

## Decision Summary LA21011X

This document summarizes my reasons for issuing Approval LA21011X under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21011, and board decision 2021-05/LA21011. 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 February 17, 2021, Hutterian Brethren Church of Little Bow (Little Bow Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO with the construction of a chicken layer barn with attached manure storage and for the increase of chicken layer numbers from 2,500 to 10,000.

The Part 2 application was submitted on February 25, 2021. On March 10, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken layer numbers from 2,500 to 10,000 birds
- Constructing a new layer barn (66 m x 33.5 m) with attached manure storage (10.6 m x 10.6 m)

On May 4, 2021, I issued a denial of the application based on its inconsistency with the land use provisions of Vulcan County's MDP. On July 20, 2021 following a request for review by Little Bow Colony which was made under the authority of AOPA section 25(4)(g), and a virtual review hearing, the NRCB board issued written decision 2021-05/LA21011. This decision directed me to issue an approval for the proposed project notwithstanding the inconsistency with the MDP's land use provisions.

#### a. Existing permits

Little Bow Colony (at its current location of NE 32-14-25 W4 and SE 32-14-25 W4) was first permitted under Municipal Development Permit #98-062 which was issued by Vulcan County on December 2, 1998. This permit was issued for the hog portion of the operation and allowed the capacity for 260 sows (farrow to finish). No other livestock facilities or livestock categories were addressed in this permit. Around this time, the Little Bow Colony was obliged by the Alberta Government to relocate from a site which is now part of the Twin Valley Reservoir. Little Bow Colony has not received any permits from the NRCB since that time. The claimed grandfathered livestock capacity of the CFO is:

- 90 milking cows (plus associated dries and replacements)
- 500 turkeys
- 800 ducks
- 800 geese
- 3,000 chicken broilers
- 2,500 chicken layers
- 300 sows (farrow to finish)

The claimed grandfathered capacity was not disputed by any responses to the application notice (in relation to the original application, LA21011).

The Alberta Infrastructure department of the Alberta Government, which existed at the time the Little Bow Colony was being relocated, was heavily involved in the relocation of facilities and construction of the new colony site. The files which exist from this time support the premise that the CFO existed on January 1, 2002 at a capacity that exceeded AOPA's permit thresholds. The CFO is therefore grandfathered with a deemed approval under section 18.1 of AOPA. That deemed permit includes Vulcan County's Development Permit #98-062. This deemed approval allows for the construction and operation of a mixed livestock type CFO.

The determination of the CFO's grandfathered status under section 18.1 of AOPA is explained in Appendix B, attached.

## **2. Terms and conditions**

Approval LA21011X permits the construction of the proposed layer barn and specifies the cumulative permitted livestock capacity of:

- 90 milking cows (plus associated dries and replacements)
- 500 turkeys
- 800 ducks
- 800 geese
- 3,000 chicken broilers
- 10,000 chicken layers
- 300 sows (farrow to finish)

Approval LA21011X 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 LA21011X includes conditions that generally address construction deadline, document submission, and construction inspection. For an explanation of the reasons for these conditions, see Appendix A.

For clarity, and pursuant to NRCB policy, I consolidated the deemed permit (including Development Permit #98-062) with Approval LA21011X (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. Appendix A discusses which conditions from the historical permit are or are not carried forward into the new approval.

### **3. Conclusion**

Approval LA21011X is issued for the reasons provided above, in the attached appendices, in Technical Document LA21011, and in Board Decision 2021-05/LA21011.

Little Bow Colony's deemed approval, including Development Permit #98-062, is therefore superseded, and its content consolidated into this Approval LA21011X, unless Approval LA21011X is held invalid following a review and decision by a court, in which case Development Permit #98-062 will remain in effect.

August 12, 2021

(Original signed)

Joe Sonnenberg  
Approval Officer

### **Appendices:**

- A. Conditions in Approval LA21011X
- B. Grandfathering determination

## **APPENDIX A: Conditions in Approval LA21011X**

### **a. Construction Deadline**

Little Bow Colony proposes to complete construction of the proposed new layer barn with attached manure storage by the year 2025. This time-frame is considered to be excessive for the proposed scope of work. In my opinion, three full building seasons would be more reasonable. I have therefore included a construction deadline of November 30, 2024.

### **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, the approval should include a condition requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the layer barn with attached manure storage 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. Little Bow Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn with attached manure storage.

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. The approval includes a condition stating that Little Bow Colony shall not place livestock or manure in the manure storage or collection portions of the new layer barn with attached manure storage until NRCB personnel have inspected the layer barn with attached manure storage and confirmed in writing that it meets the approval requirements.

## **2. Consolidation of previous permits and conditions**

For clarity, and pursuant to NRCB policy, the deemed permit (including the previously issued Municipal Permit #98-062) has been consolidated with Approval LA21011X (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). 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, and then cancelling all existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions, Approval LA21011X carries forward all existing terms and conditions from Municipal Development Permit #98-062 except for those discussed below. Construction conditions that have been met are identified in the appendix to Approval LA21011X.

The following conditions have been changed due to the passage of time.

*-Adherence to the code of practice for the safe and economic handling of animal manures*

*-adherence to the manure management plan as submitted and more specifically that liquid manure shall be injected as outlined in the plan*

These conditions are both related to the handling of livestock manure. Since the time Vulcan County Development Permit 98-06 was issued, the NRCB has assumed responsibility for the regulation of CFO's and manure spreading under AOPA, and the code of practice has been superseded. Rules relating to long-term and liquid manure storage are generally covered in permits, and in the *Standards and Administration Regulation* under AOPA. Rules relating to the short-term storage of manure are contained in section 5 of the *Standards and Administration Regulation* under AOPA. Section 5 sets out but is not limited to the following requirements: manure must not be stored more than an accumulated total of 7 months over a 3 year period at the same site, manure must not be stored less than 150 metres from the nearest residence not owned or under the control of the owner or operator of the manure storage area, and sets out required setbacks to water bodies. The general portion of the conditions will therefore not be carried forward and is effectively replaced by the general terms and conditions stated in the opening paragraph of all permits issued under AOPA that requires the operator to adhere to AOPA and its regulations.

In accordance with the NRCB's *Operational Policy 2016-1 Amending Municipal Permit Conditions*, The portion of the conditions requiring the liquid manure produced by the CFO to be directly injected is more stringent than AOPA. As such, this portion of the above condition will be carried forward as follows:

***“Liquid manure must only be land applied via direct injection”***

*-monitoring of groundwater wells surrounding the sewage complex annually in the spring by an independent qualified firm acceptable to the applicant and Vulcan County with the results being sent to Headwaters Health*

Due to the passage of time and change in regulatory regime this condition has been carried forward and rewritten as follows:

***“Monitoring wells must be checked annually. If liquid is detected in the monitoring wells, the permit holder shall sample and test the water, according to water well monitoring requirements prescribed by the NRCB in writing. The NRCB may, based on the monitoring results and at its discretion, revise those requirements from time to time, in writing.”***

*-pressure checking of lines will be conducted when filled with water annually in the spring by an independent qualified firm acceptable to Vulcan County and the applicant with the results of same being sent to Headwaters Health Authority, Alberta Environmental Protection and Vulcan County.*

Discussions regarding this condition between Vulcan County and the NRCB occurred in 2015. The replacement condition recommended by the county was as follows:

*“The applicant/land owner shall install pressure gauges on all effluent lines leading from the hog barn to the slurry tank. The pressure gauge shall be monitored and recorded weekly. The records shall be kept up to date and presented to the Natural Resources Conservation Board*

*upon request. Natural Resources Conservation Board shall have access to the pressure gauges at all times to check the readings.”*

In order to simplify this condition and to make it reasonable for the operator as well as the regulatory agency (the NRCB) this condition will be carried forward as follows:

***“Unless otherwise stated in writing by the NRCB, the permit holder shall maintain pressure gauges on all effluent lines leading from the hog barn to the manure storage tank. The pressure gauges shall be monitored and a reading recorded weekly. The NRCB shall be notified immediately if the pressure in the line drops below 5 psi or if a leak is detected by any other means. The records shall be kept up to date and presented to the NRCB upon request.”***

## APPENDIX B: Grandfathering determination

Little Bow Colony claims that its CFO is grandfathered (that is, it has a “deemed” permit) under section 18.1 of AOPA. As part of decision summary LA21011 I confirmed:

- the extent of the CFO footprint as of January 1, 2002 and that it has not changed since that time
- that the CFO had a capacity above the AOPA approval threshold on January 1, 2002

The Government of Alberta obliged the Little Bow Colony to relocate to its current location in order to accommodate the construction of the Twin Valley Dam. The former colony site was located in what is now Twin Valley Reservoir and facilities at the new site were constructed to accommodate multiple livestock types (dairy, swine, and various poultry). Planning and construction activities for the relocated colony occurred in the mid 1990's through to 2002. The new colony site became operational in 2002.

I also determined, to the best of my ability utilizing readily available resources, the grandfathered footprint of the CFO. I reviewed air photos taken between 1999 and 2015 as well as construction plans which were prepared for Alberta Infrastructure and determined that the footprint of the CFO has not changed since being approved prior to January 1, 2002. This determination is difficult to make based on air photos alone due to the limited aerial imagery that is available for the site (I had access to a single air photo taken between 1999-2003, and several air photos taken between 2010-2015). I relied heavily on plans that had been prepared for Alberta Infrastructure and my own general assessments of facility ages made during the site visit.

The only facilities that have been constructed adjacent to the site since January 1, 2002 have been confirmed as being associated with the Colony's sheep herd. As discussed in Technical Document LA21011, these facilities fall outside of the NRCB's jurisdiction as they are not CFO related. I did not identify any changes to the CFO footprint which has occurred since AOPA took effect on January 1, 2002.

The claimed grandfathered capacity of the CFO is as follows:

- 90 milking cows (plus associated dries and replacements)
- 500 turkeys
- 800 ducks
- 800 geese
- 3,000 chicken broilers
- 2,500 chicken layers
- 300 sows (farrow to finish)

It should be noted no responses to the application notice disputed this capacity or provided any information relevant to the grandfathered status of Little Bow Colony's CFO.

The CFO holds Development Permit #98-062 issued by Vulcan County on December 2, 1998 which pertained only to a hog barn and associated livestock. This permit does not specifically address any other livestock or facilities which existed at the site at the time this permit was issued, though it does confirm the CFO had permitted capacity for at least 260 sows (farrow to

finish) on January 1, 2002 and therefore holds a deemed approval under the AOPA. This hog capacity is greater than that claimed by Little Bow. Based on my site visit, and with information from operators from the CFO, it was determined that since 2002 the swine herd has fluctuated between 260 and approximately 310 sows. Based on Alberta Transportation records from the time the physical capacity of the constructed barn was for 300 swine farrow to finish. As there has been no additions or changes to the physical capacity of the barn since this time, I have determined a permitted capacity of 300 sows farrow to finish is reasonable.

To determine the capacity of the dairy housing facilities that existed on or around January 1, 2002, I consulted standards from Technical Guideline Agdex 096-81: Calculator for Determining Livestock Capacity of Operations as They Existed on January 1, 2002. During my site I visit I determined that no new construction had occurred at the site of the dairy barn. It is reasonable to conclude, in the absence of any contrary evidence, that the dairy barn contained the same number of free stalls on January 1, 2002 as it does now. On July 26, 2021 following a phone conversation, Little Bow provided documentation confirming the existence of 75 dairy stalls in their barn.

As per Agdex 096-81, the following calculation indicates the potential capacity for milking cows in the dairy barn:

Number of stalls x 1.2 stalls per animal = Animal numbers  
75 stalls x 1.2 milking cows = 90 milking cows

Little Bow's free stall dairy barn therefore had the capacity to house 90 milking cows on January 1, 2002. Additionally, based on air photo review, the CFO also has existing facilities to house the associated dries and replacements. Based on these findings, the applicant's claimed livestock numbers of 90 milking cows (plus associated dries and replacements) is reasonable.

Based on the size of the other facilities, and the fact there has been no expansion of any CFO facilities identified since Little Bow was originally built, I have determined the claimed capacity of the CFO to be reasonable. As such, the grandfathered portion of the capacity of the CFO will be stated on Approval LA210011X as:

- 90 milking cows (plus associated dries and replacements)
- 500 turkeys
- 800 ducks
- 800 geese
- 3,000 chicken broilers
- 2,500 chicken layers
- 300 sows (farrow to finish)