



Decision Summary LA24003

This document summarizes my reasons for issuing Approval LA24003 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA24003. 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 January 16th, 2024, New Dale Hutterian Brethren (New Dale Colony) submitted a Part 1 application to the NRCB to expand an existing multi-species CFO.

The Part 2 application was submitted on February 9, 2024. On February 21, 2024, I deemed the application complete.

The proposed expansion involves:

- Increasing dairy cow numbers from 100 to 150 (plus associated dries and replacements)
- Constructing a new dairy barn 111.5 m x 39.0 m
- Constructing a new calf barn (attached to the dairy barn) 21.0 m x 37.7 m
- Constructing an earthen liquid manure storage (EMS) 85 m x 50 m x 4 m deep
- Decommissioning existing dairy barn

The proposed dairy barn will replace the existing dairy barn which New Dale Colony proposes to decommission (see Appendix B for more information).

a. Location

The existing CFO is located at E ½ 06-20-21 W4M and W ½ 05-20-21 W4M in Vulcan County, roughly 4 km northeast of the Hamlet of Queenstown, Alberta, and approximately 1.6 km east of Siksika Indian Reserve #146, Alberta. The terrain where the CFO is located is relatively flat, with the closest surface water body being an irrigation ditch approximately 150 m north of the proposed development. An irrigation standpipe is within the proposed dairy barn's physical footprint (see page 11 of Technical Document LA24003). See Appendix B of this decision summary regarding the decommissioning of the irrigation standpipe.

b. Existing permits

A formal grandfathering investigation is not required in this expansion application (see Grandfathering "Deemed Permit" Policy 2023-1 at part 3). The NRCB recognizes that New Dale Colony holds a deemed permit. Under section 18.1(1)(b) of AOPA, the owner or operator of a CFO is deemed to have been issued an AOPA permit if the CFO existed on January 1, 2002, and a municipal development permit was in effect on that date.

The deemed permit under AOPA, consisting of Vulcan County's municipal development (MD) permit #20-069 (November 25, 2000), and the livestock as well as the livestock facilities existing at the CFO on January 1, 2002.

There is no unauthorized construction as the listed facilities (page 2 of Technical Document LA24003) are all shown to exist on Valtus aerial photographs (from 1999- 2002) and within the application aerial imagery submitted for MD permit #20-069. It is clear from historical documentation and aerial photographs which facilities are a part of the deemed permit to house the livestock below:

- 10,000 poultry (chicken) layers
- 100 dairy cattle (cows)
- 200 feedlot cattle (beef finishers)
- 300 farrow to finish hogs (swine)
- 500 turkey toms
- 500 geese
- 1,500 ducks

These livestock numbers constitute New Dale Colony as having a CFO with livestock numbers above the AOPA permit threshold numbers on January 1, 2002. The deemed facilities are listed in the appendix to the Approval LA24003.

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 Vulcan County, which is the municipality where the CFO is located. Also, a copy of the application was sent to Siksika Nation because the Siksika Indian Reserve #146 is located within the specified distance.

The NRCB gave notice of the application by:

- posting it on the NRCB website,
- public advertisement in Vulcan Advocate online newspaper in circulation in the community affected by the application on February 21, 2024, and
- sending 15 notification letters to people identified by Vulcan County as owning or residing on land within the notification distance.

The full application was made available for viewing during regular business hours for public viewing. Siksika Nation did not provide the NRCB with names and contact information for occupants on Siksika Indian Reserve #146 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 Environment and Protected Areas (EPA), Alberta Agriculture and Irrigation (AGI), Alberta Transportation & Economic Corridors (TEC), and the Bow River Irrigation District (BRID)

I received responses from AGI, EPA, and TEC prior to the response deadline.

An AGI admin sent a response assigning an AGI inspector Brent Kriwokon to the file. A response was not received from Brent Kriwokon.

Jeff Gutsell, a hydrogeologist with EPA, provided a response stating that there were no groundwater diversion authorizations, only one surface water diversion authorization for irrigation from the Bow, however, the licence has been cancelled. EPA's response also indicated that none of the wells on site appear to be licensed, and it is unclear where the legal source of water is obtained from. EPA acknowledged the applicant submitted a Water Use Agreement with the Bow River Irrigation District (page 6-8 of Technical Document LA24003), however also indicated that the Colony has the responsibility to assess their water availability, and if it will be adequate for their needs.

Leah Olsen, a development and planning technologist provided a response on behalf of TEC. It was stated that TEC did not require a permit for the proposed development.

I also sent a copy of the application to Fortis Alberta, Sunshine Gas Co-op, and Saturn Oil as these companies are listed as utility right-of-way (ROW) holders. I did not receive a response from any utility ROW holders.

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 construction is consistent with the land use provisions of Vulcan 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 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." Vulcan County is an affected party (and directly affected) because the proposed expansion is located within its boundaries.

Alena Matlock, a development officer with Vulcan County, provided a written response on behalf of Vulcan County. In their response, Vulcan County stated that the application is consistent with County's land use provisions of the municipal development plan because the application falls outside the CFO exclusion zone. The application's consistency with the land use provisions of Vulcan County's municipal development plan is addressed in Appendix A, attached.

The NRCB wrote to the Siksika Nation, notifying them of the application, providing guidance on how to apply for directly affected party status, and seeking information on adverse effects on Aboriginal or treaty rights if the CFO expands. I did not receive a response.

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 pen area 3, existing dairy barn, and shelter (E) pen area using the ERST. These appear to be the CFO's highest risk facilities because these facilities are just outside 100 m of the only active water well on site. 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.

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.

Alena Matlock also stated on behalf of Vulcan County that the required municipal setbacks distances were not illustrated in the proposal submitted by New Dale Colony, however it appears that they have been met.

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* / section 109 of the *Water Act* in respect of the subject of this application.

As a part of my consideration, I accessed the Environmental Appeals Board to investigate if there are any active appeals for this location (<http://www.eab.gov.ab.ca/status.htm>), accessed March 6, 2024. There are no active appeals observed associated with the E ½ 6-20-21 W4M and W½ 5-20-21 W4M.

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 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 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 LA24003 specifies the cumulative permitted livestock capacity as:

- 150 dairy cows (plus associated dries and replacements)
- 300 swine farrow to finish
- 10,000 chicken layers
- 500 tom turkeys
- 500 geese
- 1,500 ducks
- 200 beef finishers

and permits the construction of the new dairy barn with an attached calf barn and earthen liquid manure storage (EMS).

Approval LA24003 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 LA24003 includes conditions that generally address construction deadline, document submission and construction inspection, and decommissioning. For an explanation of the reasons for these conditions, see Appendix B.

For clarity, and pursuant to NRCB policy, I consolidated the deemed permit into Approval LA24003. (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 LA24003 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA24003.

New Dale Colony's deemed permit is therefore superseded, and its content consolidated into this Approval LA24003, unless Approval LA24003 is held invalid following a review and decision by the NRCB's board members or by a court, in which case the deemed permit will remain in effect.

April 4, 2024

(Original signed)
Cailyn Wilson
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA24003

APPENDIX A: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may grant an approval only if the approval officer finds 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.

The NRCB interprets the term “land use provisions” as covering MDP policies that provide generic directions about the acceptability of various land uses in specific areas and that do not call for discretionary judgements relating to the acceptability of a given confined feeding operation (CFO) development (See NRCB Operational Policy 2016-7: Approvals, part 9.2.7.). Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, 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.”).

New Dale Colony’s CFO is in Vulcan County and is therefore subject to that county’s MDP. Vulcan County adopted the latest revision to this plan on April 4, 2012, under Bylaw #2012-003.

Vulcan County Municipal Development Plan (Bylaw #2012-003)

Part 4 of Vulcan County’s MDP deals specifically with CFOs. That part starts by stating (p. 14) that CFO development within the county:

[c]ontinues to influence the local economy and landscape. The preservation of the agricultural lifestyle is promoted and maintained through these operations. The potential issues caused by CFOs may be mitigated through long-range planning so those nearby settlements can still enjoy the rural lifestyle of the County.

Sections 4.1 to 4.3 of the MDP provide specific policies for CFOs.

Section 4.1 reads:

“New confined feeding operations (CFOs) are not permitted to be established and existing confined feeding operations are not permitted to expand within the exclusion areas as shown on the map in Appendix B (re: Confined Feeding Operation Exclusion Area). However, although new CFOs and expansions to existing CFOs are prohibited in the exclusion areas (as per the map in Appendix B), improvements with respect to the maintenance and/or environmental protection of an existing CFO are permitted.”

Section 4.1 precludes new and expanding CFOs in the exclusion zones shown in Appendix B of the MDP. New Dale Colony’s existing CFO is not located within the exclusion zone shown in this MDP appendix. Therefore, this section does not apply.

Sub-sections 4.2(a), (c) and (d) of the MDP also provide several setbacks. Based on the site plan, the proposed CFO facility would meet these setbacks.

Sub-section 4.2(b) states that applications for CFOs “adjacent” to a highway “should be referred to Alberta Transportation for a roadside development permit.” This is likely not a land use provision (and, therefore, is not relevant to my MDP consistency determination), because of its procedural focus. At any rate, as noted in part 3 of the decision summary above, the NRCB notified Alberta Transportation of New Dale Colony’s application and they confirmed that a roadside development permit is not required.

Sub-sections 4.3(a) and (b) of the MDP list two factors that the NRCB “should consider” in its review of approval applications. These factors are:

- (a) the cumulative effects of a new approval on any area near other existing confined feeding operations; [and]*
- (b) impacts on environmentally sensitive areas shown in the report, “Vulcan County: Environmentally Sensitive Areas in the Oldman River Region”;*

Sub-section (a) is likely not a “land use provision,” because it calls for project-specific, discretionary judgements about the types of cumulative effects that should be considered and the acceptable maximum levels of each of those effects.

Sub-section (b) is also likely not a “land use provision,” as it calls for project-specific, discretionary judgements about the acceptable levels of impacts on environmentally sensitive areas. Additionally, the existing CFO is not within an environmentally sensitive area as identified in the report (County of Vulcan *Environmentally Significant Areas in the Oldman River Region*, 1988).

Sub-section 4.3(c) calls for “giving notice to adjacent landowners” of AOPA permit applications. This policy is likely not a “land use provision” because of its procedural focus. At any rate, as explained above, the NRCB sent fifteen notification letters, advising of the application, to the persons whose land is within 1.5 miles (2.4 km) of the CFO site, and published a general public notice in the local online newspaper, in addition to notifying Vulcan County, the Siksika Nation, and several referral agencies. The NRCB also published the application on its own website.

Lastly, sub-section 4.3(d) of the county’s MDP calls for the NRCB to consider “proof of the availability of water, specifically, confirmation of access and appropriate provision of the sufficient quantity and suitable quality of the required water supply.” This sub-section is not a “land use provision,” or, the sub-section is a “term or condition” under section 20(1.1) of AOPA. Therefore, this sub-section is not relevant to my MDP consistency determination (beyond the MDP consistency context, under NRCB policy, approval officers will consider water supply issues only to the extent of requiring applicants to sign one of the water licensing declarations on page 5 of Technical Document LA24003. See Operational Policy 2016-7: *Approvals*, part 8.15).

With consideration of the discussion above, I have concluded that the application is consistent with the land use provisions of Vulcan County’s MDP.

APPENDIX B: Explanation of conditions in Approval LA24003

Approval LA24003 includes several conditions, discussed below:

a. Earthen manure storage (EMS)

Under section 10 of the Standards and Administration Regulation in AOPA, an operator must demonstrate that they have sufficient manure storage capacity to accommodate nine months of liquid manure production at the CFO. New Dale Colony has been operating under a deemed permit, including the use of a 1.2 million imperial gallon (5,516 m³), above ground slurry tank for their 300 swine farrow to finish and 100 dairy (8,100 m³ AOPA nine month storage requirement) cow portion of their operation. Since this CFO was operating pre AOPA, the applicant did not need to prove the nine months of liquid manure production for these facilities. However, with the proposed increase of 50 dairy cows (plus associated dries and replacements), New Dale Colony had to propose to construct additional liquid manure storage to meet AOPA's manure storage requirements.

Therefore, it is a condition in Approval LA24003 that prior to New Dale Colony populating the new dairy barn with attached calf barn, New Dale Colony must have the proposed EMS constructed to meet AOPA's nine-month liquid manure storage requirement.

b. Decommissioning

As noted in part 1 of this decision summary, and indicated in Technical Document LA24003, New Dale Colony proposed to decommission their existing dairy barn. Additionally, an irrigation standpipe exists within the proposed footprint of the new dairy barn. Upon discussion with the applicant, it was noted that this irrigation standpipe will be decommissioned during the construction completion process.

This application was sent to the Bow River Irrigation District (BRID); however, no comments were received regarding the decommissioning of the irrigation standpipe by the response deadline. I contacted BRID when no response was received. Dana Fleming, landman with BRID, informed me that they do not have any BRID infrastructure on the existing CFO, and there were no recommendations for decommissioning of the privately owned standpipe.

I acknowledge that there is no available guideline or policy from the NRCB specifically addressing the decommissioning of irrigation standpipes, however I also acknowledge the importance of properly decommissioning water infrastructure within a manure collection area to prevent manure-related contamination. Therefore, a condition will be included in this permit stating the irrigation standpipe and water pipe must be decommissioned so that no manure impacted water can enter it.

Additionally, a condition will be included in this permit to address the decommissioning of the existing dairy barn. The existing dairy barn shall be decommissioned in accordance with Agdex 096-90: *Closure of Manure Storage Facilities and Manure Collection* no later than one-year post-construction new dairy barn and attached calf barn.

c. Construction deadline

New Dale Colony proposes to complete construction of the proposed new dairy barn with an attached calf barn and construction of the new EMS by October 2027. This timeframe is considered to be reasonable for the proposed scope of work. The deadline of October 31, 2027, is included as a condition in Approval LA24003.

d. 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, this approval includes a condition requiring:

1. the concrete used to construct the liner of the manure collection and storage portion of the new dairy barn with attached calf barn to meet the specification for category A (complex liquid manure storage - deeper than 8 feet), category B (liquid manure - shallow pits), and category C (solid manure – wet), in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
2. New Dale Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the new dairy barn with attached calf barn.
3. New Dale Colony to provide a completion report, stamped by a professional engineer, specific to any concrete pit floor or slabs within the dairy barn with attached calf barn constructed deeper than 8 feet (2.4 m) (large scale, under barn. The completion report is to be provided to the NRCB prior to the construction completion deadline outlining how the liner meets AOPA technical requirements and specifications, including, at minimum, the following:
 - i. The dimensions of the pits, including depth, length, and width
 - ii. The specification of the concrete used (type, strength, crack control, leak control),
 - iii. The thickness of the concrete walls and slabs,
 - iv. The size and spacing of the reinforcements, and
 - v. The type of water stop used.

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, and to reduce risk to the operator, these inspections must occur before livestock or manure are placed in the newly constructed facilities. The approval includes a condition stating that New Dale Colony shall not place livestock or manure in the manure storage or collection portions of the new dairy barn with attached calf barn or manure in the EMS, until NRCB personnel have inspected the new dairy barn with attached calf barn and EMS, and confirmed in writing that they meet the approval requirements.