

Decision Summary LA20035

This document summarizes my reasons for issuing Authorization LA20035 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20035. 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 August 12, 2020, Hutterian Brethren of Murray Lake (Murray Lake) submitted a Part 1 application to the NRCB to expand an existing animal shelter by 9.1 m x 24.4 m at an existing multi species CFO. The new permitted total dimensions of the animal shelter will be 24.3 m x 24.4 m. The Part 2 application was submitted on August 17, 2020. On August 18, 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 S½ 31-10-6 W4M, NW 29-10-6 W4M & SW 32-10-6 W4M in Cypress County, roughly 7.5 km southeast of the Hamlet of Seven Persons, Alberta. The terrain adjacent to the proposed expansion slopes slightly towards the north.

b. Existing permitted facilities.

The CFO was issued Approval LA18047 on September 12, 2018 which allows Murray Lake to operate a mixed species CFO with the capacity for 12,000 beef finishers, 600 swine farrow to finish, 150 milking cows (plus associated dries and replacements), 300 chicken layers, 25,000 chicken broilers, 800 ducks and 300 geese.

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.)

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

On August 18, 2020, the NRCB emailed referral letters and a copy of the application to Cypress County; Alberta Health Services (AHS); Alberta Environment and Parks (AEP); Alberta Transportation; and the St. Mary River Irrigation District.

3. Responses from the municipality and referral agencies

I received responses from Cypress County, AEP, Alberta Transportation, and the SMRID. No response was received from AHS.

Ms. Kaylene Simpson, planning supervisor, provided a written response on behalf of Cypress County. As noted in section 2, Cypress County is a directly affected party.

Ms. Simpson raised no concerns regarding the application for the animal shelter expansion. Ms. Simpson did however, indicate that Cypress County Council has requested the NRCB include a condition requiring the applicant to upgrade all haul roads to “high grade standard” at Murray Lake’s expense.

Under NRCB policy, approval officers will not include conditions in permits requiring operators to enter into a road use agreement with the municipality. The reason for this policy is that roads are a “municipal responsibility and are not located on the CFO site.” NRCB Operational Policy 2016-7: Approvals, part 8.9. Additionally, this application is for an authorization under the AOPA. In the case of authorizations, submissions from directly affected parties are restricted to addressing whether the application meets the requirements under the AOPA. The condition of surrounding roads is not a requirement of AOPA and as such cannot be addressed further by this application.

The application’s consistency with Cypress County’s municipal development plan, is addressed in Appendix A, attached.

Mr. Jeff Gutsell, a hydrogeologist, provided a written response on behalf of AEP that indicated his department had no concerns with the application.

Mr. Leah Olsen, a development/ planning technologist, provided a written response on behalf of Alberta Transportation that indicated a permit was not required from her department.

Ms. Linda Park, a land administrator, provided a written response on behalf of the SMRID indicating Murray Lake has sufficient water allocation for their operation.

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 Murray Lake's existing CFO facilities were assessed in 2018. According to that assessment, the facilities, including the originally permitted animal shelter, 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 animal shelter addition while considering the proposed expansion to its dimensions, using the NRCB's risk screening tool, and determined that it still poses 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 Cypress County'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 and collection areas.

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 LA20035 permits construction of the addition to the animal shelter.

Authorization LA20035 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 LA20035 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 animal shelter addition 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 documentation that the concrete used for the manure collection and storage areas meets the required specifications
- Prohibit Murray Lake from placing manure or livestock in the expanded portion of the animal shelter until it has been inspected by the NRCB following its construction

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

7. Conclusion

Authorization LA20035 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20035.

Authorization LA20035 should be read in conjunction with previously issued Approval LA18047, which remains in effect.

October 2, 2020

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization LA20035

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.).

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

Murray Lake’s CFO is located in Cypress County and is therefore subject to that county’s MDP. Cypress County adopted the latest revision to this plan in August 2018, under Bylaw #2015/26.

Section 3.2 of the MDP addresses “intensive agriculture.” As defined in section 1.4(b) of the MDP that term appears to include CFOs (e.g., “concentrated rearing of livestock and poultry”).

As relevant here, section 3.2(b) states that “[p]ursuant to the Agricultural Operations Practices Act, the County may designate areas where confined feeding operations are to be encouraged or excluded.” Section 3.2(c) then states that new CFOs “will be excluded from the areas shown on Figure No. 2.”

The CFO site is not within the CFO exclusion area shown on Figure No. 2, so the proposed CFO expansion is consistent with sections 3.2(b) and (c) of the county’s MDP.

Section 3.2 (d) specifies that “confined feeding operations are to be located where access to the site is to be gained from gravel, new high-grade roads or unless the confined feeding operator is willing to develop or upgrade the road to a gravel, new high-grade road at their own expense”. In the county’s response to the application notice, they also indicated council had passed a motion asking the NRCB to require Murray Lake to upgrade haul roads to “high grade standard”.

These terms are not defined and such roadways are not expressly identified in the MDP. This policy is not likely a land use provision as it requires discretionary judgement on what constitutes a gravel, or new high-grade road and therefore is not relevant to my MDP consistency determination. Additionally, in this case the application is for an authorization at an existing CFO and will have no impact on the location of the existing CFO which 3.2(d) aims to address.

Section 3.2(e) addresses CFO’s located within the Tri-Area Intermunicipal Development Plan Area (IDP) as identified in Figure No. 2. The proposed expansion is located outside of this area so the application is consistent with this provision.

No other MDP policies are relevant to Murray Lake's application. Therefore, it is my determination that the proposed CFO expansion is consistent with the MDP's land use provisions. The county's response confirms this conclusion.

APPENDIX B: Explanation of conditions in Authorization LA20035

a. Construction Deadline

Murray Lake proposes to complete construction of the proposed new animal shelter addition by December 30, 2020. This time-frame is considered to be unreasonable for the proposed scope of work as it does not allow for a full building season. Instead, a deadline of December 30, 2021 is included as a condition in Authorization LA20035.

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 LA20035 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the animal shelter addition 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.”
- Murray Lake to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the animal shelter addition.

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 LA20035 includes a condition stating that Murray Lake shall not place livestock or manure in the manure storage portions of the expanded animal shelter until NRCB personnel have inspected the area and confirmed in writing that it meets the authorization requirements.