

Decision Summary LA20008

This document summarizes my reasons for issuing Authorization LA20008 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20008. 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 13, 2020, Hutterian Brethren Church of Wheatland (Wheatland Colony) submitted a Part 1 application to the NRCB to construct a dairy barn extension (using a dry pack system) – 15.2 m x 27.4 m (50 ft. x 90 ft.) at an existing multi species CFO. The Part 2 application was submitted on April 28, 2020. On May 6, 2020, I deemed the application complete.

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 NW 20-25-23 W4M in Wheatland County, roughly 15 km northeast of Strathmore, Alberta. The terrain is undulating with an intermittent drainage courses near the site, and slopes generally to the north and west. An irrigation canal passes around the CFO site on the west, south and east sides.

b. Existing permitted facilities

The CFO existed on January 1, 2002 with an unnumbered county permit issued in 1994. This permit is a deemed (i.e. grandfathered) permit under section 18.1(1)(b) of AOPA. Authorization LA06008, issued on May 24, 2006, deemed the capacity of the existing structures to be:

- 300 swine farrow to finish
- 180 milking cows (plus associated dries and replacements)
- 300 beef feeders
- 475 beef finishers
- 11,000 chicken layers (plus associated pullets)
- 6,000 chicken broilers
- 40 sheep
- 800 ducks
- 200 geese
- 20 horses

On April 5, 2016, LA16009 was issued for changing the under-floor liquid manure storage pits in the dry sow and finisher sections of the hog barn to allow for group housing in these areas. Technical Document LA16009, associated with this authorization, lists all of the CFO grandfathered facilities.

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.)

Wheatland County is both an affected and directly affected party because the proposed facility is located within its boundaries.

On May 6, 2020, the NRCB emailed referral letters and a copy of the application to Wheatland County; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); Alberta Transportation; and Alberta Agriculture and Forestry (AF).

3. Responses from the municipality and referral agencies

I received responses from Wheatland County, Alberta Transportation, and AF. No response was received from AEP or AHS.

Ms. Cindy Ramsay, a safety code technician with Wheatland County, provided a written response on behalf of Wheatland County. As noted in section 2, Wheatland County is a directly affected party.

Ms. Ramsay stated that the application is consistent with Wheatland County’s municipal development plan and that all properties within 1600m of the application site are zoned Agricultural General (AG). The application’s consistency with Wheatland County’s municipal development plan, are addressed in Appendix A, attached.

Ms. Ramsay also listed the setbacks required by Wheatland County’s land use bylaw (LUB) and stated that the county’s only concern is that these setbacks are met. She did not state if these setbacks have been. All setbacks have been met.

The NRCB also received written responses from Gerry Benoit, development & planning technician with Alberta Transportation and Tom Pack, inspector with Agriculture and investigation section from Alberta Agriculture and Forestry.

Mr. Benoit stated that a roadside development permit from his department is not required.

Mr. Pack stated that he has no concern with this 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 Wheatland Colony's existing CFO facilities were assessed in 2016. According to that assessment, all existing and the proposed dairy barn extension pose a low risk to both surface water and groundwater, except the following facilities, which pose a moderate risk to surface water:

- Duck/goose shed and pens
- Feedlot catch basin
- Earthen liquid manure storage
- Dairy shed and pens
- Dairy exercise pens

The moderate risks to surface water were addressed in Authorization LA16009 and all mitigation measures are in place (see Appendix B of Authorization LA16009 for details on the required measures).

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 Wheatland County's municipal development plan and with Wheatland 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
- 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.

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

6. Terms and conditions

Authorization LA20008 permits the construction of the dairy barn extension.

Authorization LA20008 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.

In addition to the terms described above, Authorization LA20008 includes conditions that:

- Set a deadline of December 30, 2021 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the dairy barn extension 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”
- Require written confirmation that the concrete used for the manure collection and storage areas meets the required specifications.
- Prohibit Wheatland Colony from placing manure or livestock in the dairy barn extension until the extension has been inspected by the NRCB following its construction

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

7. Conclusion

Authorization LA20008 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20008.

Authorization LA20008 should be read in conjunction with the previously issued unnumbered development permit, and NRCB issued Authorizations LA06008 and LA16009, which remain in effect.

May 26, 2020

(original signed)
Carina Weisbach
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20008

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 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 22(2.1) 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.”)

Wheatland Colony’s CFO is located in Wheatland County and is therefore subject to that county’s MDP. Wheatland County adopted the latest revision to this plan in 2018, under Bylaw #2013-18 Amendment 2018-40. I determined that the LUB is integrated into the MDP.

Section 3.1.3.1 of the MDP states that the county shall act as referral agency and respond in accordance with the MDP and LUB when the Natural Resources Conservation Board is processing applications for CFO’s. In my interpretation, this is not a land use provision. Therefore, I will not be considered in my consistency determination. Regardless, I notified the county.

As relevant here, section 3.1.3.2 of the MDP states that the county encourages CFOs on parcels of land of 160 acres or more. Wheatland Colony’s CFO is an existing CFO. I therefore interpret this provision to not apply to this CFO.

The CFO is also subject to Wheatland County’s LUB #2016-01 (with its last amendment on March 24, 2020 under bylaw 2020-04). Under that bylaw, the subject land is currently zoned as Agriculture General District. Confined feeding operations are not listed as a permitted, discretionary or prohibited use. There is a general listing “Agricultural Operation” which does not require a permit. Section 4.2.7 of Part 4 specifies these as ‘an agricultural operation as defined in the Act on a parcel designated AG. This is understandable as Section 8.6 of the LUB states that the NRCB has full authority over CFOs and manure storage facilities and that applicants/landowners are responsible for obtaining the necessary permits required by the NRCB under AOPA.

In the county’s response, Ms. Ramsay requested that the development observes all applicable setbacks. The dairy barn extension meets all of these setbacks. I therefore determined that the development is consistent with the MDP and the county’s LUB.

APPENDIX B: Explanation of conditions in Authorization LA20008

a. Construction Deadline

Wheatland Colony proposes to complete construction of the proposed new dairy barn extension by December 30, 2021. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 30, 2021 is included as a condition in Authorization LA20008.

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, Authorization LA20008 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the dairy barn extension 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.”
- Wheatland Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the dairy barn extension.

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 LA20008 includes a condition stating that Wheatland Colony shall not place livestock or manure in the manure storage portions of the new dairy barn extension until NRCB personnel have inspected the extension and confirmed in writing that it meets the authorization requirements.