

Decision Summary RA21031

This document summarizes my reasons for issuing Approval RA21031 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA21031. 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 June 1, 2021, Hutterian Brethren of South Bend (South Bend Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on October 18, 2021. On January 26, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers by adding 600 beef finishers
- Constructing feedlot pens (total dimensions of 183 m x 70 m)
- Constructing a catch basin (36 m x 36 m x 2.6 m deep)

a. Location

The existing CFO is located at Sec. 15-39-12 W4M in Flagstaff County, roughly 11 km southeast of Alliance. The terrain is generally level, slightly sloping to the northeast. The CFO is approximately 2 kilometers north of the Battle River.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA21038. That permit allowed the construction and operation of a multi species CFO with 120 milking cows (plus associated dries and replacements), 26,000 chicken layers, 26,000 layer pullets, 200 beef cows, and 4000 finishing hogs. The CFO's existing permitted facilities are listed in the appendix to Approval RA21031.

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 Flagstaff County, which is the municipality where the CFO is located.

The NRCB gave notice of the application by public advertisement in the Community Press on January 26, 2022. The full application was made available for viewing during regular business hours, and was posted on the NRCB website for public viewing. As a courtesy, eleven letters were sent to people identified by Flagstaff 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).

Ms. Laura Partridge, as senior water administration officer, responded on behalf of AEP. In her response, Ms. Partridge indicated that groundwater licensing is required, and requests that a *Water Act* application be made within 90 days.

The applicant is reminded that they must abide by all applicable legislation, including the *Water Act*.

No other responses were received.

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 CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion 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.)

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

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.” Flagstaff County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Shelly Armstrong, the chief administrative officer with Flagstaff County, provided a written response on behalf of Flagstaff County. Ms. Armstrong stated that the application is consistent with Flagstaff County’s municipal development plan land use provisions. The application’s consistency with Flagstaff 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

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 monitoring for the facility. In this case a determination was made and groundwater 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.) 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 South Bend Colony's existing CFO facilities were assessed in 2012, 2017 and 2021 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.

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. Armstrong also listed the setbacks required by Flagstaff County's land use bylaw (LUB). The application meets 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 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 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 RA21031 specifies the cumulative permitted livestock capacity as:

- 800 beef cows/finishers (200 beef cows previously permitted, plus 600 beef finishers)
- 4,000 finisher hogs

- 26,000 chicken layers
- 26,000 layer pullets
- 120 dairy cows (plus associated dries and replacements)

Approval RA21031 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 RA21031 includes conditions that generally address construction deadlines, document submission, construction above the water table, construction inspection, and engineering reports. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated NRCB Approval RA21038 with Approval RA21031 (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.

Approval RA21031 includes several construction conditions from Approval RA21038 that have not been completed yet. Those conditions, along with one ongoing operating condition, are carried forward into the new Approval.

11. Conclusion

Approval RA21031 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA21031.

NRCB-issued Approval RA21038 is therefore superseded, and its content consolidated into this Approval RA21031, unless Approval RA21031 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA21038 will remain in effect.

March 17, 2022

(Original Signed)

Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA21031

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.)

South Bend 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 in August 2018, under Bylaw #10/18.

Policies 10 to 11 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 the application is consistent with the MDP, and that no other planning-type documents are associated with the area. 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 6 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.

APPENDIX B: Explanation of conditions in Approval RA21031

Approval RA21031 includes several conditions, discussed below, and carries forward a number of conditions from RA21038 (see section 2 of this appendix). Construction conditions from historical RA21038 that have been met are identified in the appendix to Approval RA21031.

1. New conditions in Approval RA21031

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.”

The applicant has estimated that the water table exists at 4.8 m below grade. The bottom of the liner for the feedlot pens is proposed to be at 0.6 m below grade, and the bottom of the liner of the catch basin is proposed to be 3.3 meters below grade (catch basin is to be 2.1 m deep, with a 1.2 m thick compacted liner).

Based on this information, the proposed feedlot pens and catch basin meet the one metre requirement of section 9(2). However, because the height of the water table can vary over time, a condition is included requiring the applicant to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

South Bend Colony proposes to complete construction of the proposed new feedlot pens and catch basin by December, 2022. In my experience, a time frame allowing two full construction seasons may be more appropriate to allow for unexpected construction delays. Therefore, a deadline of December 31, 2023 is included as a condition in Approval RA21031.

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 RA21031 includes conditions requiring South Bend Colony to provide an engineer’s completion report certifying that the feedlot pens and catch basin were constructed with the same liner material as that used for hydraulic conductivity testing and that the feedlot pens and catch basin meet AOPA liner requirements for solid manure storages (pens) and for the catch basin. The completion report, shall be stamped by a professional engineer, and must certify that the manure storage and collection portions of the feedlot pens and catch basin have been constructed in accordance with the proposed design. At a minimum the report must confirm the dimensions of the feedlot pens and the catch basin, including depth below grade; confirm that the liner material was constructed in accordance with the compacted liner requirements in the October 1, 2021 Envirowest Engineering Inc. site and soil assessment.

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 RA21031 includes conditions stating that South Bend Colony shall not place livestock or manure in the manure storage or collection portions of the new

feedlot pens, or place manure impacted runoff in the catch basin until NRCB personnel have inspected the feedlot pens and catch basin and confirmed in writing that they meet the approval requirements.

2. Construction conditions from RA21038 that are not yet completed

Approval RA21038 contains several construction conditions that are not yet completed. Those conditions are carried forward into RA21031.

3. Conditions carried forward from RA21038

Operating condition

8. The permit holder is prohibited from storing manure or housing animals in the historical sow/breeder barn, which has been converted to a non-manure storage facility.