

Decision Summary LA21026

This document summarizes my reasons for issuing Approval LA21026 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21026. 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 May 5, 2021, the Hutterian Brethren Church of Jenner (Jenner Colony) submitted a Part 1 application to the NRCB to increase their duck numbers from 1,000 to 2,000, geese numbers from 300 to 800 and turkey numbers from 1,000 to 1,500 an existing multi species CFO. No construction is proposed.

The Part 2 application was submitted on July 13, 2021. On July 21, 2021, I deemed the application complete.

a. Location

The existing CFO is located at E½ 35-21-9 W4M & W½ 36-21-9 W4M in Special Area No. 2, roughly eight kilometers north of Jenner, Alberta. The terrain is undulating to rolling. The closest common body of water is an ephemeral creek 412 m to the west, which forms the beginning of the Red Deer River Valley coulee system

b. Existing permits

The CFO is currently permitted under NRCB Approval LA19007. This permit allow the construction and operation of a CFO with:

- 115 milking cows (plus associated dries and replacements);
- 39,000 chicken layers;
- 39,000 chicken pullets;
- 6,000 chicken broilers;
- 60 beef finishers;
- 300 geese;
- 1,000 turkeys; and
- 1,000 ducks.

The CFO's existing permitted facilities are listed in the appendix of Approval LA21026.

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

A copy of the application was sent to Special Areas No. 2, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Brooks Bulletin on July 21, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, five letters were sent to people identified by Special Areas No. 2 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), and Alberta Transportation. No responses were received.

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. Land Use Order (LUO) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Special Areas No. 2’s LUO. (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 AOPA’s nutrient management requirements regarding the land application of manure

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." Special Areas No. 2 is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Brett Richards, a development officer with Special Areas No. 2, provided a written response on behalf of Special Areas No. 2. Mr. Richards stated that the application is consistent with the Special Areas No. 2's land use provisions of the Special Areas Land Use Order and noted that Appendix 2 (Land Use Planning for Confined Feeding Operations) included in Special Areas Land Use Order M.O. #: L090/03 applies. The application's consistency with the Special Areas No. 2's Special Areas Land Use Order is addressed in Appendix A, attached.

No responses were received from any other person, organization, or member of the public.

8. 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 Jenner Colony's existing CFO facilities were assessed in 2019 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.

9. Other factors

Because the approval application is consistent with the LUO 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.

Mr. Richards noted that the application meets the required setbacks.

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 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 Land Use Order (LUO) 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 LUO (See NRCB Operational Policy 2016-7: Approvals, part 8.7.3.). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA21026 specifies the cumulative permitted livestock capacity as 115 dairy cows (plus associated dries and replacements), 39,000 chicken layers, 1,500 turkeys, 2,000 ducks, 39,000 chicken pullets, 6,000 chicken broilers, 800 geese, and 60 beef finishers.

Approval LA21026 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.

For clarity, and pursuant to NRCB policy, I consolidated the Approval LA19007 with Approval LA21026 (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. All conditions in Approval LA19007 have been carried forward into the new approval.

11. Conclusion

Approval LA21026 is issued for the reasons provided above, in the attached appendix, and in Technical Document LA21026.

Jenner Colony's Approval LA19007 is therefore superseded, and its content consolidated into this Approval LA21026, unless Approval LA21026 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA19007 will remain in effect.

August 26, 2021

(Original signed)

Carina Weisbach
Approval Officer

Appendices:

A. Consistency with the Special Areas Land Use Order

APPENDIX A: Consistency with the Special Areas Land Use Order

Under section 20(1) of the Agricultural Operation Practices Act (AOPA), an approval officer may grant an application for an amendment of an approval only if the approval officer finds that the application is consistent with the land use provisions of the applicable municipal development plan (MDP). An MDP is a statutory plan provided for under section 632 of Part 17 of the Municipal Government Act (MGA).

The Special Areas is not subject to Part 17 of the MGA and therefore does not have a MDP. However, under the Special Areas Act, the Minister of Municipal Affairs has issued a Land Use Order (LUO) to regulate and control the use and development of land and buildings within Special Areas 2, 3, and 4, and to facilitate orderly and economic development within those areas. Under these circumstances, I find that the LUO is equivalent to a MDP for the purpose of AOPA's MDP consistency requirement.

The applicant's confined feeding operation (CFO) is located in Special Area No. 2 and is therefore subject to that area's LUO. (Special Areas No. 2, 3 and 4 adopted the latest revision to this order on March 3, 2015, as schedule C to M.O. # 007/15.)

I now turn to considering which sections of the LUO apply to this application:

- Section 19 - A-Agricultural District - The area in which the CFO is located is zoned A. CFOs are not listed under permitted or discretionary uses. However, CFOs are specifically discussed in Appendix 2. I therefore assume that the land use provisions in section 19 of the LUO are not meant to apply to CFOs which are specifically addressed in Appendix 2.
- Appendix 2 Section 1 - 'Restricted Areas' lists several areas in which CFOs should be excluded. The CFO is not located in or near any of the sites listed under subsections 1 (1) and 1 (2). However, subsection 1 (3) states that CFOs shall be excluded 800 metres from the bank of the Red Deer River. Further, within this setback, CFOs shall be excluded from 150 metres from the top of slope of the river banks, or any associated coulee complex, of the Red Deer River. Because this application does not include new construction, this subsection does not apply.
- Appendix 2 Subsection 2(1) - 'Areas requiring mitigation' states that all proposals for CFOs located within the very high and high risk areas for groundwater contamination (Appendix 4) shall demonstrate mitigation measures. Because this application does not include new construction, this subsection does not apply.
- Appendix 2 Subsection 2(2) states that mitigation measures must be in place to protect surrounding environmental attributes and landscape features. As stated in section 20(1.1) of AOPA - in considering whether an application is consistent with the MDP land use provisions, an approval officer shall not consider any provisions respecting any conditions related to the site for a CFO. Because this application does not include new construction, this subsection does not apply.