

Decision Summary LA20019

This document summarizes my reasons for issuing Authorization LA20019 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20019. 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 May 4, 2020, Elmspring Hutterian Brethren (Elmspring) submitted a Part 1 and Part 2 application to the NRCB to construct new facilities at an existing multi species CFO. On May 5, 2020, I deemed the application complete.

The proposed construction involves:

- Construct a shelter for dairy steers - 121.9 m x 24.4 m (400 ft. x 80 ft.)
- Construct two pens for dairy steers - 121.9 m x 24.4 m (400 ft. x 80 ft.) and 82.3 m x 64.0 m (270 ft. x 210 ft.)
- Use of a runoff catchment area (existing low spot) - 65 m x 75 m x 1.5 m

The purpose of the proposed construction is to provide more room for existing permitted livestock at the existing CFO. 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 NE 31-4-16 W4M in the County of Warner, roughly eight kilometers northeast of Warner Alberta. The terrain is flat with the land sloping gently towards Weston Lake which is approximately 2.5 km west of the CFO.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval LA17051. Approval LA17051 allows for construction and operation of a 660 swine farrow to finish, 190 dairy milking cow (plus associated stock), 19,000 chicken layer, 19,000 chicken pullet, 1,000 chicken broiler, 1,200 duck, 300 geese, and 300 turkey CFO. The CFO’s existing permitted facilities are listed in the Appendix to Approval LA17051 and the grandfathered status of the CFO is discussed in Decision Summary LA17051.

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.)

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

On May 5, 2020, the NRCB emailed referral letters and a copy of the application to the County of Warner; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); and Alberta Transportation;

3. Responses from the municipality and referral agencies

I received responses from the County of Warner, AEP and Alberta Transportation. No response was received from Alberta Health Services.

Mr. Tyler Nelson, a development officer, provided a written response on behalf of the County of Warner. As noted in section 2, the County of Warner is a directly affected party.

Mr. Nelson raised no concerns with the application and stated that it meets all the setbacks required by the county’s land use bylaw (LUB).

I received a written response from Mr. Jeff Gutsell, a hydrogeologist with AEP. Mr. Gutsell stated AEP has no concerns regarding the application.

I received a written response from Ms. Leah Olsen, a development/ planning technologist with Alberta Transportation. Ms. Olsen stated a permit would not be required from her department and raised no other 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 Elmspring’s existing CFO facilities were assessed in 2017. According to that assessment, the facilities posed a low risk to surface water and groundwater.

The circumstances have not changed since that assessment was 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 pens, shelters, and catchment area, using the NRCB's risk screening tool, and determined that these facilities all 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.

In addition, the proposed construction is consistent with the land use provisions of the County of Warner'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 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 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 LA20019 permits the construction of the pens, shelter, and runoff catchment area.

Authorization LA20019 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 LA20019 includes conditions that:

- Set a deadline of November 30, 2022 for the approved construction to be completed
- Prohibit Elmspring from placing manure or livestock in the pens, shelters, or from allowing manure contaminated runoff to enter the catchment area, 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 LA20019 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20019.

Authorization LA20019 should be read in conjunction with previously issued Approval LA17051, which remains in effect.

June 17, 2020

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20019

APPENDIX A: Consistency with the municipal development plan

Under section 22 of the *Agricultural Operation Practices Act* (AOPA), an approval officer may grant 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).

Elmspring's confined feeding operation (CFO) is located in the County of Warner and is therefore subject to that county's MDP. The county adopted the latest revision to this plan in November, 1999, under Bylaw #804-99, which pre-dates Part 2 of AOPA that came into force in 2002.

As relevant here, section 4.1.5 of the MDP states that, "[i]n general, [land] uses will be encouraged to locate in areas discussed below...." Sub-section 4.1.5(c) then states that "intensive agriculture":

- [Is]generally accepted everywhere in the county within the principles of minimum distance separation and the land use bylaw, particularly in the irrigated areas of the county,
- [Should]have regard for the minimum distance separation calculation,
- [Should]ensure compliance with land use bylaw and any other regulation.

Section 4.1.5(c) relies on the county's land use bylaw (LUB), which is Bylaw #866-08 and which post-dates Part 2 of AOPA. Due to the age of the MDP, it is necessary to consider the LUB in order to interpret the municipalities planning documents. Under that bylaw, the subject land is currently zoned as Extensive Agriculture. CFOs are not listed as either a permitted, discretionary or prohibited land use under this zoning category.

Under sections 14 and 42 of the LUB, a land use is prohibited if it is not listed as either permitted or discretionary and is not "reasonably similar" to a listed permitted or discretionary land use. In fact, the LUB does not list CFOs as permitted or discretionary land uses in any other district, and the LUB expressly prohibits CFOs in four zoning districts. (See Schedule 2, prohibited uses for the following districts: Grouped Country Residential; Urban Fringe; Urban Fringe – Agriculture; and Hamlet Transitional/Agricultural.)

The LUB does not expressly allow CFOs (above the AOPA permit threshold) anywhere in the county, though several LUB provisions address the suitability of developments near existing CFOs and of dwellings on and subdivisions of, CFO lands. (See LUB, ss. 28(l), 47(c), and Sched. 4, s. 2.) This is likely because after Part 2 of AOPA came into effect in 2002, the county recognized it no longer had permitting authority. Two other LUB provisions refer to the NRCB's authority over CFOs above the AOPA permit threshold. (LUB Sched. 13, ss. 2(b) and 3(a). Elmspring's proposed construction is not precluded by any of these CFO-specific provisions, and it meets the LUB setbacks that are applicable to any type of development.)

Viewed together, these LUB omissions and references to CFOs suggest that the county did not intend to preclude CFOs in the Extensive Agriculture district. Rather, the county omitted listing CFOs as either permitted/discretionary or prohibited, simply due to the county's recognition that, after AOPA came into effect, the county no longer had permitting authority over CFOs. This interpretation is supported by the first bullet in section 4.1.5(c) of the MDP which states that "intensive agriculture" is generally "accepted everywhere in the county..." This statement would

be meaningless if the county had meant to preclude CFOs in the Extensive Agriculture district, because that district comprises the vast majority of the lands in the county.

Two of the bullets in section 4.1.5(c) of the MDP refer to the “minimum distance separation” (MDS). The MDP does not define this term, so it is reasonable to define it by reference to the MDS requirements under AOPA. As noted in part 5 above, the colony’s proposed construction meets these MDS requirements.

The third bullet in section 4.1.5(c) refers to compliance with “any other regulation.” This is likely not a “land use provision,” for purposes of the MDP consistency requirement under AOPA. At any rate, no party, including the county, has identified “any other regulation” that has not been met.

For these reasons, I conclude that the application is consistent with the land use provisions of the County of Warner’s MDP, and with the county’s LUB. This conclusion is supported by the county’s response to the referral letter.

APPENDIX B: Explanation of conditions in Authorization LA20019

Authorization LA20019 includes several conditions, discussed below:

1. Conditions in Authorization LA20019

a. Construction Deadline

Elmspring proposes to complete construction of the proposed new pens and shelter by November 30, 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2022 is included as a condition in Authorization LA20019.

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 LA20019 includes conditions stating that Elmspring shall not place livestock or manure in the manure storage portions of the new pens, shelters, or allow manure contaminated runoff to enter the catchment area, until NRCB personnel have inspected the facilities and confirmed in writing that they meets the authorization requirements.