

Decision Summary LA20016

This document summarizes my reasons for issuing Approval LA20016 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20016. 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 March 18, 2020, Baker Hutterian Brethren (Baker Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO with the construction of a multi-use barn for broilers, ducks and turkeys. Baker Colony proposes the addition of 5,000 chicken broilers, 1,200 ducks and 100 turkeys to their permitted livestock numbers as part of this application.

The Part 2 application was submitted on April 7, 2020 and on April 21, 2020, I deemed the application complete.

Under AOPA, this type of application requires an approval.

a. Location

The existing CFO is located at N½ 23-005-10 W4M in the County of Forty Mile, roughly 8 km south of Nemiskam, Alberta. The topography slopes gently to the south toward an intermittent creek, which in turn, flows to Pakowki Lake which is located approximately 12 km southeast of the site.

b. Existing permitted facilities

The CFO was originally permitted by the NRCB on June 16, 2015, through Approval LA15015. On April 11, 2016 Approval LA16012 was issued. These approvals allow for the construction and operation of a CFO with 30,000 chicken layers (plus associated pullets) and 550 swine (farrow to finish). The CFO's existing permitted facilities are listed in the appendix of Approval LA20016

2. Notices to affected parties

Under section 19 of AOPA, the NRCB is required to notify (or direct 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:

- the municipality where the CFO is 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 individuals who own or reside on land within a specified distance from the CFO, depending on the size of the CFO

For this application, the distance is 1.5 miles. (The NRCB refers to this distance as the “affected party radius.”)

Municipalities that are affected parties are defined by the act to be “directly affected” and are entitled to provide evidence and written submissions. The County of Forty Mile is an affected party (and therefore also a directly affected party) because the proposed expansion is located within its boundaries.

All other parties who receive notice of the application may request to be considered “directly affected.” Under NRCB policy, all individuals who own or reside on land within the affected party radius are presumed to be “directly affected” if they submit a written response to the notice within the prescribed timeline. See NRCB Operational Policy 2016-7: *Approvals*, part 6.2.

Under section 20 of the act, all directly affected parties are entitled to a reasonable opportunity to provide evidence and written submissions regarding the application.

All directly affected parties are also entitled to request an NRCB board review of the approval officer’s decision on the approval application.

The NRCB published notice of the application in the 40 Mile Commentator on April 21, 2020 and posted the full application on the NRCB website for public viewing. The NRCB also emailed referral letters and a copy of the complete application to the County of Forty Mile, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation (AT). Eight courtesy letters were sent to people identified by the County of Forty Mile as owning or residing on land within the affected party radius.

3. Responses from the municipality, referral agencies, and other parties

I received responses from the County of Forty Mile, AHS, AEP, and Alberta Transportation. No responses were received from AHS, individuals, or other parties.

Mr. Nathan Ogden, a planning advisor/ development officer with the County of Forty Mile, provided a written response on behalf of the County of Forty Mile. As noted in section 2, the County of Forty Mile is a directly affected party.

Mr. Ogden stated that the application would support the goals of the County of Forty Mile’s municipal development plan and raised no concerns specific to the application. The application’s consistency with the County of Forty Mile’s municipal development plan, is discussed in appendix A, attached.

Mr. Ogden also stated that the application meets the setbacks as required by the County of Forty Mile’s land use bylaw (LUB).

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP. Mr. Gutsell did request Baker Colony provide copies of their water delivery permits to AEP. This request has been forwarded to Baker Colony for their consideration and action.

Ms. Leah Olsen, a development/ planning technologist, provided a written response on behalf of AT. Ms. Olsen raised no concerns with the application and indicated that a permit is not required from her department.

4. Environmental risk screening of existing and proposed facilities

When reviewing a new approval 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 NRCB assessed the risks posed by Baker Colony's existing CFO facilities in 2016. That assessment concluded that the facilities posed a low risk to surface water and groundwater. The circumstances have not changed since that assessment. 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 multi-use barn, using the NRCB's risk screening tool, and determined that it poses a low risk to groundwater and surface water.

5. Other factors considered

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

With respect to the act's technical requirements, 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

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.

In addition, I assessed the effects of the proposed expansion on the environment. Consistent with NRCB policy, I determined that these effects are acceptable because the application meets all of AOPA's technical requirements. I also determined that the application's effects on the economy and community are acceptable, and that the proposed expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

6. Terms and conditions

Approval LA20016 specifies the new permitted livestock capacity as 30,000 chicken layers, 550 swine farrow to finish, 5,000 chicken broilers, 1,200 ducks, and 100 turkeys and permits the construction of the multi-use barn.

Approval LA20016 also 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 LA20016 includes conditions that:

- Set a deadline of October 1, 2022 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the mixed use barn to meet the specification for category D (solid manure – dry) as described in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas”
- Require documentation that the concrete used for the manure collection and storage areas meets the required specifications
- Prohibit Baker Colony from placing manure or livestock in the mixed use barn until the barn has been inspected by the NRCB following its construction

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated Approval LA16012 with Approval LA20016. Therefore, in addition to containing the new conditions summarized above, Approval LA20016 includes all existing conditions from Approval LA16012. Construction conditions that have been met are identified and included in an appendix to Approval LA16012.

7. Conclusion

Approval LA20016 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20016.

Approval LA16012 will be cancelled, unless Approval LA20016 is held invalid following a review and decision by the NRCB’s board members or by a court, in which case the previous permit will remain in effect.

May 29, 2020

(original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20016

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).

Baker Colony’s confined feeding operation (CFO) is located in the County of Forty Mile and is therefore subject to that county’s MDP. The county adopted the latest revision to this plan on September 2009 under Bylaw 9/2009. The portions of that MDP that are applicable to this application are discussed below.

Part 3.2 of the MDP, titled “Intensive Agriculture”, is most relevant to CFOs. As relevant here, section 3.2(b) of the MDP states that, pursuant to AOPA, the county “may designate areas where confined feeding operations are to be encouraged or discouraged”. Section 3.2(c) then states that CFOs “will be excluded from the areas shown on Figure 3.1 unless otherwise approved by the County”. This section likely refers to Map 3.1, titled: Confined Feeding Operation Exclusions Area Map. Baker Colony’s CFO is not within any of the exclusion zones marked on this map.

One other relevant section is 3.2(d) which states: “The County expects developers to implement those technologies that are most effective at reducing adverse effects on the environment, especially with respect to odour and groundwater contamination.” By referring to acceptable technologies rather than acceptable land uses, this section is likely not a “land use provision” and therefore is likely not relevant to my MDP consistency determination. At any rate, regulations under AOPA require a minimum distance separation to nearby residences, which is a method of reducing conflicts due to nuisance and odour. The regulations also include several requirements to protect groundwater. The application meets or exceeds all AOPA requirements and I therefore conclude that it is consistent with section 3.2(d) of the MDP.

For these reasons, I conclude that the application is consistent with the land use provisions of the county’s MDP.

The CFO is also subject to the County of Forty Mile Land Use Bylaw #10/2009 (LUB) which is referenced in the MDP. Under that bylaw, the subject land is currently zoned as Agricultural District. CFOs are not listed as either a permitted or discretionary use under this zoning. However, the general purpose of this district is “to permit activities associated with the primary production of agricultural goods and services,” which implicitly includes CFOs. In addition, Schedule B of the LUB, titled “Protection of existing confined feeding operations,” makes it clear that the county contemplates the occurrence of CFOs within the Agricultural District. Based on these provisions, I conclude that the county considered CFOs to be an acceptable land use within the Agricultural District, notwithstanding that CFOs are not expressly listed as either permitted or discretionary land uses.

APPENDIX B: Explanation of conditions in Approval LA20016

Approval LA20016 includes several conditions, discussed below, and carries forward all conditions from Approval LA16012.

1. New conditions in Approval LA20016

a. Construction Deadline

Baker Colony proposes to complete construction of the proposed new multi-use barn by October 1, 2020. This time-frame is not necessarily reasonable for the proposed scope of work as it only allows for one building seasons and will not allow for any unforeseen delays or project complications. In my experience, three building seasons would be more reasonable. The deadline of October 1, 2022 is therefore included as a condition in Approval LA20016.

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 facilities are constructed according to the required design specifications. Accordingly, Approval LA20016 includes a condition requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the multi-use 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.”
- Baker Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the multi-use barn.

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. Approval LA20016 includes a condition stating that Baker Colony shall not place livestock or manure in the manure storage portions of the new multi-use barn until NRCB personnel have inspected the multi-use barn and confirmed in writing that it meets the approval requirements.