

Decision Summary RA20007

This document summarizes my reasons for issuing Approval RA20007 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document RA20007. 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 January 23, 2020, the Hutterian Brethren Church of Erskine, and Erskine Farming Co. (Erskine Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO. The Part 2 application was submitted on March 3, 2020. On July 9, 2020, I deemed the application complete.

The proposed CFO expansion involves:

- Increasing the number of permitted laying chickens to 40,000 and pullets to 20,000
- Constructing a new layer chicken barn (106.7 m x 30.5 m) including an attached manure load out (a roof covered manure storage pad)
- Constructing a new office and egg room for the new barn (18.3 m x 30.5 m)
- Abandoning or decommissioning two water wells

The above office and egg room are “ancillary structures,” under section 1(1)(a.1) of the Agricultural Operations, Part 2 Matters Regulation, because they will not be used to store or collect manure or to confine livestock. Therefore, under section 4.1 of that regulation, this structure does not need to be permitted under the act.

Under AOPA, this type of application requires an approval. (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.)

On August 19, 2020 a representative of Erskine Colony submitted a variance request that relates to minimum distance separation (MDS) setbacks. That variance request is discussed in Appendix A, below.

a. Location

The existing CFO is located at NE, NW and SE 31-38-20 W4M in the County of Stettler, roughly 1.5 km southeast of the Hamlet of Erskine. The terrain is generally flat.

b. Existing permitted facilities

The CFO is grandfathered, with a deemed approval under section 18.1 of AOPA. The deemed approval includes County of Stettler issued municipal development permits F9511 and 97112F on July 19, 1995 and November 18, 1997, respectively. (The NRCB determined the CFO’s grandfathered status when it issued Approval RA04049. The determination is in the decision report accompanying that permit.)

Since AOPA came into effect on January 1, 2002, the NRCB has issued the CFO Approval RA04049 on June 1, 2006 and Authorizations RA14005, RA17049 and RA18031 issued October 22, 2014, October 31, 2017 and June 1, 2018 respectively. Authorization RA14005 was cancelled and replaced by two subsequent versions of it (RA14005A and RA14005B) issued August 4, 2015 and May 10, 2017, respectively.

Collectively, these NRCB permits and the CFO's deemed approval allow Erskine Colony to construct and operate a multi species CFO at NE, NW and SE 31-38-20 W4M with the following livestock:

- 200 milking cows (plus associated dry cows and replacements)
- 400 sows (farrow to finish)
- 12,000 layer chickens
- 6,000 pullet chickens
- 1,000 ducks
- 150 geese

The CFO's deemed and NRCB-permitted facilities are listed in the appendix to Approval RA20007.

Erskine farming also owns a separate beef CFO (adjacent to this one) at SE 5-39-20 W4M which has a permitted capacity of 1,000 beef finishers.

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 Stettler is an affected party (and therefore also a directly affected party) because the CFO 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 Stettler Independent on July 9, 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 Stettler, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), Alberta Transportation, and Utility Right of Way holders AltaGas Utilities Ltd., ATCO Electric Ltd., and Bearspaw Petroleum Ltd. One hundred and eight two courtesy letters were sent to people identified by County of Stettler as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

I received responses from the County of Stettler and AEP. No responses were received from AHS, Alberta Transportation, or the above noted Utility Right of Way holders.

Ms. Jacinta Donovan, the director of planning services with the County of Stettler provided a verbal response on behalf of the county. As noted in section 2, the County of Stettler is a directly affected party.

Ms. Donovan indicated in my conversation with her that no concerns were expressed from The County of Stettler's municipal planning commission with this application. She went on to indicate that the county had wanted an in person town hall type of meeting to discuss the application but that meeting was not possible due to the Covid-19 pandemic. She did not confirm in our conversation if the proposed CFO expansion was consistent with the county's municipal development plan (MDP) or land use bylaw (LUB).

The application's consistency with the county's MDP and LUB are addressed in Appendix B, attached.

Ms. Laura Partridge, a senior water administration officer with AEP, did not raise concern with regards to the expansion of the poultry portion of the CFO. Despite this, she indicated that the colony possesses water wells that are not properly licensed under the *Water Act*, the wells that the colony intends to decommission are not properly identified in the NRCB application, and that the colony has not been in compliance with the terms and conditions of their existing water licenses under the *Water Act*. She went on to state that action is required by the colony to come into compliance with the *Water Act*. My contact with the CFO was included in the email response from Ms. Partridge.

Since the application was deemed complete the applicant reported that the two water wells specified to be decommissioned, and a third one have already been decommissioned.

4. Responses from other affected parties

The NRCB also received responses from two parties before the statement of concern deadline passed. One of the two parties submitted a secondary document to the NRCB after the statement of concern deadline passed. The content of the secondary document was materially the same as the first submission.

Both of the parties who submitted responses to the application own or reside on land within the one and a half mile radius for affected persons as specified within section 5(c) of the *Agricultural Operation, Part 2 Matters Regulation*. Because of their location within this radius, they are

presumed to be directly affected by the application See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2.).

One of the directly affected parties (G3 Canada Ltd.) submitted a statement of support. The other person, Judy Walgenbach née Heer-Coldwell, raised concerns relating to public notice, odors, and traffic related to CFO operations within the Hamlet of Erskine (see Appendix D for my review of and conclusions on these concerns).

5. Other affected parties

Thirty four parties provided minimum distance separation (MDS) waivers as part of the application. Under NRCB policy, these parties are presumed to be “directly affected” by the application. See NRCB Operational Policy 2016:7 – *Approvals*, part 6.2. Those parties are listed in Appendix C, below.

6. Environmental risk screening of existing and proposed facilities

When reviewing new approval applications 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, 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 Erskine Colony’s existing CFO facilities were assessed in 2014, 2015, 2017 and 2018. Those assessments indicated that the risks to surface water and groundwater were low for the all of the CFO’s manure storage facilities and manure collection areas, with exception of the now decommissioned dairy corrals (pens) which posed a low potential risk to groundwater and a moderate potential risk to surface water.

Since the previous risk assessments, several water wells were decommissioned or abandoned at the CFO. For this reason, I re-assessed the risks posed by the CFO’s existing facilities. For the sake of efficiency, I first assessed the CFO’s existing dairy barn and above ground liquid manure storage tanks which appear to be the CFO’s highest risk facilities due to their construction and location. Both of these facilities pose a low potential risk to surface water and groundwater. Since these facilities are presumed to be the CFO’s highest risk facilities, and because these facilities both pose low risks to surface water and groundwater, I presume that the CFO’s other existing facilities also pose a low potential risk to groundwater and surface water.

I also assessed the proposed new layer chicken barn and its attached manure load out, using the NRCB’s risk screening tool. It also poses a low potential risk to groundwater and surface water.

7. Other factors considered

The application meets all relevant AOPA requirements with a variance to the MDS setback requirements applied and with the terms and conditions summarized in part 8.

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

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

- Meets the required AOPA setbacks from all nearby residences, with a variance and through use of MDS waivers (AOPA setbacks are known as the "minimum distance separation" requirements, or MDS). The owners of thirty four residences surrounding the CFO have signed written waivers of the MDS requirement
- Meets the required AOPA setbacks from 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

I also determined that the proposed layer barn and its attached manure load out are located within the required AOPA setback from two existing water wells. However, as explained in Appendix E, this facility warrants an exemption from the 100 m water well setback due to the well's construction.

In addition, I assessed the effects of the proposed CFO 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 and the directly affected parties' concerns have been adequately addressed. I also determined that the application's effects on the economy and community are acceptable, and that the proposed CFO expansion is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan and land use bylaw. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

8. Terms and conditions

Approval RA20007 specifies the new permitted livestock capacity as set out below and permits the construction of the new layer chicken barn and its attached manure load out.

- 200 milking cows (plus associated dry cows and replacements)
- 400 sows (farrow to finish)
- 40,000 layer chickens
- 20,000 pullet chickens
- 1,000 ducks
- 150 geese

Approval RA20007 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 RA20007 includes conditions that:

- Set a deadline of November 30, 2022 for the approved construction to be completed
- Require submission of proof, prepared by a qualified third party, that indicates that the concrete used to construct the manure collection areas and manure storage liner (the floor) of the new layer chicken barn is sulphate resistant and has a minimum 28-day compressive strength of 25 MPa
- Prohibit Erskine Colony from placing manure or livestock in the new layer chicken barn until it has been inspected by the NRCB following its construction

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the deemed permit, including the County of Stettler issued development permits F9511 and 97112F, NRCB issued Approval RA04049 and Authorizations RA14005B, RA17049 and RA18031 into this new approval (see NRCB Operational Policy 2016-7: *Approvals*, part 10.5). Consolidating permits generally involves carrying forward all relevant terms and conditions in the existing permits into the new permit, with any necessary changes or deletions of those terms and conditions, and then cancelling all existing permits once the new permit is issued. This consolidation is carried out under section 23 of AOPA, which enables approval officers to amend AOPA permits on their own motion.

Therefore, in addition to containing the new terms and conditions summarized above, Approval RA20007 includes all existing terms and conditions from the previous permits (with minor revisions, see Appendix F). Construction conditions that have been met are identified and included in an appendix to Approval RA20007.

9. Conclusion

Approval RA20007 is issued for the reasons provided above, in the attached appendices, and in Technical Document RA20007.

Erskine Colony’s deemed approval, including the County of Stettler issued development permits F9511 and 97112F, and NRCB-issued Approval RA04049 and Authorizations RA14005B, RA17049 and RA18031 are therefore cancelled, unless Approval RA20007 is held invalid following a review and decision by the NRCB’s board members or by a court, in which case the previous permits will remain in effect.

August 26, 2020

(Original Signed)
 Jeff Froese
 Approval Officer

Appendices:

- A. Variance request
- B. Consistency with the municipal development plan
- C. Parties who signed minimum distance separation waivers
- D. Concerns raised by a directly affected party
- E. Exemptions from water well setbacks and monitoring requirements
- F. Explanation of conditions in Approval RA20007

APPENDIX A: Variance request

Approval officers must not grant variances lightly or in the absence of substantive evidence that they will produce equivalent levels of protection (see Decision 03-04, *AAA Cattle Ltd.* p 24).

As noted in part 1 of this decision summary, Erskine Colony has requested a variance under Section 17 of the AOPA to the minimum distance separation (MDS) requirement as part of Application RA20007. That variance request is located on page 13 of Technical Document RA20007.

Erskine Colony has requested the variance to the MDS setback requirements for two main reasons:

- the colony stands to lose a significant amount of money if it does not begin construction of the new layer chicken barn this fall. The amount of money that CFO and colony stands to lose is based on the number of and value of layer chicken quota units which would be lost if facility construction is not started this year based on a requirement of the Egg Farmers of Alberta.
- the colony has received minimum distance separation waivers from a significant number of residences within the MDS setback (especially those within the Hamlet of Erskine) of the CFO, and is confident that it would receive the remaining required waivers in due time. However, the colony would likely run out of time this year to both collect the outstanding waivers and start construction of the barn due to a variety of reasons.

Technical Document RA20007 discusses several factors that are involved in the calculation of MDS setbacks, MDS categories that are applicable in this case, and how MDS is measured. One factor within the MDS calculation that is not discussed in the technical document is the expansion factor. The expansion factor is a part of the MDS calculation that effectively reduces the setback distances to approximately 77 percent of the regular setback distance. In this particular case, the MDS for Erskine Farming's CFOs at NW, NE and SE 31-38-20 W4M and S1/2 5-39-20 W4M is 749 m for residences on agriculturally zoned land and 1,996 m for residences in a hamlet. With the expansion factor applied, the MDS is reduced to 576 m and 1,537 m, respectively. I note how there are two residences located on agriculturally zoned land within 576 m of the CFO's closest existing or proposed manure collection areas (MCAs) or manure storage facilities (MSFs). Only one of the residences within the Hamlet of Erskine is located within 1,537 m of the same MCAs or MSFs. The owners of all three of these residences have already provided the applicant MDS waivers. In addition, all of the residence owners within the Hamlet of Erskine that are located within 1,876 m of the CFO's MCAs and MSFs have also provided MDS waivers as part of this application.

In order for an expansion factor to be used or applied, three or more years need to have passed since the completion of construction arising out of a permit issued under AOPA. In this case, the last permit issued under AOPA for the CFO at NW, NE and SE 31-38-20 W4M was Authorization RA18031 (issued June 1, 2018) and the construction related to it was completed on July 24, 2018. Based on this, the colony will not be eligible to use the expansion factor until July 25, 2021.

Despite not being able to use the expansion factor at this time, I am of the opinion that there are good reasons, as outlined below, to grant the requested variance which would moot or void the

remaining approximately eleven months left before the expansion factor could be applied in this case:

- due to circumstances beyond the control of the colony and the NRCB, a requirement has been placed upon the colony to start construction the barn this year by the Egg Farmers of Alberta.
- not issuing a permit now would result in a significant financial hardship to the colony.
- the colony has already collected MDS waivers from over half of the required residences within the Hamlet of Erskine. Doing so took the colony approximately four months. A representative of the colony stated that it was challenging to collect all of the required waivers as it was difficult to track down all of the residence owners (as identified on and titles) due to the multiple factors including but not limited to the availability of the people identified on land titles.
- the colony is confident that it would be able to get the remaining MDS waivers if time allowed. The same representative of the colony indicated that with harvest looming there would be less time and people available to follow up on the remaining waivers.
- 183 courtesy letters were sent to parties identified as owning land within one and a half miles of the CFO and only one person provided the NRCB with a verbal or written statement of concern related to this application. That person resides in the Hamlet of Erskine at a dwelling that is located more than 1,996 m from the CFO's closest MSF or MCA. Further, that person's concerns are addressed in Appendix D, below.
- Conversely, if the colony were able to get a permission from the Egg Farmers of Alberta to postpone construction of the barn without losing their quota, the colony would be eligible to use the expansion factor. With the expansion factor applied only three MDS waivers would be required and the colony already has collected MDS waivers from the owners of those residences

In light of the above, I am of the opinion that in this case varying the three year timeline requirement under section 3(11) of the *Standards and Administration Regulation* will produce an equivalent level of protection as either requiring the additional waivers or requiring the colony to wait until next year to submit their application. Additionally issuing a variance would minimize or eliminate a significant financial penalty that the applicant is likely to face if they were not able to start construction of the facility this year.

Appendix B: Consistency with the municipal development plan

Under section 20 of AOPA, an approval officer may approve an application for 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).

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 20(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.”)

Erskine Colony’s CFO is located in the County of Stettler and is therefore subject to that county’s MDP. The County of Stettler adopted the latest revision to this plan on June 25, 2014, under Bylaw #1529-14. Section 4.15 of the MDP deals specifically with CFOs. The relevant subsections of this section to this application are discussed below.

Subsection 4.15(a) states that “the county supports any application for CFO development and/or expansion if it complies with the AOPA regulations...”. While I am of the opinion that this subsection is not a land use provision, it still provides an insight into the interpretation of the remaining portions of the MDP.

Subsection 4.15(d) states that the CFO site “must be located” in either the Agricultural District or the Agricultural Preserve District under the county’s land use bylaw, otherwise the county will ask the NRCB to include a condition in the permit requiring the applicant to obtain rezoning from the county. This CFO is located within the Agricultural District. Therefore, this application is consistent with this MDP policy.

Subsection 4.15(e) states that the “proposed location of a CFO structure must comply with the minimum front, side and rear yard setbacks for farm buildings as described in the land use bylaw.” This is likely not a land use provision as it calls for site specific information. I am of the opinion that this subsection is a test or condition and as noted above shouldn’t be considered as part of my MDP consistency analysis. Regardless, the proposed barn meets the setbacks in the County’s land use bylaw.

Subsection 4.15(f) states that the county *may* request that the NRCB include a condition in the permit requiring the applicant to enter into a road use agreement with the county. This is likely not a land use provision. Nevertheless, the county has made no such request in the case of this application. Further, NRCB policy is not to use AOPA permit conditions to require applicants to enter into road use agreements. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.9.)

Subsections 4.15(h) and (i) preclude new or expanding CFOs within any exclusion zones identified in an intermunicipal development plan or in any area structure, concept and outline plans listed in those subsections. This CFO is not within any of these exclusion zones.

For the reasons stated above, I conclude that the application is consistent with the land use provisions of the County of Stettler’s MDP.

In my view, the text of the County of Stettler's MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB), in sections 1.0, 3.6, 4.1, 4.7, 4.15, and 4.16. Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also considered the County of Stettler's Land Use Bylaw #1602-18 (most recently amended on May 13, 2020). Under that bylaw, the subject land is currently zoned as Agricultural District.

CFOs are not listed as permitted or discretionary land uses within the Agricultural District. The LUB provides further direction on this in section 8.1 where CFOs are exempted from the definition of agricultural operations. However, section 91.14 of the bylaw states that the county "supports the location" of CFOs in the Agricultural District, if they "comply with the relevant policies" in the county's MDP, particularly, the exclusion zones cross-referenced in the inter-municipal development plans, and around approved area structure plans, concept plans and outline plans.

In light of the above, I am of the opinion that the CFO does not conflict with the LUB.

APPENDIX C: Parties who signed minimum distance separation waivers

As noted in the above decision summary, the following parties provided a minimum distance separation waiver as part of the application and are considered to be directly affected by this application:

Jayna and Anthony Hankins, Pt. NW 31-38-20 W4M	Richard and Bonita Given
Jordan William Lee	K. Wayne Anderson
Kenneth and Kayla Baird	Felix Heninger
Allyn and Wendy Volker	Lynda and DJ Leslie
Michael Haustein	Chelsea Hougestol, Marc Hougestol
Shane D. Snideman	Nanette Gardner, Don Gardner
Ritchie Chapman	Albert Pratt, Geraldine L. Pratt
Murray Wickens, James Wickens	Virginia Wynder (residence owned by Sherry Marshall, Clint Marshall)
Marlene Bauman	Melvin and Patricia Kelm
Kandice Scheller, Cynthia Scheller	Sherry Marshall, Clint Marshall
Stanley A. and Barbara A. Gardner	Ken and Sharon Haight
Velvet Nickerson, Fred Entwisle	Ben Schultz and Jasmin Schultz, Pt. NW 31-38-20 W4M
Connie and Paul Whittingstall	Marilyn Olsen
Bill and Yvonne Dyer	Amanda Churchill, Chad Nelson
Shelly and Trevor Coleman	Debra and Kelly Lagore
Brook Doan, residence owned by the Erskine Evangelical Free Church (Daniel J. Ford signed on behalf of)	Shantel Bryson, Kent Bryson
Chris and Donna Pfeifle	Residence owned by 387751 Alberta Ltd. (Bernadette Jackson signed on behalf of).

Unless noted otherwise, all of the above are owners of residences within the Hamlet of Erskine.

APPENDIX D: Concerns raised by a directly affected party

As noted in part four of this decision summary, Judy Walgenbach née Heer-Coldwell submitted two responses to this application with concerns. The first response was submitted before the statement of concern deadline passed. It expressed concerns related to odor during corral clean out, traffic and related nuisances from the CFO in the Hamlet of Erskine, and how public notice was distributed when the application was deemed complete. The second response was received after the statement of concern deadline passed. It expressed concerns related to an increase in poultry livestock and associated odors. It also expressed concerns related to traffic and related nuisances from the CFO within the Hamlet of Erskine.

As noted in the public notice of the application being deemed complete and in the courtesy letter provided to Ms. Walgenbach statements of concern needed to be submitted before the deadline of August 7, 2020. If Ms. Walgenbach had requested additional time to submit a supplemental written statement of concern before the deadline passed, I would likely have considered her request. However, she did not. For this reason I will not consider the written concerns related to the increase in poultry livestock and associated odours which were expressed in her second statement of concern.

As directed in part 7.4 of the NRCB's *Approvals Policy* (Operating Policy 2016-7, updated May 8, 2018), I provided a copy of the responses to this application to the applicant. The applicant has declined to provide a response to Ms. Walgenbach.

My analysis and conclusion on the concerns expressed in Ms. Walgenbach's first written response to the application follow.

Odours:

The minimum distance separation (MDS) is a means of mitigating odour and other related nuisance impacts from CFOs. The NRCB generally considers nuisance effects of a CFO to be acceptable if the MDS requirement is met. The concerned party owns land within the one and a half mile affected party radius (in the Hamlet of Erskine), but beyond the category four MDS setback distance of 1,996 m of the CFO located within NE, NW and SE 31-38-20 W4M. Despite the MDS requirement being met, it is possible that persons may occasionally experience odours and other related nuisances from the CFO.

The odour concern noted above is relevant to my consideration of "effects on the community." However, as explained in part seven of this decision summary, following NRCB policy, I presumed that the effects of the proposed CFO on the community are acceptable because the application meets the land use provisions of the municipal development plan, and the municipality does not specifically preclude CFOs or CFO expansions in this case as this CFO meets the applicable specified setbacks noted in the other applicable planning documents to the area of the CFO.

Often, any odour related nuisances can be resolved through good communication between the party and the CFO operator. However, if a member of the public has concerns related to a CFO, including whether the operation is complying with AOPA, they may contact the NRCB through its toll free response line (1-866-383-6722). An NRCB inspector will follow up on the concern.

Vehicular traffic related to CFO operations within the Hamlet of Erskine:

Vehicular traffic related to a CFO is not regulated by the NRCB. Rather, it is regulated either by the local municipality on municipally controlled roads or by Alberta Transportation on Highway 12 and on other provincially controlled highways.

Copies of the application were provided to Stettler County (the local municipality) and to Alberta Transportation. I note that in my conversation with the County of Stettler's director of planning services no concerns were expressed in relation to traffic from the CFO on county controlled roads or within the Hamlet of Erskine (which is controlled by the County of Stettler). Alberta Transportation did not provide a response to this application, but they also did not provide a response that raised concerns with it either.

Adequacy of the public notice:

Public notice of the application was published in the July 9, 2020 edition of the Stettler Independent and was also publicly available for viewing on the NRCB website.

As noted in Part 7.5 of the *Approvals Policy* (Operating Policy 2016-7, updated May 8, 2018), approval officers will publish notice of approval and registration applications that are deemed complete in the primary local paper that serves the area where the development is proposed. The public notice and a copy of the application are also posted on the NRCB website until the deadline for written responses passes. In addition to this, courtesy letters were sent to parties identified by the county (as owning land or residences within the affected party radius (within one and a half miles of the CFO in this case).

Ms. Walgenbach questioned in her response if another publicly free to consume news publication which serviced the area of the CFO (and was reported to reach a wider audience) would have been more appropriate to use than the primary local paper, the Stettler Independent (as identified historically by members of the County of Stettler's planning and development office).

I acknowledge that the Stettler Independent is a fee based subscription news service while other publications that service the area of the CFO are not. Despite this, the Stettler Independent is the news service that has historically been indicated by representatives of the County of Stettler's planning and development office as the primary local paper that services the area where this CFO is located. In addition to this, Ms. Walgenbach confirmed in a phone conversation that she did receive a courtesy letter notifying her that the application was deemed complete. The courtesy letter identified how the application and related documents were available on the NRCB website and that the official public notice was being posted in the Stettler Independent.

For these reasons, I am of the opinion that the public notice procedure within the *Approvals Policy* (Operating Policy 2016-7, updated May 8, 2018) and how that policy was implemented in this case of this application being deemed complete is adequate and that Ms. Walgenbach's concern related to the adequacy of the public notice process are addressed.

APPENDIX E: Exemption from water well setbacks

According to the application, no water wells are located within 100 m of the proposed layer chicken barn and its attached manure load out. During a site and through a review of scaled air photos I have determined that two water wells are located within 100 m of it.

Because of this proximity, the applicant's proposed facility conflicts with a regulation under AOPA, which prohibits the construction of manure storage facilities (MSFs) within 100 metres of water wells.¹ However, the regulation allows approval officers to grant an exemption from this prohibition. I must therefore consider whether an exemption is appropriate in this instance.

Under the regulation, the test for granting an exemption is whether the "aquifer into which the well is drilled is not likely to be contaminated" by the proposed MSF. (According to the regulation, when granting an exemption, an approval officer may require the applicant to implement a "groundwater monitoring program.")

The regulation also makes it clear that the applicant has the burden of proving that an exemption is warranted.

In considering whether an applicant has met that burden, approval officers presume that the risks of direct aquifer contamination from the MSF are low if the applicant's proposed MSF meets AOPA's technical requirements to control runoff and leakage. However, when determining whether an MSF that meets AOPA's technical requirements should be exempted from the 100 metre water well setback requirement, approval officers also assess whether water wells that are less than 100 metres from the MSF could act as conduits for aquifer contamination.

Approval officers assess the following factors to determine the risk of aquifer contamination via the water well:

- How the well was constructed
- Whether the well is being properly maintained
- The distance between the well and the proposed MSF
- The estimated water well pumping rate
- Whether the well is up- or down-gradient from the MSF and whether this gradient is a reasonable indication of the direction of surface and groundwater flow between the two structures

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the two water wells located within 100 m of the proposed barn are water wells 1075299 and 1075300.

Water well 1075299 is located approximately 35 m west of and down gradient from the proposed barn. This well is reported to have been installed in 2013 and has a perforated or screened zone from 33 m to 40 m below ground level across interbedded shale and sandstone layers. These layers produce approximately 11 litres per minute of water that is reported to be used for livestock purposes. The well's log identifies till and clay layers from ground surface to

¹ Standards and Administration Regulation, Alta. Reg. 267/2001, section 7(1)(b).

16.2 m below ground level. The well has a bentonite seal from ground surface to 30.5 m below ground level (across the clay and till layers).

Water well 1075300 is located approximately 30 m west of and down gradient from the proposed barn. This well is also reported to have been installed in 2013. Its perforated or screened zone is from 49.5 m to 58 m below ground level across interbedded shale and sandstone layers. These layers produce approximately 45 litres per minute of water that is reported to be used for livestock purposes. The well's log identifies till and clay layers from ground surface to 16.8 m below ground level. The well has a bentonite seal from ground surface to 48.8 m below ground level (across the clay and till layers).

In addition, the NRCB has developed a "water well exemption screening tool," based on the factors listed above, to help approval officers assess the groundwater risks associated with a nearby water well and to decide whether an exemption from the 100 metre setback to a well is warranted.² This tool consists of a two-stage risk screening process; each stage provides a numeric risk "score" based on the information inputted into the tool. The first stage focuses on the well's construction. If the well scores less than 10 at this stage, the tool suggests granting a setback exemption for the subject facility. If the well scores above 28, the tool recommends denying the exemption. Scores between 10 and 28 require applying the second stage of the screening process, which focuses on the gradient and other factors bearing on the risk of manure runoff or leachate reaching the water well. If the risk score at this stage is over 20, the tool suggests denying the setback exemption to the subject well.

For the risk screening process described above, water wells 1075299 and 1075300 scored 13 and 12 points in the first risk screening stage and 18 and 19 in the second risk screening stage, respectively.

Based on the above information it is my assessment that an exemption to the 100 metre setback rule for the proposed barn and its manure load out would offer the same degree of protection and safety as that provided for by the regulations as:

- The proposed barn and its load out will have a liner that meets AOPA requirements
- The proposed facility poses a low potential risk to groundwater when risk screened using the NRCB's environmental risk screening tool
- The results of the water well exemption screening tool indicate that an exemption is more likely

Despite the above, Approval RA04049 includes a condition that requires water wells within 100 m of the CFO to be tested annually. Since the applicant has not applied to relax this permit condition, it will be carried forward into the new approval and the two water wells located west of the new layer barn will need to be tested annually.

² A complete description of this tool is available under CFO/Groundwater and Surface Water Protection on the NRCB website at www.nrcb.ca.

APPENDIX F: Explanation of conditions in Approval RA20007

Approval RA20007 includes several conditions, discussed below, and carries forward three conditions from Approval RA04049 (see sections 2 of this appendix). Construction conditions from the deemed permit and previously issued NRCB permits that have already been met are included in the appendix to Approval RA20007.

1. New conditions in Approval RA20007

a. Construction Deadline

Erskine Colony proposes to complete construction of the proposed new layer chicken barn, including its attached manure load out, by November 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 Approval RA20007.

b. Post-construction inspection and review

The NRCB's general practice is to include conditions in permits to ensure that the new facilities are constructed according to the required design specifications. Accordingly, Approval RA20007 includes conditions requiring Erskine Colony to provide written confirmation, prepared by a qualified third party, that the concrete used for the manure collection and storage areas of the barn and its attached load out are sulphate resistant and have a minimum 28-day compressive strength of 25 MPa

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 RA20007 includes a condition stating that Erskine Colony shall not place livestock or manure in the manure collection and storage portions of the new barn, including its attached load out, until NRCB personnel have inspected it and confirmed in writing that it meets the approval's requirements.

2. Conditions carried forward from Approval RA04049

5a The leakage detection system header pipes are to be checked on a regular basis and records of sampling events be kept.

This condition will be carried forward, but it will be revised to provide clarity as "regular basis" and "to be kept" are subjective in my opinion. The term *regular basis* will be replaced with *annually* while I will add clarity so that the records are *to be kept for five calendar years*. In addition to this, I will add to the condition so that *the records must be made available to the NRCB upon request*.

6a Drinking water quality tests for chlorides and nitrates must be conducted annually on the water well(s) within 100 metres of the confined feeding operation with the results submitted annually to the NRCB by February 28, beginning in 2007.

More recently issued NRCB permits that include similar water well testing requirements are typically flexible and not rigid like this one (the date of sampling can be shifted forward or backward provided that the annual testing requirements remain met). To include a similar level of flexibility seems appropriate in my mind. For this reason, this condition will be reworded to state:

Water quality tests shall be conducted annually, beginning in 2007 on water wells within 100 m of the confined feeding operation. The annual water well test results shall be submitted to the NRCB no later than February 28 of each year unless otherwise directed in writing by the NRCB.

7a Liquid manure not to be spread on NW 36-38-21 W4M, NE 35-38-21 W4M, and SE 1-39-21 W4M.

This condition will be carried forward with no revisions.