

Decision Summary RA17015A

This document summarizes my reasons for issuing Approval RA17015A under the *Agricultural Operation Practices Act* (AOPA). Additional reasons, as well as the full application, are in Technical Document RA17015A. 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.

1. Background

On May 9, 2017, the NRCB issued Approval RA17015 to the Cloverleaf Hutterian Brethren (Cloverleaf Colony), which permitted the increase of swine sow (farrow to finish) numbers from 400 to 800. The approval also permitted the construction of a new loose housing hog barn at an existing multi species confined feeding operation (CFO). Approval RA17015 also consolidated all previously issued permits, and carried forward conditions from those previously issued permits.

On May 14, 2021, Cloverleaf Colony applied to amend condition 5.d. of Approval RA17015, in regards to where they can apply their manure.

Condition 5.d. of Approval RA17015 states that “lands utilized for manure disposal are limited to lands owned by Cloverleaf Colony that are north of Highway 9. These lands include:

W1/2 18-31-17 W4	SE 13-31-18 W4	S1/2 6-32-17 W4
SE 19-31-17 W4	N1/2 14-31-18 W4	S1/2 29-31-17 W4
W1/2 20-31-17 W4	all 23-31-18 W4	NW 25-31-18 W4”

Cloverleaf Colony is applying to amend this condition in order to allow them to apply manure from their CFO onto all of their lands south of Highway 9, in addition to all of their lands north of Highway 9. No construction or increase in animal numbers is proposed with this application.

Condition 5.d. was originally included under NRCB Approval RA02060, as committed by Cloverleaf Colony in order to address odour concerns under that application. Cloverleaf Colony has indicated that they have purchased a drag hose system to apply their manure, that way reducing road usage and smell. They have indicated that they will use this drag hose system to direct inject liquid manure. Their solid manure will be stockpiled until it can be applied to the land and incorporated within 48 hours.

Under AOPA, this type of application requires an amendment to an approval.

a. Location

The existing CFO is located at N1/2 23-31-18 W4M in Starland County, roughly 6.1 km northwest of the Village of Delia, Alberta.

2. Notices to “Affected Parties”

Under section 19 of AOPA, the NRCB is required to notify (or direct 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 or is to be located
- any other municipality whose boundary is within a specified distance of the CFO, depending on the size of the CFO
- all individuals who own or reside on land within a specified distance of the CFO, depending on the size of the CFO

For this application, the distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. Starland County is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the Drumheller Mail on June 2, 2021 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to Starland County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP). Twenty five courtesy letters were sent to people identified by Starland County as owning or residing on land within the affected party radius.

3. Responses from Municipality and Referral Agencies

I received responses from the County and AHS. No response was received from AEP, individuals or other non-government parties.

Mr. Glen Riep, manager of municipal services with Starland County, provided a verbal response on behalf of the county. As noted in section 2, Starland County is a directly affected party.

Mr. Riep stated that he has no issues or concerns with the proposal. The application’s consistency with the county’s municipal development plan (MDP) is addressed in Appendix A, attached.

The NRCB also received a response from Kristina Croce, an environmental health officer/executive officer with AHS indicating that AHS has no concerns with this application and included comments under the *Public Health Act* that the applicant must follow.

4. Environmental risk screening of existing and facilities

When reviewing permit applications for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures and other facilities, using the NRCB's environmental risk screening tool, to determine the level of risk they pose to surface water and groundwater. This tool 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/Guides 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 done with a previous version of the risk screening tool and requires updating.

In this case, the risks posed by Cloverleaf Colony's CFO facilities were assessed in 2017. According to that assessment, all the facilities posed a low risk to surface water and groundwater.

As this application is only for the amendment of a manure application conditions the circumstances have not changed since that assessment was done. And therefore, the proposed change to manure application practices does not change the prior risk assessment result.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed amendment is consistent with the land use provisions of Starland County's municipal development plan. (See Appendix A for a more detailed discussion of the county's planning requirements.)

6. Factors Considered

The previous application RA17015 met all relevant AOPA requirements. The proposed modification to the manure application practices has no impact on that determination; which still stands. Additionally, the terms and conditions summarized in section 7, include all of the terms and conditions from Approval RA17015, with the exception of condition 5.d.

7. Terms and Conditions

Rather than issuing a separate "amendment" to Approval RA17015, I am issuing a new Approval (RA17015A) with the required amendment. Approval RA17015A therefore contains all of the terms and conditions in RA17015, with the exception of condition 5.d. Construction conditions from Approval RA17015 that have been met are identified in the appendix to Approval RA17015A.

8. Conclusion

Approval RA17015A is issued, for the reasons provided above, in decision summaries RA17015 and RA17015A, and in Technical Document RA17015A. In the case of a conflict between these documents, the latest ones will take precedence.

Approval RA17015 is therefore cancelled, unless Approval RA17015A is held invalid following a review and decision by the NRCB's board members or by a court, in which case the previous permit will remain in effect.

September 03, 2021

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

Appendix:

A. Consistency with the municipal development plan

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for an approval or 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).

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”)

Cloverleaf Colony’s CFO is located in Starland County and is therefore subject to that county’s MDP. Starland County’s website lists an MDP dated October 23, 2019 under Bylaw #1142.

Section 6.1 of the MDP is a residential policy and details that extensive agriculture is the predominate use of land in the County, and that nuisances (smell, dust, noise) may be disagreeable. CFOs are governed by the NRCB, and any complaints should be directed to the appropriate department.

While this is not a land use provision, it does provide a general guideline as to how the County encourages its residents to work with, and discuss their concerns with the NRCB.

Section 8.0 applies directly to CFOs. The introductory paragraph outlines the NRCB’s role in CFOs and their development, and quotes AOPA as to what an approval officer must consider. It also discusses the intent of section 8.0 to minimize conflict from incompatible land uses, and to provide separation between CFOs and environmentally significant areas and hazard areas. This section specifies Map 6: Confined Feeding Operations Restricted Areas, which displays the policies outlined in section 8. Finally, the introduction states that the goal is to protect and enhance conforming CFOs and the quality of life of residents by providing a buffer to limit negative impacts between incompatible land uses. It further states that the goal is to ensure that new or expanded CFOs are away from areas where contamination risk of groundwater, and development of other resources, are “eminent”.

This section is general in nature, and states the underlying goals and intents in the subsequent points.

a. states that the following policies have been thoroughly researched, and that NRCB approval officers, CFO developers, and operators shall abide by the following policies.

This subsection is general in nature, and provides a guideline for subsequent subsections.

b. defines “urban areas” and lists several town and hamlets. It further states that where grouped country residences are located, they shall be considered an exclusion zone. No new and/or expanding CFOs shall be permitted within the exclusion zone as identified on map 6.

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

Section 8.3 has three sub points, with respect to exclusion zones and Map 6:

c. (a) States that the boundary of grouped residential area shall be used for the purpose of determining MDS. If an area structure plan or other document has been established for multi-lot country residential area, the country residential land use district boundary shall be used to determine the minimum distance separation.

8.3 (a) essentially states how MDS shall be measured for country residential areas. The NRCB's board (see *Wyntjes*, Board Decision 2007-11 at 6 et seq.) and Approvals Policy (see the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.5) have made it clear that approval officers should not consider MDP provisions that are based on, but modify and render more stringent, AOPA's MDS requirements. Thus, this policy cannot be considered for purposes of my MDS consistency determination.

8.3 (b) states that with the exception of residences in 8.3 (a), setbacks shall be measured from the middle of the defining feature (i.e calculate the setback from the middle of the waterbody/road/ravine).

This policy isn't a specific land use provision, but states how setbacks shall be measured.

8.3 (c) states that any quarter section that touches any area identified on Map 6 is considered part of the exclusion zone.

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

8.4 states that the minimum distance separation (MDS) as defined in AOPA should be doubled.

This policy modifies the existing calculations for MDS in AOPA. As described in my response to point 8.3 (a) above, the NRCB's board and Approvals Policy have made it clear that approval officers should not consider MDS provisions that modify AOPA's MDS requirements. Thus, this policy cannot be considered for purposes of my MDS consistency determination.

8.5 states that new CFOs shall not be located on an area of "very high risk" of groundwater contamination as determined in the "County of Starland County Groundwater Assessment 1999" or successor thereto.

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

8.6 states that in areas of "high risk" of groundwater contamination, new and expanding CFOs should not be allowed "unless it can be proven that the groundwater contamination risk has been minimized and appropriate mitigation measures have been taken to prevent possible groundwater contamination in accordance with best practices and scientific methods".

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

Section 8.7 contains 4 sub points stating that new or expanding CFOs should not be located
(a) within the valley of the Red Deer River, Michichi Creek, Wolf Creek, Farrell Creek,
or any other major creek or river;
(b) within the shores of any recognized lake or within the banks of an inlet creek
(c) within 3.2 kilometers of any recognized recreational area
(d) in areas identified in section 6 which are considered an exclusion zone(s). No new
or expanding CFOs shall be permitted within the exclusion zone(s) in Map 6.

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

Section 8.8 lists 10 "Environmentally Significant Areas" (ESAs) in Starland County and
states that CFOs should not be allowed within them.

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

8.9 states that CFOs shall not be located within 3.2 kilometers (2 miles) of any urban
areas, and that this area shall be considered an exclusion zone. No new or expanding
CFOs shall be permitted within the exclusion zone as identified on Map 6.

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

8.10 states that CFOs shall not be located within 3.2 kilometers (2 miles) of any
municipal water source. This area shall be considered an exclusion zone, and no new or
expanding CFOs shall be permitted within the exclusion zone as identified on Map 6.

As this application is not for a new or expanding CFO, this policy does not apply to Cloverleaf Colony's application.

8.11 states that prior to submission of their comments to the NRCB, Starland County
will meet with the applicants to discuss the MDP and related documentation.

This policy is not a land use provision. It is procedural in nature by stating guidelines as to how Starland County will communicate with the applicant.

It further adds that:

(a) for those CFOs which require an approval from the NRCB, all liquid manure must be
injected;

This is a "test or condition" respecting the application of manure under section 20(1.1) of AOPA, so I am precluded from considering this policy. Regardless, the applicant has committed to direct inject all of their liquid manure, this condition will be included in Approval RA17015A.

(b) the application of all manure that is not covered by (a) above must either involve the notification of adjacent landowners prior to application, or shall follow the guidelines of AOPA

The first part of this point is a “test or condition” under section 20(1.1) of AOPA, which I am precluded from considering. However, all NRCB permits include conditions requiring applicants to follow AOPA and its regulations, which includes manure spreading requirements. Therefore, I consider this point as met.

(c) Manure incorporation shall not be allowed within 3.2 kilometers (2 miles) of any urban or multi-lot country residential boundary

This is a provision regarding the application of manure under section 20(1.1) of AOPA, so I am precluded from considering this policy.

(d) Manure incorporation by direct injection shall be allowed within 1.6 kilometers (1 mile) of an urban or multi-lot country residential boundary

This is a provision regarding the application of manure under section 20(1.1) of AOPA, so I am precluded from considering this policy.

(e) Nutrient management plans shall be required for all CFOs, as well as accompanying soil tests. A copy of all nutrient management plans shall be submitted to the County for their record.

I consider this to be a provision regarding the application of manure. As identified in section 20 (1.1) of the act, I am directed to not consider these provisions. Irrespective, all CFOs are required to abide by the land application, nutrient loading and record keeping requirements set out in AOPA.

(f) odour control devices and methods shall be employed in manure storage facilities

This is a “test or condition” relating to a manure storage facility under section 20(1.1) of AOPA, so I am precluded from considering this policy.

(g) The location of lands for manure incorporation are to be identified and mutually agreed upon between the applicants and the County.

Since the NRCB has jurisdiction over manure and manure application, it is inappropriate for the applicant to provide this to the County. Furthermore, this is considered a “test or condition” under section 20(1.1) of AOPA, so I am precluded from considering this policy.

(h) Spreading of manure on weekends and holidays shall not be permitted.

This is a “test or condition” under section 20(1.1) of AOPA, so I am precluded from considering this policy. Regardless, Approval RA17015 already includes this condition and it will be carried forward into the new Approval RA17015A.

(i) Section 8.11 of the MDP does not contain a sub point (i)

(j) This section states that Starland County requires, as a condition of any registration, approval, or authorization it grants, that the applicant will enter into a road agreement with the County. There are two sub points that state that the agreement must speak to road construction, and/or road maintenance.

I find the wording of this section unclear as to if it applies to a permit that the County grants, or if the policy is intended to apply to NRCB issued permits. Given that the NRCB holds jurisdiction over CFOs, and that the wording reflects the types of permits the NRCB issues (approvals, registrations, and authorizations), I interpret this section as intending to apply to NRCB permits.

The NRCB Board has previously stated that road use agreements are between the developer and the municipality, not the NRCB (see *Zealand Farms*, RFR 2011-02 at 5, *Faberdale*, RFR 2018-12 at 3). Furthermore, this is a not a land use provision, so I am precluded from considering this policy.

8.12 states that the County may initiate a public meeting to inform residents of the CFO application, with an invitation to the NRCB.

This policy isn't a land use provision, so it is precluded from my MDP consistency analysis. Further, like 8.11, this is a procedural direction to the county. I note that neighbouring landowners were advised of the application by way of public notice in the local newspaper, as well as by courtesy letters that were mailed out to those residents who own or reside land within the notification radius.

Section 10 of the MDP is titled "Industrial and Commercial". The introductory intent paragraph specifies that rural industrial and commercial developments include the oil and gas sector, agriculture, and tourism.

Due to the intent statement of section 10 including agricultural developments, I reviewed points 10.1 to 10.11. The section is unclear what is considered an agricultural development. If I considered that CFOs were intended to be an agricultural development under Section 10, several of the policies would be in conflict with Section 8. Given that Section 8 is dedicated to "Confined Feeding Operations", and without evidence to the contrary, it is my opinion that Section 10 of the MDP was not intended to apply to CFOs. Therefore, this section does not apply to my MDP consistency review.

For these reasons, I conclude that the application is consistent with the land use provisions of Starland County's MDP that I can consider.

I reviewed Starland County's MDP and have identified that there is no clear intent to adopt provisions from the land use bylaw.