



Decision Summary BA24010

This document summarizes my reasons for issuing Approval BA24010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA24010. 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 30, 2024, Hutterian Brethern Church of Hairy Hill (Hairy Hill Colony) submitted a Part 1 application to the NRCB to convert livestock category and expand livestock capacity at an existing multi species CFO.

The Part 2 application was submitted on August 27, 2024. On September 11, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing poultry layers from 11,400 to 20,000 and poultry pullets from 5,700 to 10,000
- Removing 300 swine farrow to finish livestock numbers
- Constructing a new layer barn with attached solid manure storage pad – 115 m x 26 m (manure pad 15 m x 8 m)

a. Location

The existing CFO is located at W½ 9-55-14 W4M in the County of Two Hills, roughly 4 km SW of the hamlet of Hairy Hill, AB. The terrain is relatively flat sloping to the East with a seasonal drainage located approximately 890 m to the North.

b. Existing permits

To date, the CFO has been permitted under NRCB Approval BA05007A. That permit allows Hairy Hill Colony to construct and operate a multi-species CFO. The CFO's existing permitted facilities are listed in the appendix to the Approval BA24010.

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 “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 County of Two Hills, which is the municipality where the CFO is located.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in the News Advertiser newspaper in circulation in the community affected by the application on September 11, 2024, and
- sending 13 notification letters to people identified by the County of Two Hills as owning or residing on land within the notification distance.

The full application was made available for viewing 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.

A referral letter and a copy of the complete application was emailed to Alberta Environment and Protected Areas (EPA).

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 CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of the County of Two Hills 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 conversion and 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

With the terms and conditions summarized in part 10 and in Appendix B, 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.” The County of Two Hills is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Mr. Gary Buchanan, the director of planning and development with the County of Two Hills, provided a written response on behalf of the County. Mr. Buchanan stated that the application is consistent with the County’s land use provisions of the municipal development plan. The application’s consistency with the land use provisions of the County of Two Hills 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

As part of my review of this application, I assessed the risk to the environment posed by the CFO’s existing manure storage facilities and manure collection areas. I used the NRCB’s environmental risk screening tool (ERST) to assist in my assessment of risk to surface water and groundwater (see NRCB Operational Policy 2016-7: Approvals, part 9.17). The tool provides for a numeric scoring of risks, which can fall within 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.)

For the sake of efficiency, I first assessed the CFO’s existing earthen manure storage, feedlot, and catch basin using the ERST. These appear to be the CFO’s highest risk facilities, based on the type of manure and setbacks to water wells. The assessment found that these facilities pose a low potential risk to groundwater and surface water. Because these are the CFO’s highest risk facilities, I presume that the CFO’s other existing facilities also pose a low potential risk to both groundwater and surface water. From a review of other information gathered in the course of this application, I am satisfied that the screening provided by the ERST is adequate and that the presumption is not rebutted. A further assessment of the risks posed by these other facilities, using the ERST, is not necessary.

New CFO facilities which clearly meet or exceed AOPA requirements are automatically assumed to pose a low potential 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 groundwater, surface water monitoring or an exemption monitoring for a facility. In this case a determination was made, and monitoring is not

required as the facilities meet AOPA groundwater and surface water protection requirements, and there is no shallow aquifer nearby and no porous subsurface materials.

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.

Gary Buchanan also listed the setbacks required by the County's land use bylaw (LUB) and noted that the application meets these setbacks.

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

I am not aware of any 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.

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 September 30, 2024).

Finally, I considered the effects of the proposed CFO conversion and expansion on the environment, the economy, and the community, and the appropriate use of land.

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, 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 conversion and 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 BA24010 specifies the cumulative permitted livestock capacity as:

- Beef feeders – 500
- Beef finishers – 500
- Chicken layers – 20,000

- Chicken pullets – 10,000
- Chicken broilers – 4,000
- Turkey – 2,000
- Ducks – 1,200
- Geese – 200
- Milk cows - 5

and permits the construction of the new chicken layer barn (with attached manure pad).

Approval BA24010 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 BA24010 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 permits with Approval BA24010: Approval BA05007A (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 BA24010 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA24010.

Hairy Hill Colony's NRCB-issued Approval BA05007A is therefore superseded, and their content consolidated into this Approval BA24010, unless Approval BA24010 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval BA05007A will remain in effect.

October 30, 2024

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval BA24010

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.)

Hairy Hill Colony’s CFO is located in the County of Two Hills and is therefore subject to that county’s MDP. The County of Two Hills adopted the latest revision to this plan on January 16, 2019, under Bylaw #3-2018.

Policy 5.3.1 states that “[m]ost” of the land within the county is designated as an “Agricultural Use Area” as shown on Map 2. Hairy Hill Colony’s CFO is within the Agricultural Land Use area designated on Map 2 of the MDP, and its proposed expansion is fully consistent with the “agricultural and agriculture-related” land uses for that area.

Policy 5.3.2 states that this area is, “for the most part, conserved for agricultural and agriculture related uses.”

Policy 5.3.3 states “The primary use of the Agricultural Use Area is for extensive and intensive agricultural uses and confined feeding operations...”

Policies 5.3.1-5.3.3 are likely considered general guiding principles and sets the context regarding the planning and development of agriculture lands.

Policy 5.3.7 specifically deals with CFOs and manure storage facilities (MSFs) as defined by AOPA. Under this policy, all such facilities “must fully satisfy all the requirements and regulations adopted under ... [AOPA], specifically the minimum distance separation requirements and land base requirements.” The CFO meets the requirements as set out in AOPA and therefore meets this policy requirement.

Policy 5.3.8 states that the county will provide “input” to the NRCB on applications for new or expanded CFOs, based on the “technical and locational merits” of each application. This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see Operational Policy 2016-7, Approvals, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 20(1) of AOPA. As noted in this decision summary, the application meets the “technical and locational” requirements of AOPA and the County’s response stated that the application is consistent with the county’s MDP.

For these reasons, the application is consistent with the land use provisions of the county's MDP.

APPENDIX B: Explanation of conditions in Approval BA24010

Approval BA24010 includes several conditions, discussed below, and carries forward a number of conditions from Approval BA05007A (see sections 2 of this appendix). Construction conditions from historical permits that have been met are identified in the appendix to Approval BA24010.

1. New conditions in Approval BA24010

a. Construction Deadline

Hairy Hill Colony proposes to complete construction of the proposed new layer barn with attached manure pad by the end of 2026. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2026, is included as a condition in Approval BA24010.

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 BA24010 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portion of the layer barn with attached manure 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.”
- b. Hairy Hill Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn with attached manure pad.

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 BA24010 includes a condition stating that Hairy Hill Colony shall not place livestock or manure in the manure storage or collection portions of the new layer barn with attached manure pad until NRCB personnel have inspected the facility and confirmed in writing that it meets the approval requirements.

2. Operating conditions carried forward from BA05007A

The following conditions from Approval BA05007A will be carried forward and revised to reflect current NRCB terminology.

01a. Water Well Testing Reporting

- a. Drinking water quality tests for chlorides and nitrates must be conducted annually on the three water wells within 100 metres of the confined feeding operation with the results submitted annually to the NRCB by November 30, beginning in 2007, unless otherwise directed in writing by the NRCB.

This condition will be updated to reflect current NRCB terminology.