

Decision Summary BA21007

This document summarizes my reasons for issuing Approval BA21007 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21007. 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 March 9, 2021, Hutterian Brethren Church of Pine Meadows (Pine Meadows) submitted a Part 1 application to the NRCB to construct a new multi-species CFO, in order to replace an existing permitted but unconstructed CFO on the adjacent land location.

On August 7, 2019, the NRCB issued Approval BA19006 to Pine Meadows to construct a new multi-species CFO on the S½ 25-60-9 W4M in the M.D. of Bonnyville. In early 2021 Pine Meadows contacted the NRCB requesting to relocate their approved facilities across the township road to the N½ 24-60-9 W4M. As this move represents significant change to the permit specifically being located on a different legal land location I required a new application be submitted. Part of this application is the agreement that Pine Meadows will cancel Approval BA19006 if Approval BA21007 is approved. If this occurs, all CFO facilities will be located on the N½ 24-60-9 W4M. Based on this information, it is my opinion that treating Approval BA21007 as a new CFO is appropriate.

The Part 2 application was submitted on March 24, 2021. On April 20, 2021, I deemed the application complete.

The livestock proposed at the CFO are:

- 18,000 chicken layers
- 18,000 chicken pullets,
- 10,000 chicken broilers,
- 2,000 ducks, and
- 1,000 geese

The proposed CFO facilities are as follows:

- Layer barn with attached solid manure storage pad (90 m x 20 m)
- Pullet barn with attached solid manure storage pad (68 m x 12 m)
- Broiler, duck & goose barn (122 m x 23 m)
- Two solid manure storage pads attached to broiler, duck & goose barn (23 m x 12 m each)

The application also notified the NRCB of the proposed construction of two offices (9 m x 12 m and 10 m x 23 m), and an egg grading area (18 m x 20 m). These facilities are an “ancillary structure,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, these structures do not need to be permitted under the act.

a. Location

The proposed CFO is located at N½ 24-60-9 W4M in the M.D. of Bonnyville, roughly 3.5 km from the town of Therien AB. The terrain is relatively flat sloping to the south west with a wetland located approximately 40 m north of the proposed facilities.

b. Existing permits

To date, Pine Meadows hold permit Approval BA19006 which has not been constructed. That permit allowed the construction and operation of a multi-species CFO. As a part of this application the applicant has committed to cancel Approval BA19006 providing that a permit is issued for a CFO at this new location.

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 0.5 mile. (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to the M.D. of Bonnyville, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in the Lakeland Today newspaper on April 20, 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 M.D. of Bonnyville 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).

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 is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of the M.D. of Bonnyville'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 CFO:

- 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 M.D. of Bonnyville is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Kristy Poirier, a development officer with the M.D. of Bonnyville, provided a written response on behalf of the M.D. As noted in section 2, the M.D. is a directly affected party.

Ms. Poirier stated that the application is consistent with the M.D. of Bonnyville's municipal development plan. The application's consistency with the municipal development plan, is addressed in Appendix A, attached.

Ms. Erica Denine, public health inspector, replied on behalf of AHS. Ms. Denine indicated that AHS had no concerns regarding the application, and provided a few comments for the applicant

to consider. These comments were forwarded to the applicant for their information.

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

The respondents do not own or reside on land within the 0.5 mile radius for affected persons. I consider all of these respondents to be not considered directly affected by the approval application. Appendix B sets out my reasons for determining the directly affected status.

The individuals raised concerns regarding animal welfare, agricultural practices, and ongoing inspections of animal health.

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 on-going testing or exemptions in regards to a facility. In this case the CFO facilities were determined to pose a low potential risk to surface and ground water using an Environmental Risk Screening Tool. I also determined that there are no other circumstances that need to be reviewed or considered and no monitoring is 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.

Ms. Poirier also listed the setbacks required by the M.D. of Bonnyville’s land use bylaw (LUB). The application appears to meet these setbacks.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. No response was received from AEP in regard to the application, furthermore the application meets AOPAs technical requirements.

Finally, I considered the effects of the proposed CFO 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 is an appropriate use of land because the application is consistent with the land use provisions of the municipal development plan (Approvals Policy 8.7.3.). In my view, this presumption is not rebutted because the M.D. of Bonnyville's response states that the application is consistent with their MDP.

10. Terms and conditions

Approval BA21007 specifies the cumulative permitted livestock capacity as:

- 18,000 chicken layers,
- 18,000 chicken pullets
- 10,000 chicken broilers,
- 2,000 ducks, and
- 1,000 geese.

and permits the construction of:

- Layer barn with attached solid manure storage pad (90 m x 20 m)
- Pullet barn with attached solid manure storage pad (68 m x 12 m)
- Broiler, duck & goose barn (122 m x 23 m)
- Two solid manure storage pads attached to the broiler, duck & goose barn (23 m x 12 m each)

Approval BA21007 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 BA21007 includes conditions that generally address construction deadlines, document submission, and construction inspections. For an explanation of the reasons for these conditions, see Appendix C.

11. Conclusion

Approval BA21007 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21007.

Pine Meadow's have stated in their application the intention to cancel Approval BA19006 if Approval BA21007 is approved. Therefore, I am taking this opportunity to serve notice that after the RFR review period has closed, Approval BA19006 will be cancelled.

June 15, 2021

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status
- C. Explanation of conditions in Approval BA21007

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.)

Pine Meadows’ CFO is located in the M.D. of Bonnyville and is therefore subject to that Municipal District’s MDP. The Municipal District adopted the latest revision to this plan on September 13, 2007, under Bylaw #1367 (with amendments under bylaw #1539).

The MDP has no direct requirements nor does it mention any planning guidance related to CFOs with the exception of planning country residential communities in proximity to existing CFOs.

In discussion with development staff at the M.D. of Bonnyville they established planning documents specifically for Pine Meadows within their Land use bylaw.

For these reasons, I conclude that the application is consistent with the land use provisions of the M.D. of Bonnyville’s MDP.

The CFO is also subject to the M.D. of Bonnyville’s LUB #1667. Approval officers will deem an application to be consistent with a LUB if the bylaw lists the proposed development as either a permitted or discretionary use. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3.) Under this zoning, I note that subsection 5 of the LUB states “Intensive Livestock Operation requires NRCB approval prior to development”.

Section 48 of the LUB contains several provisions referring to intensive livestock operations (which include confined feeding operations).

Subsection 48.1 refers to the issuance of development permits regarding intensive livestock operations will be screened for environmental sensitivity using the Code of Practice and if necessary will be referred to Alberta Agriculture. As AOPA has replaced the Code of Practice I take this as the M.D.’s acknowledgment that there are provincial requirements in place for the siting and construction of CFOs. The application meets all AOPA requirements.

Subsections 48.2 and 48.3 of the LUB allows the development authority to vary MDS in specific circumstances. This part is likely not considered a “land use provisions,” as it is likely a CFO-

related “test” under section 20(1.1) of AOPA. At any rate, the application meets all MDS requirements as defined by AOPA this provision is considered met.

Subsection 48.4 requires the application for a CFO to submit a manure management plan which demonstrates:

- a) Secured sufficient land, as specified in the Code of Practice, to accommodate the safe and proper disposal of manure;
- b) Made provisions for proper manure storage and application; and
- c) Demonstrated odour control methods.

This part is likely not considered a “land use provisions,” as it is likely a CFO-related “test or condition” under section 20(1.1) of AOPA. At any rate, the applicant has provided adequate spreading lands for manure management as required under AOPA. The applicant must also adhere to all AOPA spreading and storage requirements which are designed to effectively mitigate nutrient and nuisance issues associated with the storage and spreading of manure.

Subsection 48.5 requires the applicant to provide adequate waste management in accordance with applicable standards by approving authorities. As stated above the application meets all AOPA requirements and therefore this is considered met.

For these reasons, I conclude that the application is consistent with the M.D. of Bonnyville’s LUB. The county’s response of non-objection does not dispute this conclusion.

APPENDIX B: Determining directly affected party status

A person who is not specified in section 5 of the Part 2 Matters Regulation as an affected party can still qualify for directly affected party status. However, they have the burden to demonstrate they are directly affected by the application. The following individuals who submitted a response and reside outside of the affected party radius for this application fall under this category:

- Silke and Evan Skinner
SE 16-62-4 W4M
- Roger Blanchard
SE 6-63-6 W4M

Under NRCB policy, a person has the burden of demonstrating that they are directly affected by an application. In order to meet their burden of proof, the person has to demonstrate all the following five elements (see NRCB Operational Policy 2016:7 – Approvals, part 6.3):

1. A plausible chain of causality exists between the proposed project and the effect asserted;
2. The effect would probably occur;
3. The effect could reasonably be expected to impact the party;
4. The effect would not be trivial; and
5. The effect falls within the NRCB regulatory mandate under AOPA.

Using these factors, I conclude that all of these individuals located outside of the affected party radius did not establish a sufficient chain of causality and as such, they will not be considered directly affected parties in my review of this application.

The individuals raised concerns regarding animal welfare, ongoing animal health inspections, and agricultural practices.

The individuals, were concerned about animal welfare and ongoing inspections regarding this, as well as intensive agricultural practices in general. These concerns are outside the scope of AOPA as AOPA does not regulate animal welfare standards nor does it set acceptable agricultural practices. Requirements for animal welfare are set by various livestock boards and they can be contacted for any further information regarding these requirements.

It is expected that through a good neighbour relationship, that a respectful working relationship can be established and the NRCB encourages neighbours to communicate to assist with ongoing relationships.

APPENDIX C: Explanation of conditions in Approval BA21007

Approval BA21007 includes several conditions, discussed below:

a. Construction Deadline

Pine Meadows proposes to complete construction of the proposed new facilities by 2024. This time-frame is considered to be reasonable for the proposed scope of work. Therefore a construction completion deadline of December 1, 2023 is included as a condition in Approval BA21007.

b. Construction concrete requirements

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 BA21007 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the layer barn with attached manure storage pad, pullet barn with attached manure storage pad and broiler, duck and goose barn with two attached manure storage pads to meet the specification for category D (solid manure – dry) and category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- Pine Meadows to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of each facility.

c. Post-construction inspection

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval BA21007 includes conditions stating that Pine Meadows shall not place livestock or manure in the manure collection and storage portions of the new facilities until NRCB personnel have inspected the new facilities and confirmed in writing that they meet the approval requirements.