

Decision Summary RA22005

This document summarizes my reasons for issuing Approval RA22005 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA22005. 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 January 26, 2022, the Hutterian Brethren Church of Fairview (Fairview Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on May 13, 2022. On May 24, 2022, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 80 to 100 milking cows (plus dries and replacements)
- Eliminating the 220 swine – farrow to finish operation
- Converting the existing milking parlour inside the dairy barn into pens for the milking cows (23.3 m x 13.1 m)

Fairview Colony has installed robotic milkers inside the dairy barn; therefore, the former milking parlour is now proposed to be converted into pens to accommodate the additional milking cows at the CFO.

Fairview Colony is eliminating their hog operation; however, at this time they have not proposed to decommission the CFO facilities associated with this operation, as they are currently deciding what to do with them.

a. Location

The existing CFO is located at NW13-28-28 W4M in Rocky View County, roughly 13 km southeast of Crossfield, Alberta. The terrain is undulating with a general slope to the south.

b. Existing permits

To date, the NRCB has issued Approval RA15016A and Authorization RA21034, which allows the construction and operation of a CFO with 80 milking cows (plus replacements and dries), 220 swine farrow to finish, 6,000 poultry broilers, 20,000 poultry layers (includes associated pullets) and 900 ducks and geese. The CFO's existing permitted facilities are listed in an appendix of Approval RA22005.

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 0.5 mile (805 m). (The NRCB refers to this distance as the “affected party radius.”)

A copy of the application was sent to Rocky View County, which is the municipality where the CFO is located. Further the CFO is not located within 100 m of the bank of the river, stream or canal

The NRCB gave notice of the application by public advertisement in the Rocky View Weekly newspaper on May 24, 2022. The full application was made available for viewing during regular business hours and was posted on the NRCB website for public viewing. No courtesy letters were sent to people owning or residing on land within the affected party radius, as Rocky View County indicated that the applicant owns all of the lands within the notification radius of 0.5 mile.

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); and Alberta Agriculture, Forestry and Rural Economic Development (AFRED).

No response was received from AHS, AFRED or AEP.

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 CFO expansion is consistent with the land use provisions of the Rocky View County 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 CFO 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 9, the application meets all relevant AOPA requirements.

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

Ms. Jessica Anderson, the 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 Rocky View County's land use provisions of the municipal development plan. The application's consistency with Rocky View County's municipal development plan is addressed in Appendix A, attached.

Ms. Anderson also noted that the application appears to meet the setbacks required by Rocky View County's land use bylaw (LUB).

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/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.) 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 Fairview Colony's existing CFO facilities were assessed in 2015 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. Anderson also noted that the application appears to meet the setbacks required by the Rocky View County's land use bylaw (LUB).

I have considered the effects the proposed CFO 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. Furthermore the application meets AOPAs technical requirements. 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 June 16, 2022).

Finally, I considered the effects of the proposed CFO 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 CFO 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 RA22005 specifies the cumulative permitted livestock capacity as:

- 100 milking cows (plus associated replacements)
- 6,000 chicken broilers
- 20,000 chicken layers (plus associated pullets)
- 900 ducks and geese,

and permits the conversion of the former parlour into pens inside the dairy barn.

Approval RA22005 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 RA22005 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.

For clarity, and pursuant to NRCB policy, I consolidated the following permit with Approval RA22005: Approval RA15016A and Authorization RA21034 (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 RA22005 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA22005.

NRCB-issued Approval RA15016A and Authorization RA21034 are therefore superseded, and their content consolidated into this Approval RA22005, unless Approval RA22005 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA15016A and Authorization RA21034 will remain in effect.

July 4, 2022

(Original signed)

Francisco Echegaray, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA22005

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.)

Fairview Colony’s CFO is located in Rocky View County and is therefore subject to that county’s MDP. Rocky View County adopted the latest revision to this plan on April 10, 2018, under Bylaw #C-7280-2013.

Sections 8.20 – 8.24 of the MDP deal specifically with CFOs.

Section 8.20 states that the county “should make site recommendations on all new or expanded” CFOs and lists several criteria for the county to consider when making these recommendations. The criteria are not directly relevant to my MDP consistency determination as they appear to be intended to govern the county’s responses to individual CFO applications to the NRCB. In addition, the criteria require site and CFO-specific considerations that are involved in permitting decisions, so the criteria are not “land use provisions.” Therefore, this section is not relevant to my MDP consistency determination.

Section 8.21 “recommend[s]” that CFO applicants “provide nearby land owners with technical design information, receive feedback through a public involvement process, and report back to the County on how the proposal addresses public input.” This provision is not considered a land use provision because of its project-specific and procedural focus. Therefore, it is also not relevant to my MDP consistency determination. However, Rocky View County was notified of the application as specified under AOPA. The municipality has had the opportunity to review and comment on the application.

Section 8.22 states that CFOs should be located in areas where there will be “minimal conflict with non-complementary land uses.” Because the “minimum conflict” test calls for a discretionary judgement, the criteria is not considered a “land use provision” and the section is not relevant to my MDP consistency determination. Nevertheless, as noted in the county’s response, lands within 1,600 m of the CFO are generally agricultural. All residences on these properties meet the MDS requirements of the regulations. It is therefore my opinion that because of this the application would be consistent with this section, if the section applied.

Section 8.23 states that land uses incompatible with a CFO shall not be supported when proposed within the MDS of the CFO. The proposed expansion meets the required MDS.

Section 8.24 states that a CFO, including its MDS, “should not be located within the boundary of any intermunicipal development plan or notification zone, statutory planning area, hamlet, residential area, institutional use, or federal, provincial, or municipal park or recreation area.” In its response, the county stated that Fairview Colony’s land is not affected by any area structure plans, conceptual schemes, or intermunicipal plans. Fairview Colony’s proposed expansion therefore meets these requirements.

Sections 8.25 - 8.28 relate to minimizing land use conflict for non-agricultural development near agricultural operation and are not relevant to this application.

For these reasons, I conclude that the application is consistent with the land use provisions of Rocky View County’s MDP. The county’s response confirms my conclusion.

APPENDIX B: Explanation of conditions in Approval RA22005

Approval RA22005 includes several conditions, discussed below, and carries forward conditions from Approval RA15016A and Authorization RA21034 (see section 2 of this appendix). Construction conditions from historical Approval RA15016A and Authorization RA21034 that have been met are identified in the appendix to Approval RA22005.

1. New conditions in Approval RA22005

a. Construction Deadline

Fairview Colony proposes to complete construction of the proposed conversion of the former parlour into pens inside the dairy barn 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 Approval RA22005.

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 RA22005 includes a condition requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the converted parlor into pens inside the dairy barn to meet the specification for category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.” Fairview Colony shall provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the converted parlor into pens inside the dairy barn.

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 RA22005 includes a condition stating that Fairview Colony shall not place livestock or manure in the manure storage or collection portions of the converted parlor into pens inside the dairy barn until NRCB personnel have inspected it and confirmed in writing that it meets the approval requirements.

2. Conditions carried forward from Approval RA15016A and Authorization RA21034

Approval RA22005 carries forward all of the conditions from Approval RA15016A and Authorization RA21034. Construction conditions that have been met are identified in the appendix to Approval RA22005.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that conditions # 6 (a., b., and c.), and 7a. from Approval RA15016A (groundwater monitoring and water well testing reporting) should be updated and revised to reflect current drafting of conditions.