

Decision Summary LA22019

This document summarizes my reasons for issuing Approval LA22019 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA22019. 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 March 11, 2022, Hutterian Brethren Church of Mountainview (Mountainview Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on March 25, 2022. On April 6, 2022, I deemed the application complete.

The proposed expansion involves:

- Adjusting livestock numbers from 130 to 100 milking cows (plus associated dries and replacements)
- Expanding the existing dairy barn (16 m x 19 m x 4.8 m)

Because of the statement (see Application LA22019) that this dairy has been milking approximately 92 dairy cows together with the fact that Mountainview Colony's earthen liquid dairy manure storage has only a nine month storage capacity for 100 milking cows on a liquid system, I determined that an adjustment to the number of permitted dairy cows from 130 to 100 milking cows (plus associated dries and replacements) is warranted.

a. Location

The existing CFO is located at NE 19-26-25 W4M in Wheatland County, roughly 19 km north of Strathmore, Alberta. The topography at the site is flat to gently undulating with a general slope to the south and east.

b. Existing permits and permit history

To date, the NRCB has issued Approval LA05027, Authorizations LA07016 and LA11007. Collectively, these NRCB permits allow Mountainview Colony to construct and operate a 300 swine farrow to finish, 2,000 beef finishers, 30,000 chicken broilers, 300 chicken layers, 1,200 ducks, 300 geese, 130 dairy cows (plus replacements and dries), and 500 sheep CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval LA22019.

Approval LA05027 stated that the grandfathered number of animals includes 130 dairy cows (plus associated dries and replacements). In 2007, Authorization LA07016 was issued, allowing the construction of an 'add on'-dairy barn (exercise barn). In a conversation with the operator in

conjunction with this permit (Approval LA22019), the operator stated that he never had more than 92 milking cows (plus associated dries and replacements).

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:

- 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 Wheatland County, which is the municipality where the CFO is located, and to Rocky View County which has a boundary within the affected party radius.

The NRCB gave notice of the application by public advertisement in a weekly newspaper in circulation in the community affected by the application. In this case, public advertisement was in the Strathmore Times on April 6, 2022. The full application was posted on the NRCB website for public viewing. As a courtesy, 29 letters were sent to people identified by Wheatland County and 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), Alberta Environment and Parks (AEP), Alberta Agriculture, Forestry and Rural Economic Development (AFRED), Alberta Transportation (AT), Ember Resources, and the Western Irrigation District.

The NRCB received a response from AFRED, stating that Mr. Tom Pack will be the inspector for this file but no other comments were provided. A response was also received from Mr. Trevor Richelhof, development/planning technologist with AT who stated that a permit from his department is not required, and that the planning area does not fall within the permit area of a provincial highway. Ms. Carol Brittain, public health inspector with AHS stated in her response that AHS has no concerns with this application. Ms. Candace St. Denis, a surface land administrator with Ember Resources stated that they have no concerns with the application.

No response was received from the Western Irrigation District.

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 Wheatland 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

7. Responses from 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." Wheatland County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Suzanne Hayes, a development officer with Wheatland County, provided a written response on behalf of Wheatland County. Ms. Hayes stated that the application is consistent with Wheatland County's municipal development plan land use provisions. She also stated that Mountain View Colony is located within the IDP area between Wheatland County and Rocky View County. The application's consistency with the Wheatland County's municipal development plan and the IDP are addressed in Appendix A, attached.

Ms. Jessica Anderson, a policy supervisor/planning with Rocky View County, provided a written response on behalf of Rocky View County. Ms. Anderson stated that the application is consistent with the IDP between Rocky View County and Wheatland County. The application's consistency with the IDP 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, 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 Mountainview Colony's existing hog earthen liquid manure storage (EMS) were assessed in 2005 prior to the existence of the ERST. The assessment indicated that the potential risk to surface water is low but the risk to groundwater was found to be moderate. Based on this finding, the NRCB prescribed the installation of a leak detection system to monitor the hog EMS for leakage and included a water well monitoring condition that required testing of all wells within 100 m of an MSF or MCA. No other facilities were assessed in 2005. In 2009, in conjunction with the leak detection program, the hog EMS was re-assessed using the ERST. The risk to surface water was determined to be low, the risk to groundwater moderate to high.

The dairy EMS was assessed in 2007. In the report it was noted that the dairy EMS seems to have some water holding capacity but that the risk to the environment is elevated. A new assessment of the dairy EMS was not undertaken.

Since these risk assessments, the ERST was developed and adopted. An updated version of the ERST was adopted in 2011. For these reasons, I reassessed the risks posed by the CFO's existing EMS'. Because these two facilities are the deepest and therefore closest to an aquifer, I assume that they pose the highest potential risk to groundwater in comparison to all other facilities at this CFO. My reassessment found that both, the hog and the dairy EMS pose a high risk to groundwater. The current condition requiring the monitoring of the leak detection wells at the hog EMS and the groundwater testing of all seven wells on site will continue and be expanded to include all wells (as shown on the site map included in Technical Document LA22019). In addition, I will include a condition that requires the submission of a mitigation plan on how Mountainview Colony plans to address the high risk of these two MSFs (see Appendix B).

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. Hayes also listed the setbacks required by the Wheatland County's land use bylaw (LUB) and noted that the application meets these setbacks. She also did not raise any MDP or LUB related concerns.

I have considered the effects the proposed dairy barn expansion may have on natural resources administered by provincial departments. AEP has not made me aware of 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 decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>, accessed May 20, 2022).

Finally, I considered the effects of the proposed construction 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 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 LA22019 specifies the cumulative permitted livestock capacity as 100 milking cows (plus associated dries and replacements), 300 swine farrow to finish, 2,000 beef finishers, 30,000 chicken broilers, 300 chicken layers, 1,200 ducks, 300 geese and 500 sheep, and permits the expansion of the dairy barn.

Approval LA22019 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 LA22019 includes conditions that generally address the construction deadline, 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 LA22019: Approval LA05027, and Authorizations LA07016 and LA11007 (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 LA22019 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA22019.

Mountainview Colony's unnumbered municipal development permit, NRCB issued Approval LA05027, and Authorizations LA07016 and LA11007 are therefore superseded, and their content consolidated into this Approval LA22019, unless Approval LA22019 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the unnumbered municipal development permit, Approval LA05027, and Authorizations LA07016 and LA11007 will remain in effect.

June 3, 2022

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA22019

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.)

Mountainview Colony’s CFO is located in Wheatland County and is therefore subject to that county’s MDP. Wheatland County adopted the latest revision to this plan in 2018, under Bylaw #2013-18 Amendment 2018-40.

Section 3.1.3.1. of the MDP states that the county shall act as referral agency and respond in accordance with the MDP and LUB when the Natural Resources Conservation Board is processing applications for CFO’s. In my interpretation, this is not a land use provision. Therefore, I will not consider this section in my consistency determination, regardless, I notified the county.

As relevant here, section 3.1.3.2 of the MDP states that the county encourages CFOs on parcels on land of 160 acres or more. I interpret this to apply to new CFOs. Wheatland Colony’s CFO is an existing CFO. I therefore interpret this provision to not apply to this CFO.

In my view, the text in 4.4.2 of Wheatland County’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB). Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider Wheatland County’s Land Use #2016-01 (with its last amendment on March 24, 2020 under Bylaw 2020-04). Under that bylaw, the subject land is currently zoned as Agricultural General District. Confined feeding operations are not listed as a permitted, discretionary or prohibited use. There is a general listing “Agricultural Operation” which does not require a permit. Section 4.2.7 of Part 4 specifies these as ‘an agricultural operation as defined in the Act on a parcel designated AG. This is understandable as Section 8.7 of the LUB states that the NRCB has full authority over CFOs and manure storage facilities and that applicants/landowners are responsible for obtaining the necessary permits required by the NRCB under AOPA.

In the County’s response, Ms. Hayes requested that the development observes all applicable setbacks. The new dairy barn extension meets all of these setbacks. I therefore determined that the development is consistent with the MDP and the county’s LUB.

Mountainview Colony’s CFO is also in the area included in the Intermunicipal Development Plan (IDP) between Wheatland County and Rocky View County and therefore subject to this IDP.

Wheatland County and Rocky View County adopted the latest revision to this plan in 2021 - November 30, 2021, by Rocky View County under Bylaw C-8164-2021 and November 16, 2021, by Wheatland County under Bylaw 2021-10.

The relevant land use policies can be found in section 3.3 – Land Use Policies, Agriculture, specifically section 3.3.3. This policy requires applications for new or expanded CFOs within the plan area to be referred to the adjacent municipality. Although this is not considered a land use policy, I did send a copy of the application to Rocky View County for comments because Rocky View County is within the 1.5 mile notification radius.

Map 3a indicates that the area in which Mountainview Colony is located is zoned Agriculture. No other policies in this IDP apply to this application.

APPENDIX B: Explanation of conditions in Approval LA22019

Approval LA22019 includes several conditions, discussed below, and carries forward a number of conditions from Approval LA05027, and Authorizations LA07016 and LA11007 (see section 2 of this appendix). Construction conditions from historical Approval LA05027, and Authorizations LA07016 and LA11007 that have been met are identified in the appendix to Approval LA22019.

Approval LA22019 includes several conditions, discussed below:

1. New conditions in Approval LA22019

a. Construction above the water table

Section 9(3) 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 dairy barn extension does not meet the one metre requirement of sections 9(3). However, because the height of the water table can vary over time, the lack of adequate depth to water table indicated in Mountainview Colony'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 Mountainview Colony to cease construction and notify the NRCB immediately if the water table is encountered during construction.

b. Construction Deadline

Mountainview Colony proposes to complete construction of the proposed new dairy barn extension by October 2022. This time-frame seems short for the proposed scope of work. I therefore determined that the extension for an additional year, to October 31, 2023 will allow for unforeseen circumstances. The deadline of October 31, 2023, is included as a condition in Approval LA22019.

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 LA22019 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the dairy barn extension to meet the specification for category B (liquid manure shallow pits); in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- b. Mountainview 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 LA22019 includes a condition stating that Mountainview Colony shall not place livestock or manure in the manure storage or collection portions of the new dairy

barn extension until NRCB personnel have inspected the dairy barn extension and confirmed in writing that it meets the approval requirements.

d. Mitigation plan

As explained in section 8 above, both of the earth liquid manure storage facilities (hog and dairy EMS) pose a high risk to groundwater. While the hog EMS has a leakage detection system installed, the dairy EMS does not although it was identified to pose a risk to groundwater (2007). Because of the identified risk, I will include a condition that requires the permit holder to proposed and implement a plan that addressed the identified risk of the liquid manure storages (hog and dairy) within 3 years of issuance of this permit. The plan must be acceptable to, and approved by, the NRCB.

2. Conditions not carried forward or reworded

Approval LA22019 includes the terms and conditions in the unnumbered municipal permit, Approval LA05027, and Authorizations LA07016 and LA11007, except those noted below.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #8 from Approval LA05027, should be deleted and replaced by condition 4 in Authorization LA11007 in a rewritten form and condition 7 of Approval LA05027 should also be rewritten to reflect current NRCB policy. These conditions therefore are not carried forward as written to Approval LA22019.

Condition #8 in Approval LA05027 prescribes a water well monitoring regime that is repeated, although lightly modified, by condition 4 in Authorization LA11007. Because Authorization LA11007 did not consolidate the previously issued Approval LA05027, both conditions are in effect. Because the water well monitoring condition in Authorization LA11007 is more recent, I determined that condition 4 of Authorization LA11007 should be carried forward but reworded into this approval. The updated condition will state that the permit holder shall sample and test raw groundwater from water well #123456789, according to water well monitoring requirements prescribed by the NRCB in writing. The NRCB may, based on the monitoring results and at its discretion, revise those requirements from time to time, in writing by the NRCB.

Condition 7 of Approval LA05027 prescribes a leakage detection monitoring regime. This condition is not a flexible condition in that it can be modified depending on changing conditions at this CFO (e.g. the installation of a new water well within the 100m setback from a MSF or MCA). I therefore determined that this condition shall be carried forward but reworded to allow changes in the monitoring frequency as directed by the NRCB in writing and expanded to include all wells at this CFO. The new condition will state that the permit holder shall conduct leak detection groundwater monitoring for the hog earthen liquid manure storage according to a leak detection groundwater monitoring system prescribed and authorized in writing, and as amended from time to time where appropriate, by the NRCB.