

Decision Summary LA20025

This document summarizes my reasons for issuing Authorization LA20025 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20025. 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 June 25, 2020, Silver Sage Hutterian Brethren (Silver Sage) submitted a Part 1 and 2 application to the NRCB to construct a new transfer pit (15 m x 15 m x 6 m deep) at an existing multi species CFO. I deemed the application complete the same day. Silver Sage has confirmed the transfer pit will be concrete lined though the AOPA liner will be provided utilizing the existing natural soils (see technical document LA20025 for details).

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 19-6-9 W4M in the County of Forty Mile, roughly 16 km east of the Village of Foremost. The terrain is flat with the nearest common body of water being an unnamed tributary to Chin Coulee located approximately 1.5 km northwest of the site.

b. Existing permitted facilities

Silver Sage is currently permitted under Approval LA05041B issued November 20, 2015 and under Authorization LA18041 issued July 25, 2018 and Authorization LA18025 issued June 22, 2018. These permits allow the operation of a multi species livestock CFO. The CFO's deemed facilities are listed in the appendix of Approval LA05041B.

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

On June 25, 2020, the NRCB emailed referral letters and a copy of the application to the County of Forty Mile; 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 Alberta Transportation. No response was received from the County of Forty Mile, AHS, or AEP.

As noted in section 2, the County of Forty Mile is a directly affected party. This applications consistency with the County of Forty Mile municipal development plan (MDP) is addressed in Appendix A, attached.

Ms. Leah Olsen, a development/planning technologist, provided a written response on behalf of Alberta Transportation. Ms. Olsen stated a permit would not be required from her department and that Alberta Transportation had no concerns with the application.

4. Environmental risk screening of existing and proposed facilities.

When reviewing an 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/Guides 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 Silver Sage's existing CFO facilities were assessed in June and July 2018. According to those assessments, the facilities posed a low risk to surface water and groundwater.

I also assessed the proposed new transfer pit, using the NRCB's risk screening tool, and determined that they both 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 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 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 LA20025 permits the construction of the transfer pit.

Authorization LA20025 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 LA20025 includes conditions that:

- Set a deadline of November 30, 2021 for the approved construction to be completed
- Prohibit Silver Sage from placing manure in the transfer pit until the pit has been inspected by the NRCB following its construction

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

7. Conclusion

Authorization LA20025 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20025.

Authorization LA20025 should be read in conjunction with previously issued Approval LA05041B and Authorizations LA18025 and LA18041, which remain in effect.

July 31, 2020

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20025

APPENDIX A: Consistency with the municipal development plan

Under section 22 of AOPA, an approval officer may grant 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).

Silver Sage’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.).

Part 3.2 of the MDP, titled “Intensive Agriculture”, is most directly 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*. Silver Sage’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 effective at 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. This conclusion is supported by the county’s written response to the application notice.

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 Authorization LA20025

1. Conditions in Authorization LA20025

a. Construction Deadline

Silver Sage proposes to complete construction of the proposed new manure transfer pit by November 30, 2021. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of November 30, 2021 is included as a condition in Authorization LA20025.

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 manure is placed in the newly constructed facilities. Authorization LA20025 includes a condition stating that Silver Sage shall not place manure in the new transfer pit until NRCB personnel have inspected the pit and confirmed in writing that it meets the authorization requirements.