

Decision Summary RA24029

This document summarizes my reasons for issuing Approval RA24029 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA24029. 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 June 11, 2024, Neudorf Hutterian Brethren (Neudorf Colony) submitted a Part 1 application to the NRCB to expand an existing multi-species CFO.

The Part 2 application was also submitted on June 11, 2024. On June 18, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing the permitted number of chicken layers from 22,600 to 40,000
- Increasing the permitted number of chicken pullets from 11,000 to 22,000
- Constructing a new layer barn (128.4 m x 26.4 m) with attached service room
- Converting the existing layer barn into a pullet barn (no construction proposed)
- Converting the existing pullet barn into non-manure storage

The application also notified the NRCB of the proposed construction of a service room (26.2 m x 1.8 m) attached to the proposed new layer barn. This facility is an “ancillary structure,” under section 1(1)(a.1) of the *Agricultural Operations, Part 2 Matters Regulation*, because it will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure is part of the CFO but does not need to be permitted under the Act.

a. Location

The existing CFO is located at E ½ 7-29-27 W4M in Mountain View County, roughly 12 km east and 7 km south of Carstairs, Alberta. The terrain on the site is relatively flat. The Rosebud River flows from the northwest quarter to the southeast quarter of section 7-29-27 W4M and is approximately 114 metres from the nearest manure storage facility.

To date, the CFO has been permitted under NRCB Approval RA13033A. That permit allowed for the construction and operation of a multi-species CFO consisting of 85 milking cows (plus associated dries and replacements), 400 sows farrow to finish, 2,000 chicken broilers, 22,600 chicken layers, 11,000 chicken pullets, 300 turkeys and 900 ducks. The CFO’s existing permitted facilities are listed in the appendix to the Approval RA24029.

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 Mountain View County, which is the municipality where the CFO is located, and to Rocky View County which has a boundary within the affected party radius.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in The Albertan newspaper in circulation in the community affected by the application on June 18, 2024 and was also later advertised in the Rocky View Weekly in the July 16, 2024, issue of that newspaper
- sending 26 notification letters to people identified by Mountain View County and Rocky View County as owning or residing on land within the notification distance.

The full application was made available for viewing at the Red Deer NRCB 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.

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

I also sent a copy of the application to Rocky View Gas Co-op Ltd., TAQA North Ltd., Alta Link Management Ltd., and Fortis Alberta Inc. as they are right of way holders.

No 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.

There is no ALSA regional plan for the area where the existing CFO is located.

5. Municipal Development Plan (MDP) consistency

I have determined that the proposed expansion is consistent with the land use provisions of Mountain View 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

With the terms and conditions summarized in part 10 and in Appendix B, the application meets all relevant AOPA requirements.

7. Responses from municipalities 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." Mountain View County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Ms. Peggy Grochmal, a permitting and development officer with Mountain View County provided a written response on behalf of Mountain View County. Ms. Grochmal stated that the application is consistent with Mountain View County's land use provisions of the municipal development plan. The application's consistency with the land use provisions of Mountain View County's municipal development plan is addressed in Appendix A, attached.

Rocky View County is also a directly affected party because the municipality's border is within the notification radius.

No response was received from Rocky View County.

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.

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 groundwater monitoring for the facility. A determination was made that groundwater monitoring is not required due to the new layer barn being an indoor facility with solid manure.

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 Neudorf Colony's existing CFO facilities were assessed in 2016 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.

Ms. Grochmal also listed the setbacks required by Mountain View County's land use bylaw (LUB) and noted that the application meets these setbacks.

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 concern 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. Furthermore, the application meets AOPA's 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 August 27, 2024).

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 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 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 RA24029 specifies the cumulative permitted livestock capacity as:

- 85 dairy cows (plus associated dries and replacements),
- 400 sows farrow to finish,
- 2,000 chicken broilers,
- 40,000 chicken layers,
- 22,000 chicken pullets,
- 300 turkeys, and
- 900 ducks

and permits the construction of the layer barn, the conversion of the existing layer barn to a pullet barn, and conversion of the existing pullet barn into non-manure storage.

Approval RA24029 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 RA24029 includes conditions that generally address a construction deadline, document submission, construction inspection, and a prohibition from using the former pullet barn to house livestock and/or store manure. 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 RA24029: Approval RA13033A (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 RA24029 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA24029.

Approval RA13033A is therefore superseded, and its content consolidated into this Approval RA24029, unless Approval RA24029 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval RA13033A will remain in effect.

September 6, 2024

(Original signed)

Lynn Stone
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval RA24029

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.)

Neudorf Colony’s CFO is located in Mountain View County and is therefore subject to that county’s MDP. Mountain View County adopted the latest revision to this plan on September 14, 2022, under Bylaw No. 20/20.

As relevant here, section 2.0 of the MDP provides a “growth management strategy” that is reflected in the land use map in Figure 3 of the MDP. Because the land use designations in Figure 3 are not meant to be definitive, the MDP’s “growth management strategy” based on these designations is not considered to be a “land use provision”, rather it helps to identify where the location of CFO’s would be considered to be more suited within the county.

Neudorf Colony’s CFO is within the “Agricultural Preservation Area” marked on Figure 3. Section 2 of the MDP explains that the “majority” of this area is subject to the “applicable Land Use Policies outlined in section 3.0 of the MDP...”.

3.3.1 states that “all lands in the County are deemed to be agricultural, unless otherwise designated for other uses”. Neudorf Colony’s land is designated as agricultural.

As relevant here, sub-section 3.3.15 precludes new CFOs within 1.6 km (1 mile) of any identified growth centre or of an IDP with adjacent urban municipalities. The CFO is existing and therefore this provision does not apply. Nevertheless, Neudorf Colony’s CFO is not within this 1.6 km setback for either the growth centre or an IDP.

Sub-section 3.3.17 states that applications for new or expanding CFOs “shall meet all Provincial standards.” This sub-section likely isn’t a “land use provision” and therefore is not relevant to my MDP consistency determination. Regardless, Neudorf Colony’s application meets AOPA requirements.

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

APPENDIX B: Explanation of conditions in Approval RA24029

Approval RA24029 includes several conditions, discussed below, and carries forward all conditions from Approval RA13033A. Construction conditions from historical RA13033 and RA16022 that have been met are identified in the appendix to Approval RA24029.

1. New conditions in Approval RA24029

a. Construction Deadline

Neudorf Colony proposes to complete construction of the proposed new chicken layer barn by December 1, 2026. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2026, is included as a condition in Approval RA24029.

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 RA24029 includes conditions requiring:

- a. the concrete used to construct the liner of the manure collection and storage portions of the layer barn 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. Neudorf Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn.

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 birds or manure are placed in the newly constructed facilities. Approval RA24029 includes a condition stating that Neudorf Colony shall not place birds or manure in the manure storage or collection portions of the new layer barn until NRCB personnel have inspected the layer barn and confirmed in writing that it meets the approval requirements.

c. Prohibition of using former pullet barn to house livestock and/or store manure

Neudorf Colony has proposed to convert the existing pullet barn to a non-manure storage facility. Therefore, a condition is included in this approval that prohibits the former pullet barn from being used to house livestock and/or store manure.