



Decision Summary LA21012

This document summarizes my reasons for issuing Approval LA21012 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21012. 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 23, 2021, Green Acres Hutterian Brethren (Green Acres Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO by constructing a chicken layer barn (118.3 m x 26.3 m (388 ft. x 86 ft. 4 in.)) and increasing chicken layer numbers by 10,500 to 42,000.

The Part 2 application was submitted on May 20, 2021. On May 28, 2021, I deemed the application complete.

a. Location

The existing CFO is located at NE 28-22-20 W4M and NW 27-22-20 W4M in Wheatland County, roughly 13.5 km northeast of Cluny, Alberta. The CFO is located at the top of a hill with the livestock facilities on the east side, which slopes toward Crowfoot Creek approximately 800 metres to the east.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval LA10022M and Authorization LA09008. Collectively, these NRCB permits allow Green Acres to construct and operate a 100 dairy cows (plus dries and associated replacements), 31,500 chicken layers (includes pullets), 6,000 chicken pullets/broilers, 1,600 ducks, 600 swine farrow to finish, 200 geese, and 100 turkey toms/broilers CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA21012.

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:

- 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 Wheatland County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Strathmore Times on May 28, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, sixteen letters were sent to people identified by Wheatland 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), Alberta Environment and Parks (AEP), Alberta Transportation, and the Eastern Irrigation District.

No responses were received from any of the referral 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 Wheatland County’s municipal development plan. (See Appendix A for a more detailed discussion of the county’s planning requirements.)

6. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed expansion:

- Meets the required AOPA setbacks from all nearby residences (AOPA setbacks are known as the “minimum distance separation” requirements, or MDS)
- Meets the required AOPA setbacks from water wells, springs, and common bodies of water
- Has sufficient means to control surface runoff of manure
- Meets AOPA’s nutrient management requirements regarding the land application of manure
- Meets AOPA groundwater protection requirements for the design of floors and liners/protective layers of manure storage facilities and manure collection areas

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

Ms. Suzanne Hayes, a development officer with Wheatland County, provided a written response on behalf of Wheatland County. Ms. Hayes stated that she has no concerns with this application. The application's consistency with the Wheatland County's municipal development plan is addressed in Appendix A, attached.

Two individuals submitted a joint response to the application notice (see Appendix B) and both own or reside on land within the 1.5 mile radius for affected persons. Because of their location within this radius, they are presumed to be directly affected by the application.

The directly affected parties raised concerns regarding odor and dead animal disposal. These concerns are addressed in Appendix B.

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.

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 Green Acres Colony's existing CFO facilities were assessed in 2009. The assessment indicated that the potential risks from the EMS and the below ground concrete tank to surface water and groundwater were low.

Since the 2009 risk assessment, the NRCB revised the ERST. For this reason, I reassessed the risks posed by the CFO's existing facilities using the updated version of the ERST. My reassessment found that the EMS and the below ground concrete tank pose a low risk to groundwater and surface water. These appear to be the CFO's highest risk facilities, because both are the deepest facilities and therefore pose the greatest potential risk to groundwater. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening

provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

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.

I have considered the effects the proposed chicken layer barn may have on natural resources administered by provincial departments and 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 LA21012 specifies the cumulative permitted livestock capacity as 100 dairy cows (plus dries and associated replacements), 42,000 chicken layers, 6,000 chicken pullets/broilers, 1,600 ducks, 600 swine farrow to finish, 200 geese, and 100 turkey toms/broilers and permits the construction of the chicken layer barn.

Approval LA21012 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 LA21012 includes conditions that generally address the construction deadline, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix C

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA21012: Approval LA10022M and Authorization LA09008 (see NRCB Operational Policy 2016-7: Approvals, part 10.5). Permit consolidation helps the permit holder, municipality, neighbors 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. All conditions 1-6 and 9 of Approval LA10022M and all conditions of Authorization LA09008 are carried forward into the new approval. Conditions 7 and 8 of Approval LA10022M will be deleted as explained in Appendix C, attached.

11. Conclusion

Approval LA21012 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21012.

Green Acres Colony's NRCB-issued Approval LA10022M and Authorization LA09008 are therefore superseded, and their content consolidated into this Approval LA21012, unless Approval LA21012 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA10022M and Authorization LA09008 will remain in effect.

July 13, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA21012

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.)

Green Acres Colony’s CFO is located in Wheatland County and is therefore subject to that county’s MDP. Wheatland County adopted the latest revision to this plan in 2018, under Bylaw #2013-18 Amendment 2018-40.

Section 3.1.3.1. of the MDP states that the county shall act as referral agency and respond in accordance with the MDP and LUB when the Natural Resources conservation Board is processing applications for CFO’s. In my interpretation, this is not a land use provision. Therefore, I will not consider this section in my consistency determination, Regardless, I notified the county.

As relevant here, section 3.1.3.2 of the MDP states that the county encourages CFOs on parcels on land of 160 acres or more. Green Acres Colony’s CFO is an existing CFO. I therefore interpret this provision to not apply to this CFO.

In my view, the text in 4.4.2 of Wheatland County’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider Wheatland County’s Land Use #2016-01 (with its last amendment on March 24, 2020 under Bylaw 2020-04). Under that bylaw, the subject land is currently zoned as Agricultural General District (AG). Confined feeding operations are not listed as a permitted, discretionary or prohibited use. There is a general listing “Agricultural Operation” which does not require a permit. Section 4.2.7 of Part 4 specifies these as ‘an agricultural operation as defined in the Act on a parcel designated AG. This is understandable as Section 8.6 of the LUB states that the NRCB has full authority over CFOs and manure storage facilities and that applicants/landowners are responsible for obtaining the necessary permits required by the NRCB under AOPA.

The new chicken layer barn meets all of these setbacks. I therefore determined that the development is consistent with the MDP and the county’s LUB.

APPENDIX B: Determining directly affected party status and concerns raised

The following individuals own or reside on land within the “affected party radius,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

Roy and Karen Clarke
SE 2-23-20 W4

Therefore, under NRCB policy, these individuals are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.

The directly affected parties raised the following concerns:

1) Dead disposal

NRCB-issued permits generally do not include conditions relating to dead animal disposal because this activity is regulated directly by Agriculture and Forestry’s (AF) regulatory services branch under the *Animal Health Act*. Given AF’s regulatory role, concurrent oversight of dead animal disposal by the NRCB would be inefficient and might lead to inconsistencies with AF’s requirements.

2) Odor from open pit burning

Open pit burning in rural areas is not under the jurisdiction of the NRCB. I encourage the public to contact the respective county office to report and voice their concerns relating to open pit burning.

3) Odors from irrigating with effluent

AOPA’s minimum distance separation (MDS) is a means for mitigating odour and other nuisance impacts from CFOs. Mr. and Ms. Clarke’s residence is located outside of the required 764 m MDS. The NRCB generally considers the MDS as the distance beyond which the odours and other nuisance effects of a CFO are considered to be acceptable under AOPA. That said, people residing beyond the MDS may still experience odours and other nuisance impacts from time to time and, in some instances, those impacts may be more than trivial. Some of the parties also may experience some odours or other nuisance impacts when manure spreading takes place.

In this case, Green Acres Colony is irrigating the said quarter section with grey water that does not contain manure or septic waste as stated in a phone conversation with the applicant. Because non-manure contaminated effluent (grey water) is not under the jurisdiction of the NRCB, I will not address this issue further.

APPENDIX C: Explanation of conditions in Approval LA21012

Approval LA21012 includes several conditions, discussed below, and carries forward all conditions from Approval LA10022M and Authorization LA09008 except for the two conditions listed below.

1. New conditions in Approval LA21012

a. Construction Deadline

Green Acres Colony proposes to complete construction of the proposed new layer barn by December 31, 2024. This time-frame is considered to be somewhat short considering unforeseeable circumstances. I therefore extended the proposed construction completion date to December 31, 2024. The deadline of December 31, 2022 is included as a condition in Approval LA21012.

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 LA21012 includes a condition requiring:

- The concrete used to construct the liner of the manure collection and storage portion of the 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.”
- Green Acres Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the 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, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21012 includes a condition stating that Green Acres Colony shall not place livestock or manure in the manure storage portions of the new layer barn until NRCB personnel have inspected the layer barn and confirmed in writing that it meets the approval requirements.

2. Conditions in Approval LA10022M that are rewritten or deleted

Condition 7 states: “*Manure application to be carried out at agronomic rates*”.

Although this condition addresses more plant nutrients than just nitrate nitrogen and salinity levels as included the Standards and Administration Regulation Schedule 3 and is therefore more stringent than the regulations, the limits set in Schedule 3 are clear and apply to all soil types and crops. In that, the regulations are inherently different from ‘agronomic rates’ which are variable and depend on type of crop and soil type. This variability makes it impossible to enforce. I therefore determined, in accordance with the NRCB’s Policy 2016-1 – 2.2.1, that this condition should be replaced by the opening paragraph of this approval that states that the permit holder/operator shall comply with the requirements of the *Agricultural Operation Practices Act* (AOPA) and the regulations passed pursuant to that act.

Condition 8 states: "*The operator must comply with the manure application and record keeping requirements in AOPA Standards and Administration Regulation*".

This condition is included in the opening paragraph of this approval that requires the permit holder to comply with the requirements of the *Agricultural Operation Practices Act* (AOPA) and the regulations passed pursuant to that act. This condition will therefore be deleted.