

Decision Summary RA21019

This document summarizes my reasons for issuing Authorization RA21019 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21019. 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 authorization. For additional information on NRCB permits please refer to www.nrcb.ca.

1. Background

On April 6, 2021, the Hutterian Brethren Church of Wavy Lake (Wavy Lake Colony) submitted a Part 1 application to the NRCB to convert a portion of the milking parlour inside the dairy barn into a pen for calves (33.5 m x 11.6 m) at an existing multi species CFO.

The Part 2 application was submitted on October 21, 2021. On October 26, 2021, I deemed the application complete.

The applicant has installed two robotic milkers in the former calf pen inside the dairy barn; and therefore, the former milking parlour is now proposed to be converted into a calf pen to accommodate dairy calves at the CFO.

There is no proposed increase in manure or livestock.

a. Location

The existing CFO is located at SW 20-44-15 W4M in Flagstaff County, roughly five kilometers southwest of the Village of Strome. The terrain is slightly undulating sloping northeast and southeast. Wavy Lake is located five kilometers to the northeast.

b. Existing permits

The CFO is already permitted under Approval RA19059A.

2. Notices to affected parties

Under section 21 of AOPA, the NRCB notifies all parties that are “affected” by an authorization application. Section 5 of AOPA’s Part 2 Matters Regulation defines “affected parties” as:

- the municipality where the CFO is located or is to be located
- any other municipality whose boundary is within a notification distance. In this case, the notification distance is 1.0 mile(s) (1,600 m) from the CFO

A copy of the application was sent to Flagstaff County, which is the municipality where the CFO is located.

3. Notice to other persons or organizations

Under NRCB policy, 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), and Alberta Agriculture Forestry and Rural Economic Development (AFRED).

No responses were received from any of the referral agencies.

4. Municipal Development Plan (MDP) consistency

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

5. AOPA requirements

With respect to the technical requirements set out in the regulations, the proposed modification:

- 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 groundwater protection requirements for the design of floors and liners of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 8, the application meets all relevant AOPA requirements.

6. Responses from the municipality

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." Flagstaff County is an affected party (and directly affected) because the proposed facility conversion is located within its boundaries.

Ms. Rosemary Hoyland, a development officer with Flagstaff County, provided a verbal response on behalf of the county.

Ms. Hoyland stated that the application complies with the county's municipal development plan (MDP). Additionally, she indicated that the CFO site, and all lands within 1,600 m of the CFO, are zoned as Agricultural in the county's land use bylaw (LUB). She also listed the setbacks required by the county's LUB.

7. Environmental risk of 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 or groundwater monitoring for the facility. In this case a determination was made and surface or groundwater monitoring is not required.

When reviewing a new authorization 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.) 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 Wavy Lake Colony's existing CFO facilities were assessed in 2006, 2008, 2009, 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 the last assessment was done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

8. Terms and conditions

Authorization RA21019 permits the conversion of the milking parlour in the permitted dairy barn into a pen for calves.

Authorization RA21019 contains terms that the NRCB generally includes in all AOPA authorizations, 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, Authorization RA21019 includes conditions that generally address a construction deadline, document submission and a construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

9. Conclusion

Authorization RA21019 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21019.

Authorization RA21019 must be read in conjunction with NRCB previously issued Approval RA19059A which remain in effect.

January 14, 2022

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

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization RA21019

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may only approve an application for an authorization 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 22(2.1) 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.)

Wavy Lake Colony’s CFO is located in Flagstaff County and is therefore subject to that county’s MDP. Flagstaff County adopted the latest revision to this plan on August 2018, under Bylaw 10/18.

Policies 10 to 13 under Section 7 of the county’s MDP deal specifically with CFOs.

Policy 10 states that the county will provide input to the NRCB regarding applications for new or expanded CFOs. All CFOs and manure storage facilities must fully satisfy all the requirements and regulations adopted under AOPA. In her response, the county’s development officer indicated that they do not have any concerns with the application. The application also meets all relevant AOPA requirements.

Policy 11 requires CFOs to meet the minimum distance separations (MDS) set out in AOPA. This policy is likely not a relevant “land use provision” for my consideration. At any rate, the proposed development meets the MDS requirements, as noted in part 5 above.

Policy 12 precludes CFOs within 3.2 km of the corporate boundaries of any urban municipality or within 0.8 km of the Growth Node Area Overlay designated on Map 6 - Future Land Use. The CFO meets these setbacks requirements.

Policy 13 discourages locating CFOs in environmentally sensitive areas where slope instability and/or groundwater contamination may be of concern. However, the policy does not identify these sensitive areas and is not clear whether it was intended to apply to existing CFOs. At any rate, the existing CFO, as well as the proposed development, meet AOPA’s technical requirements, several of which are designed to prevent or minimize manure leakage from CFO facilities and thus to prevent CFO manure from reaching and contaminating groundwater. AOPA requirements are also intended to protect the soil, groundwater, and surface water from contamination caused by excessive application of manure nutrients. Therefore, I have determined that the application is not inconsistent with policy 13.

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

The CFO is also subject to Flagstaff County's Land Use Bylaw 09/18. Under that bylaw, the subject land is currently zoned Agricultural Land Use District. CFOs are not regulated under the county's LUB. However, the LUB states that CFOs are regulated by *AOPA* and the regulations under the act.

APPENDIX B: Explanation of conditions in Authorization RA21019

Authorization RA21019 includes several conditions, discussed below:

a. Construction Deadline

Wavy Lake Colony proposes to complete construction of the conversion of the milking parlour into a calf pen by November 2024. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2024 is included as a condition in Authorization RA21019.

b. 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, Authorization RA21019 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the converted milking parlour into a calves' pen to meet the specification for D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Wavy Lake Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the converted milking parlour into a calves' pen.

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. Authorization RA21019 includes a condition stating that Wavy Lake Colony shall not place livestock or manure in the manure storage or collection portions of the converted milking parlour into a calves' pen until NRCB personnel have inspected the facility and confirmed in writing that it meets the authorization requirements.