

Decision Summary LA21015

This document summarizes my reasons for issuing Approval LA21015 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21015. 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 March 1, 2021, Old Elm Hutterian Brethren, Old Elm Enterprises Ltd., and Old Elm Farming Co. Ltd. (Old Elm Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO by adding 470 finisher cattle, constructing feedlot pens (198.1 m x 30.4 m plus 12.2 m) and a catch basin (30 m x 20 m x 3.5 m).

The proposed feedlot pens and catch basin are to replace two facilities, the dry cow pens (78 m x 152 m) and catch basin (23 m x 25 m x 2 m deep), that are permitted under Authorization LA15011, but have not been built to date. In addition, the construction completion deadline passed on December 31, 2018. Therefore, instead of amending Authorization LA15011 to reflect what has been built to date, all conditions pertaining the completed construction of the close up bull pen in Authorization LA15011 will be carried over while all conditions pertaining to the unconstructed facilities (dry cow pens and catch basin) will be deleted (see Appendix B for more detail).

The Part 2 application was submitted on July 26, 2021. On August 5, 2021, I deemed the application complete.

a. Location

The existing CFO is located at S½ & NW 19-4-22 W4M & SE 30-4-22 W4M in Cardston County, roughly 13 km south of the town of Magrath, Alberta. The topography of the site is hilly with an overall slope towards the northeast. There are two creeks traversing the CFO site. The closest distance of any of the existing CFO facilities to either of these two creeks is 12 m.

b. Existing permits

To date, the NRCB has issued Approval LA10060 and Authorization LA15011. The deemed un-written permit together with Approval LA10060 permits Old Elm Colony to construct and operate a 160 dairy cow (plus associated dries and replacements), 30,000 chicken layers, 25,000 chicken pullets, 2,000 chicken broilers, 500 sow farrow to finish, 900 ducks, and 200 geese CFO. Authorization LA15011 approved the construction of new bull pens, dry cow pens and a catch basin (see comment above). The CFO's existing permitted facilities are listed in the appendix to the Approval LA21015.

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:

- 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 person or municipality entitled to divert water from that body within 10 miles downstream
- 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 Cardston County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in a daily newspaper in circulation in the community affected by the application. In this case, public advertisement was in the August 5, 2021 editions of the Lethbridge Herald and the Westwind Weekly News. The full application was posted on the NRCB website for public viewing. As a courtesy, two letters were sent to people identified by Cardston 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), Magrath Irrigation district, and Alberta Transportation.

The NRCB received responses from Leah Olsen, development & planning technologist with Alberta Transportation; Kristen Dykstra, public health inspector with AHS; and Jeff Gutsell, hydrogeologist with AEP.

Ms. Olsen stated in her letter that a permit from her department is not required and that her department has no objections or concerns with this development.

Ms. Dykstra stated that some of the facilities do not seem to meet applicable setbacks to a common body of water or to a water well. She also requested that all manure collection or storage areas do have an adequate setback to Old Elm Colony’s fresh water storage. She closed her response, stating that AHS does not foresee any new public health problems as a result of the proposed development. AHS’ concerns are addressed in Appendix B, attached

Mr. Jeff Gutsell, stated in his response, that AEP has not received a new application to cover additional water needs and that there are no groundwater diversion authorizations for the location where the CFO is located. He acknowledges that Old Elm Colony has access to water from the Magrath Irrigation District as a water source and requested proof from the colony that they have enough volume to sustain their increase water needs. A copy of the response was forwarded to Old Elm Colony for their information and action.

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 Cardston 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 the 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." Cardston County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Joe Thomas, a development officer with Cardston County, provided a written response on behalf of Cardston County. Mr. Thomas did not comment if the application is or is not consistent with Cardston County's land use provisions of the municipal development plan. However he stated that the county has no issues with this development. The application's consistency with Cardston County's municipal development plan is addressed in Appendix A, attached.

No responses were received from any individuals or other parties.

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, 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 Old Elm's existing CFO facilities were assessed in 2011, the new layer/pullet barn and the bull pen were assessed in 2015. The assessment indicated that the potential risks to surface water and groundwater were low.

Since the 2011 and 2015 risk assessments, a new version of the risk screening tool was developed and, in addition, a new well was installed 35 m east of the hog barns (specifically the finishing barn) and 124 m north of the dairy barn. For these reasons, I reassessed the risks posed to groundwater by these two facilities. I also reassessed the risk the EMS (cell 1 and 2) poses to surface water. These are the facilities that have the highest potential to pose a risk due to their proximity to a water well or surface water respectively. My reassessment found that the risk of the hog barns and dairy barn to groundwater and the risk to surface water from the EMS remains low. I therefore presume that the risk of all other existing CFO facilities also remains low.

New manure collection areas or storage facilities 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 monitoring for the facility. In this case a determination was made using the ERST. The risk the proposed feedlot and catch basin pose to groundwater and surface water is low. Monitoring is not required.

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 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 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 LA21015 specifies the cumulative permitted livestock capacity as 160 dairy cows (plus associated dries and replacements), 30,000 chicken layers, 25,000 chicken pullets, 2,000 chicken broilers, 500 swine farrow to finish, 900 ducks, 200 geese, and 470 finishers and permits the construction of the feedlot pens and catch basin.

Approval LA21015 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 LA21015 includes conditions that generally address construction deadline(s), document submission and construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA21015: Approval LA10060 and Authorization LA15011 (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. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval LA21015 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21015.

Old Elm Colony's Approval LA10060 and Authorization LA15011 are therefore superseded, and their content consolidated into this Approval LA21015, unless Approval LA21015 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA10060 and Authorization LA15011 will remain in effect.

September 13, 2021

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Concerns raised by AHS
- C. Explanation of conditions in Approval LA21015

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.)

Old Elm Colony’s CFO is located in Cardston County and is therefore subject to that county’s MDP. Cardston County adopted the latest revision to this plan in December 1999, under Bylaw # 448/99.

Section 4 of the MDP – titled ‘Municipal Planning Policy’ – establishes the land use policies that serve as guidance for development within the county’s boundaries. The introductory statement of section 4.1 states that agriculture is the predominant land use in the county and that it is imperative to protect agricultural endeavours. It then continues to discuss other, non-CFO related planning issues. The MDP’s only direct reference to CFOs (which the MDP refers to as “intensive livestock operations”) is in terms of CFO subdivisions and limiting development near existing CFOs, rather than vice versa (section 4.6.20).

Section 4.8 (Environmental considerations) does not specifically refer to CFOs, but it provides guidance for all types of developments in environmentally sensitive or significant areas. The colony’s CFO is not within an environmentally sensitive or significant area, so this section does not apply.

Section 4.10 (Fringe areas) provides guidance for development within fringe areas identified in that section. Old Elm Colony’s CFO is not located within any of these fringe areas. All other policies in this section relate to annexation, municipal services, subdivisions and dispute resolution and therefore are not relevant to my MDP consistency determination.

For these reasons, I conclude that the application is consistent with the land use provisions of Cardston County’s MDP.

APPENDIX B: Concerns raised by AHS

In the response, an AHS public health inspector stated that *'the AHS is on the opinion that a nuisance condition appears to exist at the site as a water well is closer than 100 m from the hog barn.'*

She also requested that there should be an adequate distance between any manure collection and storage area and the fresh water reservoir to ensure that this source will not be contaminated.

Apart from these concerns, AHS does not foresee any new public health problems as a result of the proposed development.

As noted in the decision summary above, and further documented in Technical Document LA21015, the water well in question has been installed in 2018, approximately 32 m west of the hog barns. It is a back-up well and is currently not used for domestic purposes. A risk screening (ERST) for the hog barns and a water well exemption screening of the well was conducted. The result of these screenings confirmed that the risk the dairy barn and the hog barns pose to groundwater has not changed and remains low. The water well exemption screening score is also low.

As a conclusion, the risk for groundwater contamination is assumed to be low due to the installation of the well and its protection. Having said that, I would recommend Old Elm Colony to annually test this well as a pre-cautionary measure.

APPENDIX C: Explanation of conditions in Approval LA21015

Approval LA21015 includes several conditions, discussed below, and carries forward a number of conditions from Authorization LA15011 and all conditions from Approval LA10060 (see sections 2 of this appendix). Construction conditions that have been met are identified in the appendix to Approval LA21015.

1. New conditions in Approval LA21015

a. Decommissioning of Existing Facilities

As noted in Decision Summary LA21015 and Technical Document LA21015, Old Elm Colony proposed to decommission the old dry cow pens and replace them with the new facilities. Therefore a conditions will be added, requiring Old Elm Colony to decommission the existing dry cow pens within one year after completing construction of the new dry cow pens. The decommissioning shall be conducted according to Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas".

b. Catch basin

Old Elm Colony proposed to construct a shelter that will cover approximately 12 m of the feedlot area (total dimensions of the feedlot are 198 m x 42 m). The rainwater accumulated on the roof of this shelter will be directed in the opposite direction and will not contribute to the overall runoff volume. Because the catch basin, as proposed in this application, is too small to contain the potential runoff of 285 m³ (uncovered feedlot area: 198 m x 30 m), a condition will be added stating that the width of the catch basin has to be increased by 5 m to a total of: 30 m x 20 m x 3.5 m deep (volume at freeboard level 513 m³) in order to meet AOPA requirements.

c. Construction Deadline

Old Elm Colony proposes to complete construction of the proposed new feedlot pens and catch basin by December 31, 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2024 is included as a condition in Approval LA21015.

d. 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 LA21015 includes conditions requiring:

- a. Old Elm Colony to provide documentation to confirm that the catch basin is constructed in the approved location, the dimensions and maximum depth below ground.

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. Approval LA21015 includes a condition stating that Old Elm Colony shall not place livestock or manure in the manure storage or collection portions of the new feedlot and catch basin until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

2. Conditions not carried forward from Authorization LA15011

Approval LA21015 includes all terms and conditions in Approval A10060 and Authorization LA15011, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that the permitted construction of the dry cow pens and the catch basin shall be cancelled and all pertaining conditions (conditions # 4-9) associated with their construction should be deleted and therefore are not carried forward to Approval LA21015.

My reasons for deleting these conditions are that the permit holder no longer intends to construct these facilities and has proposed to replace them with the feedlot and catch basin permitted in this permit (Approval LA21015).