

Decision Summary LA20036

This document summarizes my reasons for issuing Approval LA20036 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20036. 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 20, 2020, the Hutterian Brethren Church of Northbrook (Northbrook) submitted a Part 1 application to the NRCB to construct a new poultry CFO. On September 1, 2020 a revised Part 1 application was submitted for 40,000 chicken layers, to construct a layer barn (63.7 m x 21.48 m (209 ft. x 70 ft. 6 in.), and a manure storage pad (30 m x 30 m). The Part 2 application was submitted on September 1, 2020. On September 11, 2020, I deemed the application complete.

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 proposed CFO is located at S½ 11-7-18 W4M in the County of Warner, roughly 13 km northeast of the Village of Stirling. The terrain is gently undulating with surface water generally flowing into localized wetland areas adjacent to the CFO.

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 ½ mile. (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 Warner is an affected party (and therefore also a directly affected party) because the proposed facility 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 *Prairie Post* on September 11, 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 Warner, Alberta Health Services (AHS), Alberta Environment and Parks (EP), Alberta Transportation, and the St. Mary River Irrigation District (SMRID). Three courtesy letters were sent to people identified by the County of Warner as owning or residing on land within the affected party radius.

3. Responses from the municipality, referral agencies, and other parties

I received responses from the County of Warner, Alberta Transportation, and the SMRID. No response was received from AHS, EP, or from other parties.

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

Mr. Nelson stated that the application is consistent with the County of Warner’s municipal development plan and that the application appears to meet all county setbacks. The application’s consistency with the County of Warner’s municipal development plan 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.

Ms. Linda Park, a land administrator, provided a written response on behalf of the SMRID. Ms. Park stated that the applicant has sufficient water allocation for the application.

4. Environmental risk screening of proposed facilities

As part of my review of this application, I assessed the risk to surface water and groundwater posed by the CFO’s existing and proposed manure storage facilities. I used the NRCB’s environmental risk screening tool for this purpose (see NRCB Operational Policy 2016-7: *Approvals*, part 8.13). The 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.)

I assessed the proposed layer barn and manure storage pad using the NRCB’s risk screening tool, and determined that it 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 CFO is consistent with the land use provisions of the County of Warner's municipal development plan (See Appendix A for a more detailed discussion of the county's planning requirements.)

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

- 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'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

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.

In addition, I assessed the effects of the proposed CFO on the environment. Consistent with NRCB policy, I determined that these effects are acceptable because the application meets all of AOPA's technical requirements. I also determined that the application's effects on the economy and community are acceptable, and that the proposed CFO is an appropriate use of land. Under NRCB policy, these determinations are based on the application's consistency with the municipal development plan. (See NRCB Operational Policy 2016-7: *Approvals*, part 8.7.3.)

6. Terms and conditions

Approval LA20036 specifies the new permitted livestock capacity as 40,000 chicken layers and permits the construction of the layer barn and manure storage pad.

Approval LA20036 also contains terms that the NRCB generally includes in all AOPA approval, 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 LA20036 includes conditions that:

- Set a deadline of December 31, 2022 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection and storage portion of the layer barn 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 confirmation that the compacted clay liner proposed for the manure storage pad meets AOPA requirements
- Prohibit Northbrook from placing manure or livestock in the layer barn or manure on the manure storage pad until the facilities have been inspected by the NRCB following their construction
- Require Northbrook to control surface water run-on and run-off at the site of the manure storage pad

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

7. Conclusion

Approval LA20036 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20036.

October 22, 2020

(Original signed)
Joe Sonnenberg
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20036

APPENDIX A: Consistency with the municipal development plan

Under section 20 of the *Agricultural Operation Practices Act* (AOPA), an approval officer may grant 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).

Northbrook's proposed confined feeding operation (CFO) is located in the County of Warner and is therefore subject to that county's MDP. The county adopted the latest revision to this plan in November 1999, under Bylaw #804-99.

As relevant here, section 4.1.1 and section 4.1.5 of the MDP would apply to this application.

Section 4.1.1 states that approval authorities should recognize that "...the prime use of land in the county is agriculture." The application is consistent with this provision.

Section 4.1.5 sets out land uses and the areas where the uses are encouraged. Sub-section 4.1.5(c) addresses "intensive agriculture." This section states that intensive agriculture is "generally accepted everywhere in the county within the principles of minimum distance separation and the land use bylaw, particularly in the irrigated areas of the county" It also states that intensive agriculture should:

- Have regard for the minimum distance separation calculation, and
- Ensure compliance with the land use bylaw and any other regulation.

Section 4.1.5(c) refers to the municipality's land use bylaw. The land use bylaw was last updated in October 2017 while the MDP was last revised in November 1999 prior to the implementation of the AOPA. Land use bylaw #930-17 states the subject land is currently zoned Extensive Agriculture. CFOs are listed as a discretionary land use under this zoning category. The land use bylaw (which is more recently revised) states that NRCB approval rather than a municipal permit is required.

Section 4.1.5(c) refers to "minimum distance separation" (MDS). The MDP does not define this term, so it is reasonable to define it by reference to the MDS requirements under AOPA. As noted in part 5 above, Northbrook's proposed expansion exceeds these MDS requirements.

Section 4.1.5(c) also refers to compliance with "any other regulation." This is likely not a "land use provision" for purposes of the MDP consistency requirement under AOPA (which came into effect after the implementation of the subject MDP). At any rate, no party, including the county, has identified any "other regulation" that the application does not meet.

For these reasons, I conclude that the application is consistent with the land use provisions of the County of Warner's MDP. This conclusion is confirmed by the county's response to the application notice.

APPENDIX B: Explanation of conditions in Approval LA20036

Approval LA20036 includes several conditions, discussed below:

a. Construction Deadline

Northbrook proposes to complete construction of the proposed new layer house and manure storage pad by the end of 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 31, 2022 is included as a condition in Approval LA20036.

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 LA20036 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the layer barn 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.”
- Northbrook to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn.
- Northbrook to provide an engineer's completion report certifying that the manure storage pad was constructed with the same liner material as that used for hydraulic conductivity testing and that the manure storage pad was constructed according to the proposed procedures and design specifications.
- Northbrook to control run-on and runoff at the site of the manure storage pad.

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 LA20036 includes a condition stating that Northbrook shall not place livestock or manure in the manure storage portions of the new layer barn or on the manure storage pad until NRCB personnel have inspected the facilities and confirmed in writing that they meets the approval requirements.