

Decision Summary BA20010

This document summarizes my reasons for issuing Approval BA20010 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA20010. 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 July 9, 2020, Hutterian Brethren of Scotford (Scotford Colony) submitted a Part 1 application to the NRCB to expand an existing multi-species CFO. The Part 2 application was submitted on July 24, 2020. On August 6, 2020, I deemed the application complete.

The proposed expansion involves:

- Increasing livestock numbers from 1,000 to 2,000 beef finishers
- Constructing solid manure storage pad (east) – 16 m x 16 m
- Constructing solid manure storage pad (west) – 16 m x 16 m

The purpose of the proposed increase to animal numbers and the construction of two solid manure storage pads is because Scotford Colony is in the process of constructing two fabric roofed buildings over their existing feedlot footprint (not compromising the grandfathered liner) which allows them to increase stocking densities. The two fabric roofed buildings do not require a permit under AOPA.

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.)

a. Location

The existing CFO is located at NE 17-55-21 W4M in Strathcona County, roughly eight km east of the City of Fort Saskatchewan, Alberta. The terrain is flat to very gently rolling with the nearest common body of water, Astotin Creek, 592 metres to the northeast.

b. Existing permitted facilities

The CFO is currently permitted under NRCB Approval BA18012. This approval allows the construction and operation of a multi-species CFO consisting of 1,000 beef finishers, 170 milking cows (plus associated dries and replacements), 73,100 pullets/broilers, 17,136 layers, 1,200 turkey hens, 2,400 ducks, and 400 geese. The CFO’s existing permitted facilities are listed in the appendix of Approval BA20010.

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 persons 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. Strathcona County 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 Fort Saskatchewan Record newspaper on August 6, 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 Strathcona County, Alberta Health Services (AHS), Alberta Environment and Parks (AEP), and Alberta Transportation. Thirty-one courtesy letters were sent to people identified by Strathcona County as owning or residing on land within the affected party radius.

3. Responses from the municipality and referral agencies

I received responses from Strathcona County and AHS. No response was received from AEP or AT.

Ms. Brooke Hoeven, a planner I with Strathcona County’s land development planning department, provided a written response on behalf of the county. As noted in section 2, Strathcona County is a directly affected party.

Ms. Hoeven stated that the CFO is located within the Heartland Policy Area of the Strathcona County’s MDP and within the Heartland Area Structure Plan (ASP). Ms. Hoeven also stated that the county has no concerns with the proposal and that the application appears to meet the required setbacks in the county’s land use bylaw (LUB). The application’s consistency with the county’s MDP, LUB and ASP are addressed in Appendix A, attached.

Ms. Koreen Anderson, a public health inspector / executive officer, responded on behalf of AHS. Ms. Anderson inquired if a risk assessment has been conducted regarding the water wells within 100 metres of manure storage facilities. She also requested that any complaints against the CFO in regards to their current livestock numbers be addressed prior to expanding the CFO.

As explained below in section 4, I risk screened the existing and proposed CFO facilities. All of the CFO's facilities score low risk to both groundwater and surface water. The NRCB has not received any complaints about this CFO since 2010, and therefore no complaints need to be addressed at this time.

Ms. Anderson also recommended that any water wells not being used should be decommissioned in accordance with AEP's regulations. This response was forwarded to the applicant.

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 risks posed by Scotford Colony's existing CFO facilities were assessed in 2018. According to that assessment, the facilities posed a low potential 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 new solid manure storage pads, using the NRCB's risk screening tool, and determined that they both pose a low potential 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 expansion is consistent with the land use provisions of Strathcona County's municipal development plan and with Strathcona County's land use bylaw. (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 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 solid manure storage pads are to be located within the required AOPA setback from an existing water well. However, as explained in Appendix B, these solid manure storage pads warrant an exemption from the 100 metre water well setback due to the wells' construction and location upslope from the solid manure storage pads.

In addition, I assessed the effects of the proposed expansion on the environment. Consistent with NRCB policy, I presumed that these effects are acceptable because the application meets all of AOPA's technical requirements. I also presume 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 presumptions 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.) After considering comments from the referral agencies and feedback from Strathcona County, I find these presumptions are not rebutted.

6. Terms and conditions

Approval BA20010 specifies the new permitted livestock capacity as 2,000 beef finishers, 170 milking cows (plus associated dries and replacements), 73,100 pullets/broilers, 17,136 layers, 1,200 turkey hens, 2,400 ducks, and 400 geese. Approval BA20010 also permits the construction of the two solid manure storage pads.

Approval BA20010 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 BA20010 includes conditions that:

- Set a deadline of December 1, 2023 for the approved construction to be completed
- Require the concrete used to construct the liner of the two solid manure storage pads to meet the specification for category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas”
- Scotford Colony to provide documentation to confirm the concrete specification
- Prohibit Scotford Colony from placing manure on the two solid manure storage pads until the facilities have been inspected by the NRCB following their construction

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

a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated Approval BA18012 with Approval BA20010 (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 BA20010 includes all existing terms and conditions from Approval BA18012. Construction conditions that have been met are identified and included in an appendix to Approval BA20010.

7. Conclusion

Approval BA20010 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA20010.

Approval BA18012 is therefore cancelled, unless Approval BA20010 is held invalid following a review and decision by the NRCB's board members or by a court, in which case Approval BA18012 will remain in effect.

October 6, 2020

(Original signed)

Julie Wright
Approval Officer

Appendices:

- A. Consistency with planning documents
- B. Exemptions from water well setbacks
- C. Explanation of conditions in Approval BA20010

APPENDIX A: Consistency with planning documents

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.”)

Scotford Colony’s CFO is located in Strathcona County and is therefore subject to that county’s MDP. Strathcona County adopted the latest revision to this plan in January, 2020, under Bylaw #20-2017.

The MDP has different policies for CFOs depending on where they are located (or proposed to be located) in the county. Scotford Colony is in the “Heartland Policy Area” which is a sub-part of the “Rural Service Area.” Both of these areas are shown on Map 2 of the MDP.

Section 5.7 of the MDP has 31 numbered policies for the Heartland Policy Area, but only two of these—policies 16-17—relate specifically to CFO permitting. These policies are discussed below.

Policy 16

This policy states that “new confined feeding operations to locate outside of the Heartland Policy Area.” Scotford Colony’s CFO is an existing CFO, therefore this policy isn’t relevant to my MDP consistency consideration.

Policy 17

This policy states that the county will “[s]upport viability in the long term by considering...the continued operation and expansion of existing” CFOs “in accordance with [AOPA].” Since this application is for an expansion of the existing CFO and it meets the AOPA requirements, Scotford Colony’s application is consistent with this policy.

For these reasons, I conclude that the application is consistent with the land use provisions of Strathcona County’s MDP. The county’s response confirms this conclusion.

Strathcona County’s MDP cross- references Area Structure Plans (ASPs) in the context and interpretation section (at 2.1) by stating “[ASP] build upon the objectives and policies of the [MDP] and provide more specific policy direction for existing and future development...” Following NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider Strathcona County’s Heartland Industrial Area Structure Plan #24-2018. Under that plan, the subject land is currently zoned “Transition Policy Area”. The ASP does not list CFOs under this policy area but

lists it in the “General Land Use” section. Under section 3.1, policies 7-8 relate specifically to CFO permitting. These policies are discussed below.

Policy 7

This policy states “expansion of existing [CFOs] in accordance with [AOPA] where the location does not limit existing or planned industrial development to support [CFOs] to continue as long as possible.” This policy is likely not a land use provision as it calls for site-specific, discretionary judgements. Therefore, this policy is not relevant to my MDP consistency determination required by section 20(1) of AOPA.

Policy 8

This policy states “new [CFOs] to locate outside of the Plan area to ensure land is available for future development in the Plan area.” Scotford Colony’s CFO is an existing CFO, therefore this policy isn’t relevant to my MDP consistency consideration.

I considered land use provisions in the Heartland ASP and determined, the CFO meets these policies. The county’s response confirms this conclusion.

Strathcona County’s MDP intends to adopt provisions from the Land Use Bylaw (LUB). The MDP cross- references the LUB in the context and interpretation section (at 2.1) by stating “[LUB] provides zoning and regulations that is used to implement the objectives and policies of the [MDP]...to regulate the use and development of land and buildings within the County.” Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also must consider Strathcona County’s LUB #6-2015. Under that bylaw, the subject land is currently zoned “Agriculture General”. The LUB does not list CFOs as either permitted or discretionary uses in this zoning district. Ordinarily, if a LUB does not list a land use as either permitted or discretionary, that omission implies that the land use is prohibited in the relevant zoning district. However, section 6.8.1 of the LUB states that CFOs:

“continue to be regulated by the Government of Alberta and therefore shall adhere to all applicable provincial regulations”

This section implies that the county’s decision not to list CFOs in the Agriculture District is simply a reflection of the county’s recognition that, since AOPA came into effect in 2002, the NRCB is responsible for permitting CFOs. (See Operational Policy 2016-7: *Approvals*, part 8.3.)

The response to the application from the county’s planner for land development planning referred to the LUB and said it appears the proposed facilities meets the LUB setbacks. This response confirms my interpretation that the LUB did not intend to preclude CFOs in this district.

APPENDIX B: Exemptions from water well setbacks

According to the application, two water wells are located within 100 metres from the proposed solid manure storage pads. I have confirmed this information by site visit and through review of satellite imagery.

Because of this proximity, the applicant's proposed solid manure storage pads 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
- 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

These presumptions and considerations are based on NRCB Operational Policy 2016-7: *Approvals*, part 8.7.1.

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the first water well located approximately 56 m east of the west solid manure storage pad and 56 m west of the east solid manure storage pad is likely AEP water well ID #83434. This well is reported to have been installed 1986 and has a screened zone from 17.7 m to 19.2 m below ground level. This well is used for non-domestic purposes. The well's log identifies protective clay layer from ground surface to 11.58 m below ground level. The well has a driven seal from ground surface

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

to 17.68 m below ground level. The well appeared to be in good condition at the time of my site inspection. The well is up-gradient of the proposed solid manure storage pads.

Based on information provided by the applicant and from the Alberta Environment and Parks (AEP) water well database, the second water well located approximately 79 m northeast from the east solid manure storage pad is likely AEP water well ID #83433. This well is reported to have been installed 1986 and has a perforated zone from 91.4 m to 109.7 m below ground level. This well is used for non-domestic purposes. The well's log identifies protective layer from ground surface to 11.6 m below ground level. The well has a driven seal from ground surface to 27.7 m below ground level. The well appeared to be in good condition at the time of my site inspection. The well is up-gradient of the proposed solid manure storage pad.

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.²

In this case, the results of the water well exemption screening tool suggest that an exemption is likely.

Based on the above, I am prepared to grant an exemption to the 100 m water well setback requirement for the both of the proposed solid manure storage pads.

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 C: Explanation of conditions in Approval BA20010

Approval BA20010 carries forward all conditions from BA18012 and includes several conditions, discussed below:

New conditions in Approval BA20010

a. Construction Deadline

Scotford Colony proposes to complete construction of the proposed new solid manure storage pads by December 2023. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2023 is included as a condition in Approval BA20010.

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, Approval BA20010 includes conditions requiring:

- the concrete used to construct the liner of the solid manure storage pads to meet the specification for category C (solid manure – wet) in Technical Guideline Agdex 096-93 “Non-Engineered Concrete Liners for Manure Collection and Storage Areas.”
- Scotford Colony to provide documentation to confirm the specifications of the concrete used to construct the solid manure storage pads.

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 BA20010 includes a condition stating that Scotford Colony shall not place manure on the new solid manure storage pads until NRCB personnel have inspected the facilities and confirmed in writing that they meet the approval requirements.