



Decision Summary LA21058

This document summarizes my reasons for issuing Approval LA21058 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA21058. 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 December 1, 2021, Hutterian Brethren of Newell (Newell Colony) submitted a Part 1 application to the NRCB to expand an existing multi-species CFO. An updated part 1 was received on January 24, 2022. The application is to increase dairy cow numbers (plus associated dries and replacements) from 100 to 150, chicken layers from 13,000 to 46,000, add 46,000 chicken pullet, and to construct a layer barn (119.9 m x 34.5 m) plus attached solid manure storage (9.3 m x 34.5 m). The Part 2 application was submitted on January 17, 2022. On January 26, 2022 I deemed the application complete.

a. Location

The existing CFO is located at W½ 8-23-18 W4M in the County of Newell, roughly 18 km north of Bassano, Alberta. The topography of the site is undulating to rolling. The closest common body of water is the Crawling Valley Reservoir which is 4.7 km to the east.

b. Existing permits

The CFO is currently permitted under Approval LA05002 and Authorizations LA06004, LA08013, LA08030, and LA21016 allowing for 600 swine farrow to finish, 200 beef feeders, 100 milking cows (plus associated dries and replacements), 13,000 poultry layers, 2,000 poultry broilers, 100 turkeys, 1,400 ducks and 100 geese.

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 County of Newell, which is the municipality where the CFO is located and to Wheatland County which is within the notification radius.

The NRCB gave notice of the application by public advertisement in the Brooks Bulletin on January 26, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, two letters were sent to people identified by the County of Newell 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), Alberta Transportation, and the Eastern Irrigation District.

The NRCB received a written response from Leah Olson, development/planning technologist with Alberta Transportation. In her response she stated that a development permit from her department is not required and that her department has no objections to this application.

No responses were received from other referral agencies.

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 the County of Newell’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 municipalities 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." The County of Newell is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Maria Jackson, a development officer with the County of Newell, provided a written response on behalf of the County of Newell. Ms. Jackson stated that the application is consistent with the County of Newell's land use provisions of the municipal development plan. The application's consistency with the County of Newell's municipal development plan is addressed in Appendix A, attached.

No responses were received from Wheatland County, any individuals or other directly affected 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 potential risks posed by Newell Colony's existing earthen liquid manure storage (EMS), the dairy barn, and the dry cow pens were assessed in 2021 (see comments in Decision Summary LA21016, section 7). A new risk screening was therefore not undertaken.

New MCA/MSFs which clearly meet or exceed AOPA requirements are automatically assumed to pose a low risk to surface and groundwater. I therefore did not assess the risk of the chicken layer barn with attached solid manure storage.

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. Jackson also listed the setbacks required by the County of Newell's land use bylaw (LUB) and noted that the application does not meet these setbacks. The applicant has since applied for a partial road closure for the section of road that is close to the barn (see Technical Document LA21058, page 4). The reason for the necessary road closure is accommodate a fenced off loafing area for the chicken as required for the production of organic eggs. This area will not be provide any water or feed for the chicken and is not considered a MDF/MCA.

I have considered the effects the proposed chicken layer barn may have on natural resources administered by provincial departments and am not aware of any negative effects.

I am not aware of any statements of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* / section 109 of the *Water Act* in respect of the subject of this application.

I am not aware of any written decisions 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 in the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, this presumption is not rebutted because.

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 LA21058 specifies the cumulative permitted livestock capacity as 46,000 chicken layers, 48,000 chicken pullets (incl. chicken broilers) with associated pullets, 600 swine – farrow to finish, 200 beef – feeders, 150 milking cows, 2,000 poultry – broilers, 100 turkeys, 1,400 ducks, 100 geese, and permits the construction of the layer barn with attached solid manure storage.

Approval LA21058 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 LA21058 includes conditions that generally address construction deadlines, monitoring, document submission and construction inspection. 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 LA21058: Approval LA05002 and Authorizations LA06004, LA08013, LA08030, and LA21016 (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 LA21058 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA21058.

Newell Colony's NRCB-issued Approval LA05002 and Authorizations LA06004, LA08013, LA08030, and LA21016 are therefore superseded, and their content consolidated into this Approval LA21058, unless Approval LA21058 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA05002 and Authorizations LA06004, LA08013, LA08030, and LA21016 will remain in effect.

March 16, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA21058

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.)

Newell Colony’s CFO is located in the County of Newell and is therefore subject to that county’s MDP. The County of Newell adopted the latest revision to this plan on February 2013, under Bylaw # 1705-10, consolidated to Bylaw 1761-13.

The MDP policies relating to CFOs are in part 7. Section 7.1 states that the County “shall restrict the development of CFOs within the established urban fringe areas ...”

Newell Colony’s CFO is not located in any of the urban fringe areas designated in the MDP, so the proposal is consistent with this policy.

Section 7.2 states that the NRCB “should also consider” the following:

- Proximity to water bodies to minimize negative impact on drinking water supplies;
- The “cumulative effect of a new approval” on any area new other CFOs;
- Environmentally sensitive areas as shown on the report “environmentally Significant Areas of the County of Newell (1991)”;
- Giving notice to adjacent landowners even in case of application for authorizations.

Newell Colony’s CFO is not close to a common body of water.

The second of these four items does not apply because this permit is an expansion of an existing operation and therefore not a “new approval”. In addition, this provision is likely not a land use provision as it calls for site-specific discretionary judgements (viewed cumulatively with other existing CFOs), so it is not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.)

As for the third item, the CFO is not located in an environmentally significant area as listed in the report and is therefore consistent with this policy.

As for the fourth item in section 7.2, this item is likely not a land use provision because of its focus on process and therefore does not need to be considered in my MDP consistency determination. As explained above, the NRCB did notify the County of Newell, Wheatland

County, several referral agencies, and gave public notice in the Brooks Bulletin on January 26, 2022. With that the notification requirements under AOPA have been met.

Section 7.3 of the MDP states that the county “may use the MDS method to establish separation distances between proposed developments and CFOs.” This policy appears to refer to the “minimum distance separation” (MDS) requirements under AOPA. However, in several review decision, the NRCB’s board members have made it clear that approval officers should not consider MDP provisions that rely on or change the MDS formulas or MDS requirements under AOPA. That said, the county may still rely on this policy to set appropriate setbacks from proposed residential or other developments that the county regulates, from Newell Colony’s CFO.

Section 7.4 of the MDP states that the county “will impose a CFO exclusion zone” around the City of Brooks shown on the map in Appendix C. The applicant’s CFO is not located in the designated CFO exclusion area, so the application is consistent with this part of the plan.

Finally, section 7.5 of the MDP states that, as a “general guideline”. The county will use an 800 meter development setback from all reservoirs. However, this setback can be adjusted on a case-by-case basis depending on topography and other factors. As proposed, the new chicken layer barn with attached solid manure storage meets this suggested setback of 800 meter to a reservoir and is therefore consistent with this policy.

For this reason, I conclude that the application is consistent with the land use provisions of County of Newell’s MDP.

Newell Colony is located within the zone to which the Intermunicipal Development Plan between County of Newell and Wheatland County (Bylaw No. 1830-15 consolidated to Bylaw No. 1926 and Bylaw No. 2018-30) applies. The IDP policies relating to CFOs are in part 4, section 4.3.

Policy 4.3.1 states that existing CFOs located within the Plan Area will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operations Practices Act and Regulations. Newell Colony is an existing CFO and the proposed chicken layer barn with attached solid manure storage meets all AOPA requirements.

Policy 4.3.2 requires the county to forward any application within the plan area to the other county. Although this is not a land use provision and is therefore not a part of my considerations to determine consistency of the application with the land use provision in this plan. A copy of the application was provided to Wheatland County for their review.

Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also consider the County of Newell’s Land Use Bylaw # 1892-17 (consolidated to bylaw #1943-19 – April 2019). Under that bylaw, the subject land is currently zoned Agriculture. Although the land use bylaw does not explicitly mention CFOs (or intensive livestock operations) I would categorize it as an ‘Agricultural operation’ which is a permitted use of land under that land zoning.

APPENDIX B: Explanation of conditions in Approval LA21058

Approval LA21058 includes several conditions, discussed below, and carries forward all conditions from Approval LA05002 (except those noted in section 2 below) and Authorizations LA06004, LA08013, LA08030, and LA21016. Construction conditions from historical Approval LA05002 and Authorizations LA06004, LA08013, LA08030, and LA21016 are in the appendix to Approval LA21058.

1. New conditions in Approval LA21058

a. Construction Deadline

Newell Colony proposes to complete construction of the proposed new layer barn with attached solid manure storage 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 LA21058.

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, Approval LA21058 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the layer barn with attached solid manure to meet the specification for category D (solid manure – dry) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Newell Colony to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage area 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, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA21058 includes a condition stating that Newell Colony shall not place livestock or manure in the manure storage or collection portions of the new layer barn with attached solid manure until NRCB personnel have inspected the layer barn with attached solid manure and confirmed in writing that they meet the approval requirements.

2. Conditions not carried forward from Approval LA05002

Approval LA21058 includes all terms and conditions in Approval LA05002, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #11 from Approval LA05002 should be deleted and therefore is not carried forward to Approval LA21058. My reasons for deleting this condition which states :” *The operator must maintain manure application records as identified in AOPA and its associated regulations*” is, that it is included in the opening paragraph of this permit which states that the operator has to adhere to AOPA and its regulations. It is therefore redundant and can be deleted.