

Decision Summary RA21034

This document summarizes my reasons for issuing Authorization RA21034 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21034. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On June 9, 2021, Hutterian Brethren Church of Fairview (Fairview Colony) submitted a Part 1 application to the NRCB to construct a new duck and goose barn (24.3 x 15.2 m) with an attached solid manure storage pad (24.3 m x 18.3 m) at an existing multi species CFO. The new barn will replace an old barn that has already been decommissioned.

The Part 2 application was submitted on June 25, 2021. On June 29, 2021, I deemed the application complete.

The application also notified the NRCB of the proposed construction of an office/mechanical and storage room (5.2 m x 4.6 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

The existing CFO is located at NW 13-28-28 W4M in Rocky View County, roughly 13 km southeast of Crossfield, Alberta. The terrain is undulating with a general slope to the south.

b. Existing permits

The CFO is already permitted under Approval RA15016A, which allows the construction and operation of a CFO with 80 milking cows (plus replacements and dries), 220 swine farrow to finish, 6,000 poultry broilers, 20,000 poultry layers (includes associated pullets) and 900 ducks and geese. The CFO’s existing permitted facilities are listed in an appendix of Approval RA15016A.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization 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
- 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 municipality entitled to divert water from that body within 10

miles downstream

- any other municipality whose boundary is within a notification distance. In this case, the notification distance is one mile (1.600 m) from the CFO

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

3. Notice to other persons or organizations

Under NRCB policy, 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).

No response was received from AHS or AEP.

4. Municipal Development Plan (MDP) consistency

I have determined that the proposed construction is consistent with the land use provisions of Rocky View County'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 construction:

- 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 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 8, the application meets all relevant AOPA requirements.

6. Responses from municipality

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." Rocky View County is an affected party (and directly affected) because the proposed barn is located within its boundaries.

Ms. Jessica Anderson, a senior planner with Rocky View County, provided a written response on behalf of Rocky View County. Ms. Anderson stated that the application is consistent with Rocky View County's land use provisions of the municipal development plan. The application's

consistency with Rocky View County's municipal development plan is addressed in Appendix A, attached.

Ms. Anderson also noted that the application meets the setbacks required by Rocky View County's land use bylaw (LUB).

7. Environmental risk of facilities

New manure storage facilities/manure collection areas (MSFs/MCAs) 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 surface/groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

When reviewing a new authorization 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 Fairview Colony's existing CFO facilities were assessed in 2015 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.

8. Terms and conditions

Authorization RA21034 permits the construction of the duck and goose barn with an attached solid manure storage pad.

Authorization RA21034 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization RA21034 includes conditions that generally address a construction deadline, document submission and a construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA21034 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21034.

Authorization RA21034 must be read in conjunction with NRCB previously issued Approval RA15016A which remains in effect.

August 10, 2021

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA21034

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization 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 22(2.1) 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.)

Fairview Colony’s CFO is located in Rocky View County and is therefore subject to that county’s MDP. Rocky View County adopted the latest revision to this plan on April 10, 2018, under Bylaw #C-7280-2013.

Sections 8.20 – 8.24 of the MDP deal specifically with CFOs.

Section 8.20 states that the county “should make site recommendations on all new or expanded” CFOs and lists several criteria for the county to consider when making these recommendations. The criteria are not directly relevant to my MDP consistency determination as they appear to be intended to govern the county’s responses to individual CFO applications to the NRCB. In addition, the criteria require site and CFO-specific considerations that are involved in permitting decisions, so the criteria are not “land use provisions.” Therefore, this section is not relevant to my MDP consistency determination.

Section 8.21 “recommend[s]” that CFO applicants “provide nearby land owners with technical design information, receive feedback through a public involvement process, and report back to the County on how the proposal addresses public input.” This provision is not considered a land use provision because of its project-specific and procedural focus. Therefore, it is also not relevant to my MDP consistency determination. However, Rocky View County was notified of the application as specified under AOPA. The municipality has had the opportunity to review and comment on the application.

Section 8.22 states that CFOs should be located in areas where there will be “minimal conflict with non-complementary land uses.” Because the “minimum conflict” test calls for a discretionary judgement, the criteria is not considered a “land use provision” and the section is not relevant to my MDP consistency determination. Nevertheless, as noted in the county’s response, lands within 1,600 m of the CFO are generally agricultural. All residences on these properties meet the MDS requirements of the regulations. It is therefore my opinion that because of this the application would be consistent with this section, if the section applied.

Section 8.23 states that land uses incompatible with a CFO shall not be supported when proposed within the MDS of the CFO. The proposed expansion meets the required MDS.

Section 8.24 states that a CFO, including its MDS, “should not be located within the boundary of any intermunicipal development plan or notification zone, statutory planning area, hamlet, residential area, institutional use, or federal, provincial, or municipal park or recreation area.” In its response, the county stated that Fairview Colony’s land is not affected by any area structure plans, conceptual schemes, or intermunicipal plans. Fairview Colony’s proposed construction therefore meets these requirements.

Sections 8.25 - 8.28 relate to minimizing land use conflict for non-agricultural development near agricultural operation and are not relevant to this application.

For these reasons, I conclude that the application is consistent with the land use provisions of Rocky View County’s MDP. The county’s response confirms my conclusion.

APPENDIX B: Explanation of conditions in Authorization RA21034

Authorization RA21034 includes several conditions, discussed below:

a. Construction Deadline

Fairview Colony proposes to complete construction of the proposed new duck and goose barn with an attached solid manure storage pad by August 20, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of August 31, 2024 is included as a condition in Authorization RA21034.

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, Authorization RA21034 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the duck and goose barn with an attached solid manure storage pad to meet the specification for category D (solid manure – dry) and category C (solid manure – wet), respectively, in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Fairview 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. Authorization RA21034 includes conditions stating that Fairview Colony shall not place livestock or manure in the manure storage or collection portions of the new duck and goose barn with an attached solid manure storage pad until NRCB personnel have inspected them and confirmed in writing that they meet the authorization requirements.