

## Decision Summary RA21042

This document summarizes my reasons for issuing Approval RA21042 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21042. 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 September 9, 2021, Hutterian Brethren Church of Beiseker (Beiseker Colony) submitted a Part 1 application to the NRCB to increase the number of permitted chicken layers from 3,900 to 8,208 at an existing multi species CFO.

No construction is proposed in this application as the applicant's existing facilities can accommodate the additional layers.

The Part 2 application was submitted on September 9, 2021. On September 28, 2021, I deemed the application complete.

#### a. Location

The existing CFO is located at Sec. 13-28-27 W4M and E1/2 14-28-27 W4M in Rocky View County, roughly 10 kilometers west of Beiseker, Alberta. The CFO is located in a valley along the Rosebud River. The Rosebud River is located within 40 metres of the existing facilities.

#### b. Existing permits

The CFO is currently permitted under NRCB Approval RA20025, which allows Beiseker Colony to operate a multi-species CFO. The CFO's deemed and NRCB-permitted facilities are listed in the appendix of RA21042.

### 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 Rocky View County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Rocky View Weekly on September 28, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, thirty nine letters were sent to people identified by Rocky View 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), and Alberta Environment and Parks (AEP).

No responses were received from either organization.

### **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 existing CFO is located.

### **5. Municipal Development Plan (MDP) consistency**

I have determined that the proposed expansion is consistent with the land use provisions of Rocky View 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 AOPA’s nutrient management requirements regarding the land application of manure

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**

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

Ms. Jessica Anderson, a senior planner with Rocky View County, provided a written response on behalf of Rocky View County. Ms. Anderson stated that the application is consistent with Rocky View County's land use provisions in their municipal development plan. The application's consistency with Rocky View County's municipal development plan 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](http://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 Beiseker Colony's existing CFO facilities were assessed in 2014, 2015, and 2020 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater, with the exception of the dairy pens/corrals, which scored a low-moderate risk to surface water, and low risk to groundwater. The dairy pens/corrals' risks to surface water were addressed by a condition in Authorization RA14028. Further, the applicant has proposed to decommission these pens/corrals as part of Approval RA20025. The decommissioning condition in Approval RA20025 will be carried forward to this approval RA21042.

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 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. Anderson also listed the setbacks required by Rocky View County's land use bylaw (LUB) and noted that the existing layer barn appears to meet these setbacks.

I have considered the effects the proposed expansion may have on natural resources administered by provincial departments, and determined that these are acceptable.

I am not aware of any applicable statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act*, or any written decision of the Environmental Appeals Board or Director under the *Water Act* relating to the CFO site.

Finally, 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 on 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 and the application meets the land use requirements and setbacks in the County's MDP and LUB.

## **10. Terms and conditions**

Approval RA21042 specifies the cumulative permitted livestock capacity as:

- 8,208 Chicken Layers
- 600 Ducks
- 600 Geese
- 240 Dairy Cows (plus dry cows and replacements)
- 3,000 Beef Finishers

Approval RA21042 contains terms that the NRCB generally includes in all AOPA approvals, including terms stating that the applicant must follow AOPA requirements.

For clarity, and pursuant to NRCB policy, I consolidated the previous Approval RA20025 with Approval RA21042 (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. Construction conditions from historical Approval RA20025 that have been met are identified in the appendix to Approval RA21042.

## **11. Conclusion**

Approval RA21042 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21042.

NRCB-issued Approval RA20025 is therefore superseded, and its content consolidated into this Approval RA21042, unless Approval RA21042 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA20025 will remain in effect.

November 10, 2021

(Original Signed)  
Lynn Stone  
Approval Officer

## **Appendices:**

A. Consistency with the municipal development plan

## **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.”)

Beiseker Colony’s CFO is located in Rocky View County and is therefore subject to that county’s MDP. Rocky View County adopted the latest revision to this plan on April 10, 2018, under Bylaw #C-7280-2013.

Sections 8.20 – 8.24 of the MDP deal specifically with CFOs.

Section 8.20 states that the county “should make site recommendations on all new or expanded” CFOs and lists several criteria for the county to consider when making these recommendations. The criteria are not directly relevant to my MDP consistency determination as they appear to be intended to govern the county’s responses to individual CFO applications to the NRCB. In addition, the criteria require site and CFO-specific considerations that are involved in permitting decisions, so the criteria are not “land use provisions.” Therefore, this section is not relevant to my MDP consistency determination.

Section 8.21 “recommend[s]” that CFO applicants “provide nearby land owners with technical design information, receive feedback through a public involvement process, and report back to the County on how the proposal addresses public input.” This provision is not considered a land use provision because of its project-specific and procedural focus. Therefore, it is also not relevant to my MDP consistency determination. However, neighbouring land owners were notified of the application as specified under AOPA. The neighbours have had the opportunity to review and comment on the application.

Section 8.22 states that CFOs should be located in areas where there will be “minimal conflict with non-complementary land uses.” Because the “minimum conflict” test calls for a discretionary judgement, the criteria is not a “land use provision” and the section is not relevant to my MDP consistency determination. Nevertheless, as noted in the county’s response, lands within 1,600 m of the CFO are generally agricultural. All residences on these properties meet the MDS requirements of the regulations. It is therefore my opinion that because of this the application would be consistent with this section, if the section applied.

Section 8.23 states that land uses incompatible with a CFO shall not be supported when proposed within the MDS of the CFO. The proposed expansion meets the required MDS.

Section 8.24 states that a CFO, including its MDS, “should not be located within the boundary of any intermunicipal development plan or notification zone, statutory planning area, hamlet, residential area, institutional use, or federal, provincial, or municipal park or recreation area.” In its response, the county stated that Beiseker Colony’s land is not affected by any area structure plans, conceptual schemes, or intermunicipal plans. Beiseker Colony’s proposed expansion therefore meets these requirements.

Sections 8.25 - 8.28 relate to minimizing land use conflict for non-agricultural development near agricultural operation and are not relevant to this application. For these reasons, I conclude that the application is consistent with the land use provisions of Rocky View County’s MDP. The county’s response confirms my conclusion.