

Decision Summary LA23041

This document summarizes my reasons for issuing Approval LA23041 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA23041. 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 September 11, 2023, Midwest Hutterian Brethren (Midwest Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO.

The Part 2 application was submitted on October 17, 2023. On October 25, 2023, I deemed the application complete.

The proposed expansion involves:

- Increasing poultry broiler numbers from 53,000 to 96,000 birds
- Constructing a broiler barn – 140.2 m x 18.9 m (460 ft. x 62 ft.)
- Constructing a solid manure storage pad – 30.5 m x 18.9 m (100 ft. x 62 ft.) (located east of the new boiler barn)

a. Location

The existing CFO is located at SE 16-26-21 W4M and SW 15-26-21 W4M in Wheatland County, roughly 13 km northeast of Standard, Alberta. The terrain is flat to gently undulating, sloping slightly towards an unnamed creek located approximately 505 metres to the south of the CFO.

b. Existing permits

The CFO is permitted under NRCB Approval LA18051 allowing the operation of a multi-species CFO with the capacity of 53,000 broiler chickens, 13,000 layer chickens (plus associated pullets), 4 milking cows (plus associated dries and replacements), 1,000 ducks, 250 geese, and 100 broiler turkeys.

The CFO's existing permitted facilities are listed in an appendix to Approval LA23041.

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 ½ mile. (The NRCB refers to this distance as the “notification distance.”)

None of the proposed facilities is located within 100 m of a bank of a river, stream or canal.

A copy of the application was sent to Wheatland County, which is the municipality where the CFO is 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 Strathmore Times on October 25, 2023. 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, 5 notification letters were sent to people identified by Wheatland County as owning or residing on land within the notification distance.

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), and Alberta Transportation & Economic Corridors (TEC).

I also sent a copy of the application to Prairie Sky Royalty Ltd., Torxen Energy Ltd., and Rosebud Gas Co-op Ltd. because these companies are right of way owners and have an interest in the subject land.

The NRCB has received a response from Ms. Courtney Hlady, a public health inspector with AHS. In her response Ms. Hlady stated that AHS has no concerns with this application.

The NRCB has not received any other responses from the referral agencies that were notified.

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 proposed CFO is to be located.

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

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." 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 with Wheatland County's land use provisions of the municipal development plan and the CFO is not within any Area Structure Plans or IDPs. The application's consistency with Wheatland County's municipal development plan is addressed in Appendix A, attached.

Apart from municipalities, any member of the public may request to be considered "directly affected." The NRCB received a joint response from two individuals.

Both individuals who submitted the response own or reside on land within the ½ mile notification radius for affected persons. Because of their location within this radius, and because they submitted a response, they qualify for directly affected party status. (See NRCB Operational Policy 2016-7: Approvals, part 7.2.1)

The directly affected parties raised concerns regarding groundwater, air quality, manure handling, not being listed as a neighbour on application, and effects on the community. These concerns are addressed in Appendix B.

8. Environmental risk of CFO facilities

When reviewing new approval applications for an existing CFO, NRCB approval officers normally assess the CFO's existing buildings, structures, and other facilities, using the NRCB's environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool 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/Guides 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 done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: *Approvals*, part 9.17.

In this case, the risks posed by Midwest Colony's existing CFO facilities were assessed in 2013. The 2013 assessment determined that the risk to surface water and groundwater is low for the existing facilities (The CFO's existing facilities are listed in the Appendix to LA18051.)

The new proposed facilities can clearly meet all AOPA requirements for the protection of groundwater and are therefore presumed to pose a low risk to groundwater and surface water.

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 Wheatland County's land use bylaw (LUB) and noted that the application does not indicate the distance to the west property line and advises that this setback should be met. The broiler barn will be constructed in line with the existing layer barn. Both are more than 56 m east of the west property line.

I have considered the effects the proposed CFO may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concerns submitted under section 73 of the Environmental Protection and Enhancement Act or section 109 of the Water Act in respect of the subject of this location. Furthermore, the application meets AOPA's technical requirements.

I am not aware of a written decision of the Environmental Appeals Board for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed November 23, 2023.

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 9.10.9), 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 9.10.9), 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 9.10.9).

10. Terms and conditions

Approval LA23041 specifies the cumulative permitted livestock capacity as 96,000 broiler chickens, 13,000 layer chickens (plus associated pullets), 4 milking cows (plus dries and replacements), 100 broiler turkeys, 1,000 ducks, 250 geese, and permits the construction of a broiler barn and a solid manure storage pad.

Approval LA23041 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 LA23041 includes conditions that generally address construction deadlines, 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 permit with Approval LA23041: Approval LA18051 (see NRCB Operational Policy 2016-7: Approvals, part 11.5). 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.

11. Conclusion

Approval LA23041 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA23041.

Midwest Colony's Approval LA18051 is therefore superseded, and its content consolidated into this Approval LA23041, unless Approval LA23041 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA18051 will remain in effect.

December 1, 2023

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Determining directly affected party status and concerns raised
- C. Explanation of conditions in Approval LA23041

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.)

Midwest 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 under Bylaw #2013-18.

Section 3.1 Agriculture recognizes that some agricultural practices are under the jurisdiction of the NRCB. Section 3.1.3 specifically elaborates on the role the county has in the NRCB application process. In subsection 1, the county recognizes that it will respond to the NRCB in accordance with the MDP and LUB. Because this is procedural in nature, I cannot consider this section. At any rate, the application was sent to the county for its comments and concerns. Subsection 2 states that the county does not support the establishment of new parcels within 400 m of an existing CFO. The siting of residential parcels is not under the jurisdiction of the NRCB. I will therefore not discuss this subsection any further.

In my view, the text in 4.2.2 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 9.2.4, I also consider Wheatland County’s Land Use #2016-01 (amended on October 17, 2013, under Bylaw 2023-22). 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 8.6 of the LUB states that the NRCB has full authority over CFOs and manure storage facilities.

Based on my analysis, I determined that the development is consistent with the Wheatland County MDP and LUB.

APPENDIX B: Determining directly affected party status and concerns raised

The following individuals qualify for directly affected party status because they submitted a response to the application and they own or reside on land within the “affected party distance,” as specified in section 5(c) of the Agricultural Operation, Part 2 Matters Regulation:

Kristina Lauridsen and Michael Love
NW 16-26-21 W4M

See NRCB Operational Policy 2016:7 – Approvals, part 7.2.

Concerns from the directly affected parties

The directly affected parties raised the following concerns:

- groundwater,
- air quality,
- manure handling,
- not being listed as neighbour on application
- Effects on the community

Groundwater

There are three wells at this land location. None of those wells are within 100 m of any of the manure collection or storage areas (CFO facilities) and all existing facilities meet AOPA liner requirements for the protection of groundwater resources. As explained in section 8 above, the risk to groundwater is determined to be low.

Air quality

There are no specific requirements under AOPA related to air quality other than fly and dust control (section 20 Standard and Administration Regulation). AOPA requires CFO's to meet the minimum distance separation (MDS) to neighbouring residences. The MDS is one of the measures to mitigate nuisance impacts, including odor that neighbouring residences may experience from a CFO. Additionally, the application was also sent to AHS for their comments. As stated above, AHS did not identify any concerns related to this application.

Manure handling

AOPA and its regulations are very specific in respect to manure storage and the land application of manure (sections 10 and 24, Standards and Administration Regulation). These include distances to water bodies, water wells, and soil nutrient levels. Midwest Colony has sufficient land to apply the manure produced at this CFO. In addition, as stated in the opening paragraph of this permit, the permit holder must adhere to AOPA and its regulations which include manure management. Incidences of non-compliance or other concerns can be reported to the NRCB's 24 hour a day response line (1-866-383-6722 or 310-000 toll free line).

Not being listed as neighbour on application

For every application, the responsible approval officer consults aerial photos (e.g. google earth) and confirms any observations with a site visit to ensure that the information is complete when considering an application and before rendering a decision. In this case, and as noted in the

Technical Document, there are two residences on the NW 16-26-21 W4M. While these residences are located within the notification distance required for this type of application, both are outside the minimum distance separation. Notification letters were sent to the owners of these residences advising of the proposed development and inviting them to participate in the application consideration process.

Effects on the community

The directly affected parties were concerned about the long-term effects and sustainability of the establishment of large-scale CFOs and multi-family development in proximity to small towns.

The planning documents developed by a county determine and guide economic and other land use activities within the county through zoning. In this case, the area is zoned agricultural and allows of a variety of agricultural activities. Although, as mentioned above, CFOs are not explicitly mentioned as a permitted, discretionary, or prohibited use in this land use zone, the county acknowledges that CFOs are regulated by the NRCB. The 'fit' with existing agricultural uses and consistency test are considered under "appropriate use of land, which is the applications consistency with the MDP. The proposed development meets this criterion, a conclusion that was not disputed by the county. In addition, development of CFOs could be considered to align with the guiding principles stated in the MDP to preserve the county's agricultural heritage and support agricultural producers.

APPENDIX B: Explanation of conditions in Approval LA23041

Approval LA23041 includes several conditions, discussed below, and carries forward all conditions from LA18051. Construction conditions that have been met are identified in the appendix to Approval LA23041.

1. New conditions in Approval LA23041

a. Construction Deadline

Midwest Colony proposes to complete construction of the proposed new broiler barn and solid manure storage pad by the end of December 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2025, is included as a condition in Approval LA23041.

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 LA23041 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the broiler barn and solid manure storage pad 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” and to provide evidence or written confirmation from a qualified third party that the concrete used for the manure collection and storage portions of the broiler barn and manure storage pad meet 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, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval LA23041 includes a condition stating that Midwest Colony shall not place livestock or manure in the manure storage or collection portions of the new broiler barn and solid manure storage pad until NRCB personnel have inspected the broiler barn and solid manure storage pad and confirmed in writing that they meet the approval requirements.