

Decision Summary RA23016

This document summarizes my reasons for issuing Approval RA23016 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA23016. 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 May 17, 2023, the Hutterian Brethren Church of Holt (Holt Colony) submitted a Part 1 application to the NRCB to expand an existing multi species confined feeding operation (CFO).

The Part 2 application was submitted on October 27, 2023. On January 5, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 600 to 1,500 beef finishers
- Constructing a new feedlot – 244 m x 92 m
- Decommissioning the existing feedlot
- Constructing a new runoff control catch basin – 50 m x 50 m x 2 m

a. Location

The existing CFO is located at section 6-47-9 W4M in the Municipal District (MD) of Wainwright, roughly 14 km north and west of Irma, AB. Topography of the site is hummocky with a general slope toward the southwest.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval RA08046. That permit allowed the construction and operation of a multispecies CFO with the following livestock capacity:

- 400 sows farrow to finish
- 130 milking cow dairy (plus associated dried and replacements)
- 600 beef finishers
- 5,000 poultry layers
- 9,275 broiler chickens
- 1,300 turkeys
- 1,200 ducks
- 300 geese

The CFO's existing permitted facilities are listed in the appendix to the Approval RA23016.

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 “notification distance”).

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

A copy of the application was sent to the MD of Wainwright, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- public advertisement in the Wainwright Star EDGE newspaper in circulation in the community affected by the application on January 5, 2024, and
- sending 15 notification letters to people identified by the MD of Wainwright as owning or residing on land within the notification distance.

The full application was also made available for viewing during regular business hours at the NRCB Red Deer office and was posted on the NRCB website for public viewing.

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 Protected Areas (EPA).

I also sent a copy of the application to Pine Cliff Energy Ltd. and Atco Gas and Pipelines Ltd. as right of way holders.

I received responses from AHS, EPA, and Pine Cliff Energy Ltd.

Mr. Gregory Ward, an AHS public health/executive officer, indicated that AHS has no concerns with this application and included some comments under the *Public Health Act* and its regulations.

Ms. Laura Partridge, a senior water administration officer responded on behalf of EPA. Ms. Partridge provided sources to verify water requirements and sources at the colony. Ms.

Partridge also included the *Water Act* licence application process if required.

The applicants are reminded that they are responsible for obtaining licences under the *Water Act*.

Ms. Jennifer Sadler, a surface land manager with Pine Cliff Energy Ltd. indicated they have no concerns with this application.

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 existing 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 the MD of Wainwright'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, liners and protective layers of manure storage facilities and manure collection areas

With the terms and conditions summarized in part 10 and in 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 MD of Wainwright is an affected party (and directly affected) because the proposed CFO expansion is located within its boundaries.

Ms. Dana Smith, the director of development services with the MD of Wainwright, provided a written response on behalf of the MD of Wainwright. Ms. Smith stated that there is no intermunicipal development plan or area structural plans in effect for the proposed location and

included a setback under the MDP to residential uses. The application's consistency with the land use provisions of the MD of Wainwright'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 may be assumed to pose a low risk to surface and groundwater. There may be circumstances where, because of the proximity of a shallow aquifer, or porous subsurface materials, and surface water systems an approval officer may require surface or 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, 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 9.17.

In this case, the risks posed by Holt Colony's existing CFO facilities were assessed in 2009. The assessment indicated that the potential risks to groundwater were low.

Since the 2009 risk assessment, the NRCB has adopted a new version of the ERST. For this reason, I reassessed the risks posed by the CFO's existing facilities. My reassessment found that the proposed and existing facilities pose a low potential 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.

Ms. Smith also listed the setbacks required by the MD of Wainwright's land use bylaw (LUB) and noted that the application meets these setbacks.

I have considered the effects the proposed CFO expansion may have on natural resources administered by provincial departments. EPA has not made me aware of statements of concern 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 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 February 13, 2024).

Finally, I considered the effects of the proposed expansion on the environment, the economy, and the community, and the appropriate use of land. In doing so, I had before me information in the application, views from the MD of Wainwright, and my own observations from site visits.

Consistent with NRCB Operational Policy 2016-7: Approvals, part 9.10.9, 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 Operational Policy 2016-7: Approvals, part 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 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 9.10.9). In my view, this presumption is not rebutted, and I note that the MD of Wainwright's response states that the application is consistent with their MDP.

10. Terms and conditions

Approval RA23016 specifies the cumulative permitted livestock capacity as:

- 400 sows farrow to finish
- 130 milking cow dairy (associated replacements and dries allowed on site)
- 1,500 beef finishers
- 5,000 poultry layers
- 9,275 broiler chickens
- 1,300 turkeys
- 1,200 ducks
- 300 geese

and permits the construction of the new feedlot and runoff control catch basin.

Approval RA23016 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 RA23016 includes conditions that generally address construction deadlines, document submission, construction inspections, and decommissioning of the existing feedlot. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the Approval RA08046 with Approval RA23016 (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. Appendix B discusses which conditions from the historical permits are or are not carried forward into the new approval.

11. Conclusion

Approval RA23016 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA23016.

Approval RA08046 is therefore superseded, and its content consolidated into this Approval RA23016, unless Approval RA23016 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the aforementioned permit will remain in effect.

March 26, 2024

(Original signed)
Francisco Echegaray, P.Ag.
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA23016

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may only approve an application for 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.

“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 9.2.7.)

Holt Colony’s CFO is located in the MD of Wainwright and is therefore subject to that municipal district’s MDP. The MD of Wainwright adopted the latest revision to this plan on June 20, 2023, under Bylaw #1694.

Section 7.3 of the MDP relates to intensive agricultural operations and CFOs.

Policy 7.3.1 states that the MD of Wainwright supports the development of new or expanding CFOs in the agricultural and rural development area, where there is limited potential for land use conflict. I interpret this as being a general guiding principle. According to the MD of Wainwright’s Land Use Bylaw 1695, Holt Colony’s CFO is in the land use district Agricultural, where intensive agriculture is a discretionary use.

Policy 7.3.2 states that CFOs must meet MDS requirements, as set out in AOPA. Holt Colony’s application meets the AOPA MDS requirements.

Policy 7.3.3 specifies four areas (a.- d.) where the MD of Wainwright considers CFO development to be inappropriate. CFOs shall not be permitted:

a. Within 1.6 km of land used for residential, commercial, recreational or institutional use or land designated for such uses;

Subsection (a) essentially creates exclusion zones surrounding areas based on specific land use or land designation. The land surrounding Holt Colony’s site is zoned as agricultural, and is used for agricultural purposes; therefore, it is not designated or used for commercial, recreational, or institutional purposes.

This policy suggests that there is a 1.6 km setback to residences, regardless of how the land is zoned. The MD of Wainwright’s response indicated that their interpretation is residential uses other than those within the colony itself, and instead refers to adjacent or neighboring residential dwellings beyond the colony.

In my view, the first portion of 7.3.3.a. modifies AOPA's MDS to residences by making it a blanket 1.6 km. The NRCB's board (see *Wyntjes*, Board Decision 2007-11 at 6 et seq.) and Approvals Policy (see the NRCB Operational Policy 2016-7: Approvals, part 8.2.5) have made it clear that approval officers should not consider MDP provisions that are based on, but modify and render more stringent, AOPA's MDS requirements. Thus, this policy cannot be considered for purposes of my MDP consistency determination. Regardless, there is one residence in the vicinity of the CFO, located 1,700 m (1.7 km) from the CFO. The application therefore meets this policy.

b. Within 100.0 m of a water body, watercourse or ravine

This policy is not a specific land use provision, but adds additional setbacks to general water bodies or water ways. AOPA already has requirements for setbacks to common bodies of water, which this application meets.

c. Within 1.6 km of an urban municipality, an intermunicipal development plan boundary, or a hamlet; or

The proposed CFO expansion meets this setback.

d. Within the Environmentally Significant Area

Holt Colony is not located within the Environmentally Significant Area, as identified on map A4 of the MDP.

Policy 7.3.4 states that the NRCB has jurisdiction over CFOs, and that all CFOs must meet AOPA's requirements, specifically MDS and land base requirements. This is not a specific land use provision, but is a statement of law and jurisdiction. Holt Colony's application meets these requirements.

Policy 7.3.5 states that in addition to MDS, CFOs are not allowed within 2.4 km (1.5 miles) of the corporate boundaries of:

- a. any urban municipality;*
 - b. multi-lot country residential areas;*
 - c. Hamlets;*
 - d. the Lakeside Residential District in the MD of Wainwright Land Use Bylaw; and*
 - e. Dillberry Provincial Park;*
- which areas shall be considered an urban fringe when calculating the regulations under AOPA.*

The application meets these setbacks.

For these reasons, I conclude that the application is consistent with the land use provisions of the MD of Wainwright's MDP that I may consider.

APPENDIX B: Explanation of conditions in Approval RA23016

Approval RA23016 includes several conditions, discussed below, and carries forward all conditions from Approval RA08046. Construction conditions from historical Approval RA08046 that have been met are identified in the appendix to Approval RA23016.

1. New conditions in Approval RA23016

a. Groundwater protection requirements

Holt Colony proposes to construct the new runoff control catch basin with a 7.25 metre thick naturally occurring protective layer. Section 9 of AOPA's Standards and Administration Regulation specifies a maximum hydraulic conductivity for this type of protective layer in order to minimize leakage.

Holt Colony has measured the hydraulic conductivity of the proposed protective layer by removing a relatively undisturbed soil sample during borehole drilling (using a Shelby tube) and testing the hydraulic conductivity of that sample in a lab.

Lab measurements of hydraulic conductivity are made in a precisely controlled setting and are typically based on a small soil sample. Therefore, the NRCB generally multiplies lab-measured hydraulic conductivity values by a factor of 10 to reflect the potential variability in actual protective layer materials and conditions that can reasonably be expected to be achieved in the field.

Example: Hydraulic conductivity = k
 Lab $k = 1 \times 10^{-9}$ cm/sec
 Expected field $k = 10 \times (1 \times 10^{-9}$ cm/sec) = 1×10^{-8} cm/sec

The regulations provide that the actual hydraulic conductivity of a 5 metre thick naturally occurring protective layer must not be more than 1×10^{-6} cm/sec.

In this case, the lab measurement was 3.13×10^{-8} cm/sec. With the required ten-fold modification, the expected field value is 3.13×10^{-7} cm/sec. This expected value is below the maximum value in the regulations. Therefore, the proposed liner meets the hydraulic conductivity requirement in the regulations and no additional condition is required.

b. Construction Deadline

Holt Colony proposes to complete construction of the proposed new feedlot and catch basin by the end of 2025. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2025 is included as a condition in Approval RA23016.

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 RA23016 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the feedlot pens 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. Holt Colony shall 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 in accordance with the permit requirements. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Approval RA23016 includes conditions stating that Holt Colony shall not place livestock or manure in the manure storage or collection portions of the new feedlot pens, nor manure impacted runoff in the catch basin, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.

d. Facility Decommissioning

As noted in part 1 above, Holt Colony proposes to decommission the existing feedlot pens. A condition has been included in Approval RA23016 requiring the existing feedlot pens to be decommissioned in accordance with Technical Guideline Agdex 096-90, "Closure of Manure Storage Facilities and Manure Collection Areas".