



Decision Summary LA23001

This document summarizes my reasons for issuing Approval LA23001 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23001. 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 4, 2023, Fairfield Hutterian Brethren (Fairfield Colony), a split from the Oaklane Hutterian Brethren, submitted a Part 1 application to construct two broiler breeder barns (153.9 m x 32.9 m each), a mixed livestock barn (61.0 m x 30.5 m), and a pullet barn (141.7 m x 33.5 m) with the capacity for 60,000 broiler breeders, 350 poultry layers, 1,000 poultry broilers, 20 cows (milk and beef), 1,000 ducks, and 400 turkeys.

The Part 2 application was submitted on January 4, 2023. On January 11, 2023, I deemed the application complete.

a. Location

The proposed CFO is located at SW 5-8-16 W4M in the Municipal District (M.D.) of Taber, roughly 17 km south of the town of Taber. The terrain is generally flat with relief to the south in the form of gullies which drain towards Chin Coulee Reservoir. The proposed CFO will be located more than 1.3 km from the reservoir.

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

A copy of the application was sent to the M.D. of Taber, which is the municipality where the CFO is to be located.

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 Taber Times on January 11, 2023. 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 out as Fairfield Colony and Oaklane Colony own all of the land within the affected party radius. As mentioned in Part 1 above, Oaklane Colony proposes to construct the CFO at the new site which has been named Fairfield Colony, and so there has been effective notice to Oaklane Colony.

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 Protected Areas (EPA), Alberta Transportation & Economic Corridors (TRAN), and the St. Mary River Irrigation District (SMRID).

I also sent a copy of the application to Forty Mile Gas Co-Op Ltd.

I received responses from AHS, EPA, TRAN, and the SMRID. The only concerns raised were relating to water licensing and allocation. The responses from EPA and the SMRID were provided to the applicant for their consideration and action. Fairfield Colony is reminded that they should secure adequate water licensing prior to populating any facilities at the proposed CFO.

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 is consistent with the land use provisions of the M.D. of Taber'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 CFO:

- 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 and Appendix B, 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.” The M.D. of Taber is an affected party (and directly affected) because the proposed CFO is located within its boundaries.

Mr. Brian Peers, director of Lands, Planning, and Development with the M.D. of Taber, provided a written response on behalf of the M.D. of Taber. Mr. Peers stated that the application is consistent with the M.D. of Taber’s land use provisions in their municipal development plan. The application’s consistency with the M.D. of Taber’s municipal development plan is addressed in Appendix A, attached. The M.D. of Taber’s also indicated the application appears to meet all required municipal setbacks and is not located in an exclusion zone.

Apart from municipalities, any member of the public may request to be considered “directly affected.” No responses were received from any other person, organization, or member of the public.

The only directly affected parties are the applicant and the M.D. of Taber.

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. In this case all facilities clearly meet AOPA requirements and are presumed to pose a low risk to surface water and groundwater.

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.

Mr. Peers also indicated the application meets the setbacks as required by the M.D. of Taber's land use bylaw (LUB).

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments.

I have considered 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.

Finally, I considered the effects of the proposed CFO 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, having considered information in the application and from referral agencies, 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, having considered information in the application, in the MDP, and from the M.D., this presumption is not rebutted.

I also presumed that the proposed CFO 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, for the same reasons as above, this presumption is not rebutted.

10. Terms and conditions

Approval LA23001 specifies the cumulative permitted livestock capacity as 60,000 broiler breeders, 350 poultry layers, 1,000 poultry broilers, 20 cows (dairy and beef), 1,000 ducks, and 400 turkeys. Approval LA23001 also permits the construction of the two broiler breeder barns, a mixed livestock barn, and a pullet barn.

Approval LA23001 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 LA23001 includes conditions that generally address construction deadlines, document submission and construction inspection. For an explanation of the reasons for these conditions, see Appendix B.

11. Conclusion

Approval LA23001 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23001.

March 23, 2023

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA23001

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).

In general, “land use provisions” cover 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 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 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.)

Fairfield’s CFO is located in the Municipal District (M.D.) of Taber and is therefore subject to that county’s MDP. The M.D. of Taber adopted the latest revision to this plan on September 28, 2021, under Bylaw #1980.

Sections 5.1.13 – 5.1.15 of the MDP provide policies “related to confined feeding operations.” The stated purposes of these policies include providing the NRCB with “requirements that the council of the M.D. of Taber wish to have considered when applications for CFOs are evaluated for approval....”

Each of the applicable sections are discussed below.

Section 5.1.13

This section states that “CFOs” should be “discouraged” in the areas shown in Map 2 as “restricted”. This exclusion zone is a land use provision. Fairfield’s CFO is not located within the CFO restricted zone.

Sections 5.1.14(a)-(d)

These sections list setbacks for CFOs from roads and property lines. Fairfield’s CFO is not within any of these setbacks.

Section 5.1.15

Under this section, the Municipal District requests that the NRCB consider the four following items:

- a. the proximity of the operation to open bodies of water and the topography of the surrounding lands in order to minimize any negative impacts to drinking water supplies;
- b. the cumulative effect of a new approval on any area near other existing confined feeding operations;
- c. environmentally sensitive areas shown in the report, Municipal District of Taber Environmentally Sensitive Areas in the Oldman River Region;

- d. give[ing] notice to adjacent landowners even in the case of applications for registration or authorization.

Neither (a) or (b) are likely “land use provisions,” as they call for site-specific judgements about the acceptability of an individual operation in light of certain criteria (“proximity,” magnitude and nature of cumulative effect, effect on environmentally sensitive areas). As such, these two MDP policies are not relevant to my MDP consistency determination. (See Operational Policy 2016-7: Approvals, part 8.2.5.).

At any rate, Fairfield’s CFO meets requirements related to item (a), which refers to the impact of the operation on drinking water supplies. Several of the requirements under AOPA and its regulations are designed to prevent or minimize leakage from CFO facilities and thus to prevent manure from reaching and contaminating surface water and groundwater. Because the application meets these requirements, this development would not pose a material risk to surface water or groundwater (and therefore potential drinking water supplies).

Subsection (b) refers to cumulative effects of CFOs. AOPA does not expressly require approval officers to consider the cumulative effects of proposed developments together with those of other existing CFOs or other activities in the area. Further, the NRCB’s Board members have directed approval officers not to consider cumulative effects in their permitting decisions. In a 2011 decision, the Board stated that consideration of cumulative effects is “not within the Board’s regulatory mandate. As a statutory decision maker, the Board takes its direction from the authorizing legislation. AOPA does not provide for cumulative effects assessment.” (Zealand Farms, RFR 2011-02 at 5.)

The CFO is not located in an environmentally sensitive area as indicated in item 5.1.15(c) above.

Policy 5.1.15(d) is a procedural requirement so it is likely not a “land use provision.” Therefore, it is not relevant to my MDP consistency determination. At any rate, as explained above, in addition to notifying the Municipal District of Taber, and several referral agencies, the NRCB also published official notice of the application in the Taber Times and sent courtesy letters to landowners and residents within the radius as identified in the AOPA. The notification requirements under AOPA have therefore been met.

For these reasons, I conclude that the proposed construction is consistent with the land use provisions of the Municipal District of Taber’s MDP.

APPENDIX B: Explanation of conditions in Approval LA23001

Approval LA23001 includes several conditions, discussed below:

a. Construction Deadline

Fairfield Colony proposes to complete construction of the proposed new broiler breeder barns, mixed livestock barn, and pullet barn by November 30, 2028. Though this timeframe is longer than usual, in my opinion the project scope and lack of existing infrastructure (i.e. water, power, gas) warrant granting the requested time frame. Therefore, in my opinion this timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2028, is included as a condition in Approval LA23001.

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 LA23001 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the four barns 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. Fairfield Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the barns.

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 LA23001 includes conditions stating that Fairfield Colony shall not place livestock or manure in the manure storage or collection portions of the four new barns until NRCB personnel have inspected the barns and confirmed in writing that they meet the approval requirements.