

## Decision Summary LA21041

This document summarizes my reasons for issuing Approval LA21041 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21041. 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 August 5, 2021, New Elm Hutterian Brethren (New Elm) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on September 30, 2021. On October 7, 2021, I deemed the application complete.

The proposed expansion involves:

- Increasing dairy livestock numbers from 80 to 160 milking cows (plus associated dries and replacements)
- Constructing a dairy barn (solid/liquid manure) – 126.2 m x 45.7 m (414 ft. x 150 ft.)
- Constructing a solid manure storage pad – 91.4 m x 106.7 m (300 ft. x 350 ft.)
- Constructing a calf barn – 33.52 m x 13.10 m (110 ft. x 43 ft.)

#### a. Location

The existing CFO is located at Sec. 14-004-22 W4M in Cardston County, roughly 12 km south of Magrath, Alberta. The terrain is undulating, sloping toward Pothole Creek which meanders approximately 200 meters south southwest of the CFO site. Pothole Creek drains into Jensen Reservoir located 1,200 meters to the west of the CFO site.

#### b. Existing permits

The CFO is currently permitted under NRCB Approval LA18028. This approval allows the construction and operation of an 80 milking cow (plus associated livestock), 900 beef finishers, 225 sows farrow to finish, 35,000 chicken layers, 800 chicken broilers, 800 ducks, and 60 geese CFO. The CFO's existing permitted facilities are listed in the appendix of Approval LA21041.

## **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 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 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 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 the Westwind Weekly on October 7, 2021. The full application was posted on the NRCB website for public viewing. As a courtesy, nine 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 also notifies 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), Alberta Agriculture and Forestry (AF), Alberta Transportation, and the Magrath Irrigation District.

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

Ms. Olsen stated that her department has no concerns with the expansion as proposed and that a permit is not required.

Ms. Dykstra stated that AHS do not see any new public health problems being created. I therefore presume that AHS has no concerns in respect to this application.

Mr. Gutsell stated that AEP has not received an application for additional water for the expansion. He continued to state that there are no water diversion authorizations for the that quarter section and requested that the applicant contact AEP to discuss water needs or provide other proof that adequate water is available for the proposed development. Because the issuance of water licenses is not under the jurisdiction of the NRCB and is solely regulated by AEP, I will not discuss this issue any further and provided a copy of AEP’s response to the applicant for their attention.

#### **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 liners and protective layers of manure storage facilities and manure collection areas

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

Mr. Thomas, a development officer with Cardston County, provided a written response on behalf of Cardston County. Mr. Thomas stated the county has no issues with this application. No other comments were provided. The application's consistency with Cardston County's municipal development plan, are 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.**

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 surface and/or groundwater monitoring for the facility. In this case a determination was made and monitoring is not required.

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 New Elm's existing CFO facilities were assessed in 2014 and 2016 using the ERST. According to those assessments, the facilities posed a low potential risk to surface water and groundwater.

The circumstances have not changed since those assessments were 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.

I have considered the effects of the proposed CFO expansion may have on natural resources administered by provincial departments. To this end, I referred the application to AEP and AHS. Neither of the departments is opposed to this application.

I am not aware that anyone submitted statements of concern under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application or of any written decision of the Environmental Appeals Board / the Director under the *Water Act* in respect of the subject of this application.

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.

I presumed that the effects on the economy and the community are acceptable, including that the proposed expansion is an appropriate use of land because the application is consistent with the MDP (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.).

## **10. Terms and conditions**

Approval LA21041 specifies the cumulative permitted livestock capacity as 160 milking cows (plus dries and associated replacements), 900 beef finishers, 225 sows farrow to finish, 35,000 chicken layers, 800 chicken broilers, 800 ducks, and 60 geese and permits the construction of the proposed dairy barn, solid manure storage pad, and calf barn.

Approval LA21041 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 LA21041 includes conditions that generally address construction deadlines, 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 Approval LA21041: LA18028 (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 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 from Approval LA18018 have been carried forward into the new approval.

## **11. Conclusion**

Approval LA21041 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21041.

New Elm's Approval LA18028 is therefore superseded, and its content consolidated into this Approval LA21041, unless Approval LA21041 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA18018 will remain in effect.

November 24, 2021

(Original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21041

## **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.)

New Elm’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 on December 1999, under Bylaw #449/99.

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. New 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: Explanation of conditions in Approval LA21041**

Approval LA21041 includes several conditions, discussed below, and carries forward all conditions from Approval LA18028. Construction conditions that have been met are listed in the appendix to Approval LA21041.

### **1. New conditions in Approval LA21041**

#### **a. Construction above the water table**

Section 9(2) of the *Standards and Administration Regulation* under the *Agricultural Operation Practices Act* (AOPA) requires the bottom of the liner of a manure storage facility or manure collection area to be not less than one metre above the water table of the site “at the time of construction.”

Based on this information, the proposed in-barn pit of the dairy barn does not meet the one metre requirement of sections 9(2) for concrete liners. However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in New Elm's report does not mean that there will be an inadequate depth at the time of construction. To address this variability and ensure that the depth requirement is met at the time of construction, a condition is included requiring New Elm Colony to cease construction and notify the NRCB immediately if the water table is encountered during construction.

#### **b. Construction Deadline**

New Elm proposes to complete construction of the proposed new dairy barn, calf barn, and solid manure storage pad 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 LA21041.

#### **c. 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 LA21041 includes conditions requiring:

- a. New Elm to provide an engineer's completion report certifying that the solid manure pad was constructed with the same liner material as that used for hydraulic conductivity testing and can meet the hydraulic conductivity required for solid manure storages under the act.
- b. The concrete used to construct the liner of the dairy barn in-barn pit to meet the specification for category B (liquid manure shallow pits); and category D (solid manure – dry) for the manure collection and storage portions of the dairy barn and the floor of the calf barn as stated in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- c. New Elm to provide documented evidence or written confirmation from a qualified third party, that the concrete used for the manure collection and storage areas meets the required specifications.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21041 includes conditions stating that New Elm shall not place livestock or manure in the manure storage or collection portions of the new dairy barn, calf barn, and solid manure storage pad until NRCB personnel have inspected the dairy barn, calf barn and solid manure storage pad and confirmed in writing that they met the approval requirements.