

Decision Summary LA20009

This document summarizes my reasons for issuing Authorization LA20009 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20009. 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.

1. Background

On February 14, 2020, Hutterian Brethren Church of Elkwater (Elkwater) submitted a Part 1 application to the NRCB to construct feedlot pens (350 m x 350 m) and a catch basin (150 m x 40 m x 4 m deep) at an existing multi-species CFO. The Part 2 application was submitted on March 6, 2020. On March 9, 2020, I deemed the application complete.

The purpose of the proposed construction is to increase the pen space available per permitted feedlot animal.

There is no proposed increase in livestock.

Under AOPA, this type of application requires an authorization. (This is one of several types of “permits” issued under AOPA. For an explanation of the different types and when each one applies, see www.nrcb.ca.)

a. Location

The existing CFO is located at N½ 35-9-2 W4M and SW 1-10-2 W4M in Cypress County, roughly 15 km northeast of the hamlet of Elkwater. The terrain is generally undulating with the land sloping towards the headwaters of Mackay Creek, which flows northward from the site. Mackay Creek is located 45 m from the existing dairy pens but is more than 800 m from the proposed feedlot pens and catch basin which slope towards an unnamed drainage.

b. Existing permitted facilities.

The CFO is currently permitted under NRCB issued Approval LA19035 which was issued on May 17, 2019. This permit allowed the construction and operation of a mixed livestock CFO with the capacity for:

- 300 chicken layers
- 150 geese
- 600 ducks
- 1,500 chicken pullets
- 50 swine feeders
- 300 dairy cows (plus associated dries and replacements)
- 4,000 beef finishers

All existing facilities are listed in the appendix of Approval LA19034.

2. Notices to affected parties

Under section 21 of AOPA, notice of an authorization application must be provided to municipalities that are “affected” by the application. Section 5 of AOPA’s Part 2 Matters Regulation lists the categories of municipalities that are affected parties. These categories include the municipality where the existing CFO is located. Under section 21(2) of the act, all affected municipalities are automatically also “directly affected” parties. The NRCB interprets section 21(3) as allowing affected municipalities to provide written submissions regarding whether the application meets the requirements of the regulations under the act. (See Operational Policy 2016-7: *Approvals*, part 7.11.2.)

Cypress County is both an affected and directly affected party because the proposed facilities are located within its boundaries.

On March 9, 2020, the NRCB emailed referral letters and a copy of the application to Cypress County; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); and Alberta Transportation.

3. Responses from the municipality and referral agencies

I received responses from Cypress County, AEP, and Alberta Transportation. No response was received from AHS.

Ms. Kaylene Simpson, a planning supervisor, provided a written response on behalf of Cypress County. As noted in section 2, Cypress County is a directly affected party.

Ms. Simpson stated that the application is located outside of the exclusion zone as outlined in the county’s municipal development plan (MDP). The application’s consistency with Cypress County’s MDP is addressed in Appendix A, attached.

Ms. Simpson also listed the setbacks required by Cypress County’s land use bylaw (LUB). The application meets these setbacks.

Mr. Jeff Gutsell, a hydrogeologist, submitted a written response on behalf of AEP. Mr. Gutsell raised no concerns with the application.

Ms. Leah Olsen, a development/ planning technologist, submitted a written response on behalf of Alberta Transportation. Ms. Olsen raised no concerns with the application.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new authorization application for an existing CFO, NRCB approval officers normally assess the CFO’s existing buildings, structures, and other facilities, using the NRCB’s environmental risk screening tool to determine the level of risk they pose to surface water and groundwater. This tool 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 done with a previous version of the risk screening tool and requires updating. See NRCB Operational Policy 2016-7: Approvals, part 8.13.

In this case, the risks posed by Elkwater's existing CFO facilities were assessed in 2018 and 2019. According to those assessments, all facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since those assessments were done. As a result, a new assessment of the risks posed by the CFO's existing facilities is not required.

I also assessed the proposed new feedlot pens and catch basin, using the NRCB's risk screening tool, and determined that they pose a low risk to groundwater and surface water.

5. Other factors considered

The application meets all relevant AOPA requirements, with the terms and conditions summarized in part 6.¹

In addition, the proposed construction is consistent with the land use provisions of Cypress County's municipal development plan and with Cypress County's land use bylaw. (See Appendix A for a more detailed discussion of the county's planning requirements.)

With respect to the act's technical requirements, the proposed construction:

- 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

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.

6. Terms and conditions

Authorization LA20009 permits construction of the additional feedlot pens and catch basin.

Authorization LA20009 also contains terms that the NRCB generally includes in all AOPA authorizations, including terms stating that the applicant must follow AOPA requirements and must adhere to the project descriptions in their application and accompanying materials.

1. For a summary of these requirements, please see the [2008 AOPA Reference Guide](https://www.nrcb.ca/about/documents), available on the NRCB website at www.nrcb.ca/about/documents.

In addition to the terms described above, Authorization LA20009 includes conditions that:

- Set a deadline of November 30, 2023 for the approved construction to be completed
- Prohibit Elkwater from placing manure or livestock in the feedlot pens or from allowing runoff to enter the catch basin until the facilities have been inspected by the NRCB following their construction

For an explanation of the reasons for these conditions, see Appendix B.

7. Conclusion

Authorization LA20009 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20009.

Authorization LA20009 should be read in conjunction with previously issued Approval LA19034 which remains in effect.

April 17, 2020

(original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20009

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may approve an application for an authorization only if the approval officer finds that the application is consistent with the “land use provisions” of the applicable municipal development plan (MDP).

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 8.2.).

Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 22(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”).

Elkwater’s CFO is located in Cypress County and is therefore subject to that county’s MDP. Cypress County adopted the latest revision to this plan in August 2018, under Bylaw #2015/26.

Section 3.2 of the MDP addresses “intensive agriculture.” As defined in section 1.4(b) of the MDP that term appears to include CFOs (e.g., “concentrated rearing of livestock and poultry”).

As relevant here, section 3.2(b) states that “[p]ursuant to the Agricultural Operations Practices Act, the County may designate areas where confined feeding operations are to be encouraged or excluded.” Section 3.2(c) then states that new CFOs “will be excluded from the areas shown on Figure No. 2.”

The CFO site is not within the CFO exclusion area shown on Figure No. 2, so the proposed CFO construction is consistent with sections 3.2(b) and (c) of the county’s MDP.

Section 3.2 (d) specifies that “confined feeding operations are to be located where access to the site is to be gained from gravel, new high-grade roads or unless the confined feeding operator is willing to develop or upgrade the road to a gravel, new high-grade road at their own expense”.

These terms are not defined and such roadways are not expressly identified in the MDP. This policy is not likely a land use provision as it requires discretionary judgement on what constitutes a gravel, or new high-grade road and therefore is not relevant to my MDP consistency determination. At any rate, the county indicated the county road adjacent to the CFO is a low-grade gravel road but HWY 515 falls under the jurisdiction of Alberta Transportation. As discussed in section 3 above, Alberta Transportation has no concerns with the application.

Section 3.2(e) addresses CFO’s located within the Tri-Area Intermunicipal Development Plan Area (IDP) as identified in Figure No. 2. The proposed construction is located outside of this area so the application is consistent with this provision.

No other MDP policies are relevant to Elkwater’s application. Therefore, the proposed construction is consistent with the MDP’s land use provisions. The county’s response confirms this conclusion.

Cypress County also strongly references their land use bylaw (LUB) in their MDP. The county stated the subject property and adjacent land parcels are zoned as A-2 General Agriculture. The land use bylaw does not address CFO's in this zoning category but does list road setbacks which would apply to all developments. The application meets these setbacks, I therefore conclude that the application is consistent with the LUB.

APPENDIX B: Explanation of conditions in Authorization LA20009

Authorization LA20009 includes several conditions discussed below.

New conditions in Authorization LA20009

a. Construction Deadline

Elkwater proposes to complete construction of the proposed new feedlot pens and catch basin by November 30, 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2023 is included as a condition in Authorization LA20009.

b. Post-construction inspection and review

The NRCB routinely inspects newly constructed facilities to assess whether the facilities were constructed according to their required design specifications. To be effective, these inspections must occur before livestock or manure are placed in the newly constructed facilities. Authorization LA20009 includes a condition stating that Elkwater shall not place livestock or manure in the feedlot pens, or allow runoff to enter the catch basin, until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.