

Decision Summary BA21017

This document summarizes my reasons for issuing Approval BA21017 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA21017. 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 August 24, 2021, Shaun and Coral Robinson (Robinsons) submitted a Part 1 application to the NRCB to construct a new 2,000 beef finisher CFO.

The Part 2 application was submitted on September 8, 2021. On September 21, 2021, I deemed the application complete.

The proposed CFO involves:

- Permitted capacity of 2,000 beef finishers
- Constructing feedlot pen area – 305 m x 150 m (includes catch basin)
- Constructing a triangular shaped catch basin within the pen area – 138 m x 200 m x 235 m x 1.65 m deep

a. Location

The proposed CFO is located at SW 9-64-8 W4M in the M.D. of Bonnyville, roughly 26 km from the hamlet of La Corey AB. The terrain is slightly rolling with the pen location sloping to the northeast and the nearest common body of water being a seasonal slough adjacent to the proposed CFO.

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 the M.D. of Bonnyville, which is the municipality where the CFO is to be located.

The NRCB gave notice of the application by public advertisement in the Lakeland This Week paper on September 21, 2021. The full application was also posted on the NRCB website for public viewing. As a courtesy, 10 letters were sent to people identified by the Municipal District 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) and Alberta Environment and Parks (AEP).

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.

There is no ALSA regional plan for the area where the proposed CFO is to be located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed CFO is consistent with the land use provisions of the M.D. of Bonnyville’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 CFO:

- 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

With the terms and conditions summarized in part 10, the application meets all relevant AOPA requirements.

7. Responses from municipality and other directly affected parties

Municipalities that are affected parties are identified by the act as “directly affected.” The M.D. of Bonnyville is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Ms. Kristy Poirier, a development officer with the M.D. of Bonnyville, provided a written response on behalf of the M.D. As noted in section 2, the M.D. is a directly affected party.

Ms. Poirier stated that the application is consistent with the M.D. of Bonnyville’s municipal development plan. The application’s consistency with the municipal development plan, is addressed in Appendix A, attached.

Ms. Erica Denine, public health inspector, replied on behalf of AHS. Ms. Denine had no objections to the application and provided 4 comments for the applicants consideration including, protecting drinking water, properly disposing of dead animals, controlling pests and nuisances, and ensuring the applicant flows the Alberta Public Health Act Nuisance and General Sanitation Regulation.

8. Environmental risk of CFO facilities

New CFO 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 groundwater or surface water monitoring or construction supervision monitoring for the facility. In this case a determination was made and monitoring is not required as the applicant has demonstrated that the natural protective layer meets AOPA requirements, and there are no water wells within 100 m of the site.

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.

Ms. Poirier also listed the setbacks required by the Municipality’s land use bylaw (LUB) and noted that the application appears to meet these setbacks.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments.

Finally, I considered the effects of the proposed CFO 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 and LUB 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 CFO 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 BA21017 specifies the cumulative permitted livestock capacity as 2,000 beef finishers and permits the construction of feedlot pens and a catch basin.

Approval BA21017 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 BA21017 includes conditions that generally address construction deadlines and construction inspections. For an explanation of the reasons for these conditions, see Appendix B.

11. Conclusion

Approval BA21017 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA21017.

November 1, 2021

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval BA21017

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.)

Robinson’s CFO is located in the M.D. of Bonnyville and is therefore subject to that Municipal District’s MDP. The Municipal District adopted the latest revision to this plan on September 13, 2007, under Bylaw #1367 (with amendments under bylaw #1539).

The MDP has no direct requirements nor does it mention any planning guidance related to CFOs with the exception of planning country residential communities in proximity to existing CFOs.

In previous discussion with development staff at the M.D. of Bonnyville, the county’s Land Use Bylaw contains planning requirements regarding CFOs.

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

The CFO is also subject to the M.D. of Bonnyville’s LUB #1667. Approval officers will deem an application to be consistent with a LUB if the bylaw lists the proposed development as either a permitted or discretionary use. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.3.) Under this zoning, I note that subsection 5 of the LUB states “Intensive Livestock Operation requires NRCB approval prior to development”.

Section 48 of the LUB contains several provisions referring to intensive livestock operations (which include confined feeding operations).

Subsection 48.1 refers to the issuance of development permits regarding intensive livestock operations will be screened for environmental sensitivity using the Code of Practice and if necessary will be referred to Alberta Agriculture. As AOPA has replaced the Code of Practice I take this as the M.D.’s acknowledgment that there are provincial requirements in place for the siting and construction of CFOs. The application meets all AOPA requirements.

Subsections 48.2 and 48.3 of the LUB allows the development authority to vary MDS in specific circumstances. This part is likely not considered a “land use provisions,” as it is likely a CFO-related “test” under section 20(1.1) of AOPA. At any rate, the application meets all MDS requirements as defined by AOPA this provision is considered met.

Subsection 48.4 requires the application for a CFO to submit a manure management plan which demonstrates:

- a) Secured sufficient land, as specified in the Code of Practice, to accommodate the safe and proper disposal of manure;
- b) Made provisions for proper manure storage and application; and
- c) Demonstrated odour control methods.

This part is likely not considered a “land use provision,” as it is likely a CFO-related “test or condition” under section 20(1.1) of AOPA. At any rate, the applicant has provided adequate spreading lands for manure management as required under AOPA. The applicant must also adhere to all AOPA spreading and storage requirements which are designed to effectively mitigate nutrient and nuisance issues associated with the storage and spreading of manure.

Subsection 48.5 requires the applicant to provide adequate waste management in accordance with applicable standards by approving authorities. As stated above the application meets all AOPA requirements and therefore this is considered met.

For these reasons, I conclude that the application is consistent with the M.D. of Bonnyville’s LUB. The county’s response does not dispute this conclusion.

APPENDIX B: Explanation of conditions in Approval BA21017

Approval BA21017 includes several conditions, discussed below:

a. Construction Deadline

Robinson proposes to complete construction of the proposed new pens and catch basin by winter 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2024 is included as a condition in Approval BA21017.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in new permits to ensure that the facilities are constructed according to the required design specifications. Accordingly, Approval BA21017 includes a condition requiring the permit holder to construct the catch basin according to the recommended construction procedures in the August 12, 2021 Envirowest Engineering report titled: "Site and Soil Assessment Solid Manure Storage and Catch Basin Design SW $\frac{1}{4}$, Sec. 09, Twp. 064, Rge. 08, W4M Municipal District of Bonnyville No. 87, Alberta"

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 BA21017 includes a condition stating that Robinsons shall not place livestock or manure in the manure storage or collection portions of the new pens or catch basin until NRCB personnel have inspected the facilities and confirmed in writing that it meets the approval requirements.