, calcium, magnesium, sodium, potassium, and sulphate.

2) Nutrient Management

- a) Manure application of liquid manure will be by subsurface injection. This will start in 2004 as outlined in the application.

3. Conditions not carried forward from Approval FA02002B

Approval FA02002B includes the terms and conditions in Approval FA02002B, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that the following condition from Approval FA02002B should be deleted and therefore is not carried forward to Approval FA21001. My reasons for deleting this condition is listed below:

2) Nutrient Management

- b) The applicant will implement a nutrient plan in accordance with Schedule 3 of the Standards and Administration Regulation before spreading manure in 2005 and in subsequent years.

As a part of this application, the applicant must provide adequate manure spreading lands per Section 24 of the Standards and Administration Regulation. It also sets nutrient limits that shall not be exceeded. For this reason, this condition is not being carried forward as written, rather, this condition is being rewritten as a general statement that is included in all AOPA permits: *the permit holder shall comply with the requirements of the Agricultural Operation Practices Act and the regulations pursuant to the act.*