



Decision Summary LA24024

This document summarizes my reasons for issuing Approval LA24024 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24024. 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 16, 2024, New Elm Hutterian Brethren (New Elm Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO. On May 27, 2024, an updated Part 1 application and a Part 2 were submitted.

On June 6, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing chicken pullet numbers from 3,200 to 21,400
- Renovating the existing (former layer now pullet) barn by replacing the existing liner - 57.22 m x 13.10 m (no change to dimensions of barn)
- Constructing an attached manure load out to the pullet barn – 9.75 m x 16.15 m

a. Location

The existing CFO is located at N½ & SW 14-4-22 W4M in Cardston County, roughly 12 km south of Magrath, Alberta. The terrain is undulating, sloping toward Pothole Creek which meanders approximately 200 meters south southwest of the CFO site. Pothole Creek drains into Jensen Reservoir located 1,200 meters to the west of the CFO site.

b. Existing permits

The CFO is currently permitted under NRCB Approval LA21041, which superseded all previous permits. This approval allows the construction and operation of a 160 milking cows (plus associated dries and replacements), 900 beef finishers, 225 sows farrow to finish, 35,000 chicken layers, 800 chicken broilers, 800 ducks, and 60 geese CFO. The CFO's existing permitted facilities are listed in the appendix of Approval LA24024.

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
- 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. No other municipality is within the notification distance.

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

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- advertisement in Westwind Weekly newspaper in circulation in the community affected by the application on June 6, 2024, and
- sending 4 notification letters to people identified by Cardston County as owning or residing on land within the notification distance.

The full application was made available for viewing in the NRCB’s Lethbridge office during regular business hours.

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 Environment and Protected Areas (EPA), Alberta Transportation & Economic Corridors (TEC), and the Magrath Irrigation District.

I also sent a copy of the application to Chief Mountain Gas Co-op Ltd., and Fortis Alberta Inc. because they are right of way holders on this land.

Responses were received from Ms. Leah Olson, a development/planning technologist with TEC, and Mr. Bradley Calder, a water administration technologist with EPA.

- Ms. Olson stated that a permit from her department is not required.
- Mr. Calder stated in his response that there are five water well logs reported for section 14 but that there is no licence associated with these wells and that it is unclear where the legal source of water is coming from. Water licencing is not under the jurisdiction of the NRCB. Therefore, I will not look further into this issue. Having said that, I forwarded the response to New Elm Colony for their information and action. New Elm is reminded that it is their responsibility to ensure they have adequate water for their operation.

No other responses were received.

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 Cardston 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 of manure storage facilities and manure collection areas

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." Cardston County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Joe Thomas, a development officer with Cardston County, provided a written response on behalf of Cardston County. In his first response, Mr. Thomas did not comment if the application is or is not consistent with Cardston County's land use provisions of the municipal development plan, however he stated that it is not consistent with their bylaw (land use bylaw) because the development crosses the property line. In his second response, Mr. Thomas concluded that there are no provisions in the LUB or the MDP that apply to CFO facilities permitted under AOPA and stated that he has no concerns with this application. The application's consistency with the land use provisions of Cardston County'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. The information on this file supports the assumption that risks to groundwater and surface water are low.

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 9.17.

In this case, the risks posed by New Elm Colony's existing CFO facilities were assessed in 2014 using the ERST. According to that assessment, the facilities posed a low potential risk to surface water and groundwater.

There have been no changes related to groundwater or surface water protection, water wells, or CFO facilities since that assessment was 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.

Mr. Thomas stated that setbacks from property lines listed in Cardston County's land use bylaw (LUB) do not apply to CFO facilities permitted under AOPA.

I have considered the effects the proposed expansion 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 under section 109 of the *Water Act* in respect of the subject of this application. I also did not receive any responses from any utility right-of-way holders.

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 July 12, 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, responses from Cardston County, and my own observations from site visits.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, I presumed that the effects on the environment are acceptable because the application meets all of AOPA's technical requirements. In my view, having considered the relevant information, this presumption is not rebutted from the information I have.

Consistent with NRCB Operational Policy 2016-7: *Approvals*, part 9.10.9, if the application is consistent with the MDP/IDP then the proposed development is presumed to have an acceptable effect on the economy and community. In my view, this presumption is not rebutted from the information I have.

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). In my view, this presumption is not rebutted.

10. Terms and conditions

Approval LA24024 specifies the cumulative permitted livestock capacity as 160 milking cows (plus dries and associated replacements), 900 beef finishers, 225 sows farrow to finish, 35,000 chicken layers, 800 chicken broilers, 800 ducks, 60 geese, and 21,400 chicken pullets, and permits the renovation of the existing pullet barn by replacing the liner, and the construction of an attached manure load out to the pullet barn.

Approval LA24024 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 LA24024 includes conditions that generally address the construction deadline, 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 LA24024: Approval LA21041 (see NRCB Operational Policy 2016-7: *Approvals*, part 11.5). Permit consolidation helps the permit holder, municipality, neighbors 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. All conditions in Approval LA21041 will be carried forward into the new approval.

11. Conclusion

Approval LA24024 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24024.

New Elm Colony's Approval LA21041 is therefore superseded, and its content consolidated into this Approval LA24024, unless Approval LA24024 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval LA21041 will remain in effect.

July 29, 2024

(Original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24024

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.

“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.)

New Elm’s CFO is located in Cardston County and is therefore subject to that county’s MDP. Cardston County adopted the latest revision to this plan in December 1999, under Bylaw #448/99.

Section 4 of the MDP – titled ‘Municipal Development Planning Policies’- provides land use policies for development within the county’s boundaries. The introductory statement of section 4.1 states that agriculture is the predominant land use in the county and that it is imperative to protect agricultural endeavours. Section 4.1 then discusses planning issues unrelated to CFOs. The MDP’s only direct references to CFOs (called “intensive livestock operations”) are in terms of CFO (parcel) subdivisions and limiting development near existing CFOs rather than vice versa (section 4.6.20).

Although section 4.8 (Environmental Considerations) does not specifically refer to CFOs, it provides guidance to all developments in environmental significant areas identified in the report “Environmentally Significant Areas in the Oldman River Region: MD of Cardston”. New Elm’s proposed new manure storage room (attached to the former layer now pullet barn) as well as the barn itself are not within an environmentally sensitive or significant area.

Section 4.10 (Fringe areas) provides guidance for development within urban “fringe areas”. New Elm’s proposed new manure storage room (attached to the former layer now pullet barn) as well as the barn itself are not located in or near any fringe areas identified in the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of Cardston County’s MDP.

APPENDIX B: Explanation of conditions in Approval LA24024

Approval LA24024 includes several conditions, discussed below, and carries forward all conditions of conditions from Approval LA21041 in the appendix to Approval LA24024. The construction conditions from historical permits can be found in the appendix of Approval LA24024

Approval LA24024 includes several conditions, discussed below:

a. Construction Deadline

New Elm Colony proposes to complete construction of the proposed new liner in the former layer now pullet barn and the attached solid manure storage room by December 31, 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 LA24024.

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 LA24024 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the pullet barn and the attached manure storage room 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. New Elm Colony to provide evidence or written confirmation 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 renovated/constructed facilities. Approval LA24024 includes a condition stating that New Elm shall not place birds or manure in the manure storage or collection portions of the existing pullet barn and the attached manure load out until NRCB personnel have inspected the facilities and confirmed in writing that it meets the approval requirements.