

Decision Summary BA20015

This document summarizes my reasons for issuing Authorization BA20015 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document BA20015. 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 October 5, 2020, Hutterian Brethren Church of Pibroch (Pibroch Colony) submitted a Part 1 application to the NRCB to construct a manure collection pit (21 m x 3.6 m x 3 m deep) at an existing multi-species CFO. The Part 2 application was submitted on the same day. On October 6, 2020, I deemed the application complete.

The purpose of the proposed application is to construct a manure collection pit on a replacement heifer shelter. The replacement heifer shelter is being constructed within an existing CFO pen and therefore does not require a permit. As the attached pit however will be disturbing the existing pens liner a permit is required for this portion.

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 NW 28-61-26 W4M in Westlock County, 5 km roughly north of the town of Pibroch AB. The terrain is relatively flat with Dapp Creek running through the centre of the confined feeding operation.

b. Existing permitted facilities

The CFO previously existed prior to January 1, 2002 with a capacity greater than the AOPA permitting thresholds. This assessment is based on infrastructure on site and the issuance of Westlock County development permit #97-091 on November 17, 1997. This permit allowed the construction of a 5,000 finishing hog barn, associated lagoon, and expansion of the existing hog barn from 200 sows to 300 sows at an existing multi-species CFO. To date, no official grandfathering has been completed at this CFO. The development application (#97-091) indicates several CFO facilities existed on site prior the issuance of the permit. However, as application BA20015 is for an authorization I will not be making an official grandfathering determination at this time.

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 NRCB Operational Policy 2016-7: *Approvals*, part 7.11.2.)

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

On October 6, 2020, the NRCB emailed referral letters and a copy of the application to Westlock County; Alberta Health Services (AHS); and Alberta Environment and Parks (AEP).

3. Responses from the municipality and referral agencies

I received responses from Westlock County, AEP, and AHS.

Ms. Kathleen Deshoux, a development officer with Westlock County, provided a written response on behalf of the county. As noted in section 2, Westlock County is a directly affected party.

Ms. Deshoux stated that the application is consistent with Westlock County’s municipal development plan (MDP) and that there are no area structure plans (ASP) or intermunicipal development plans (IDP) that apply. The application’s consistency with the county’s MDP is addressed in Appendix A, attached.

Ms. Deshoux also listed the setbacks required by Westlock County’s land use bylaw (LUB). The application meets these setbacks. The property is zoned agriculture district in which CFOs are listed as discretionary use in this district.

A generic response from AEP was received in response to the application. It provided information on several potential requirements for all applications. The applicant is reminded that they must meet all applicable AEP regulations.

Ms. Lu Wang, a public health inspector, replied on behalf of AHS. In her response she enquired if the application meets the setback requirements of AOPA, if there are any wells within 100 m of the manure pit, and if the applicant has plans for odour and pest control. As explained in Section 5, below, the application meets the AOPA technical requirements and there are no wells within 100 m of the proposed manure pit. With regards to odour and pest control, AOPA setbacks are designed to mitigate some of the issues for neighbouring residences. Ms. Wang also enquired about risk to Dapp creek which is located in the centre of the existing CFO. As explained in Section 4, below, an environmental risk assessment has been completed for some of the existing facilities and it was found these facilities scored low risk.

4. Environmental risk screening of existing and 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.)

For the sake of efficiency, I first assessed the CFO's existing earthen manure storages and dairy barn using the risk screening tool. These appear to be the CFO's highest risk facilities, based on the type of manure and location related to Dapp Creek which runs through the operation. My risk assessment found that these facilities pose a low risk to groundwater and surface water. Because these are the CFO's highest risk facilities, I presume that the CFO's other existing facilities also pose a low risk to both groundwater and surface water. Therefore, a further assessment of the risks posed by these other facilities, using the NRCB's environmental risk screening tool, is not necessary.

I also assessed the proposed new liquid manure pit 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 construction is consistent with the land use provisions of Westlock County's municipal development plan and 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 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

6. Terms and conditions

Authorization BA20015 permits the construction of the manure collection pit (21 m x 3.6 m x 3 m deep).

Authorization BA20015 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 BA20015 includes conditions that:

- Set a deadline of December 1, 2022 for the approved construction to be completed
- Require the concrete used to construct the liner of the manure collection pit to meet the specification for category B (liquid manure shallow pits) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas"
- Require written documentation confirming the concrete used for the manure collection pit and storage areas meets the required specifications.
- Prohibit Pibroch Colony from placing manure or livestock in the manure collection pit until the facility has been inspected by the NRCB following its construction

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

7. Conclusion

Authorization BA20015 is issued for the reasons provided above, in the attached appendices, and in Technical Document BA20015.

Authorization BA20015 should be read in conjunction with previously issued development permit #97-091, which remains in effect.

November 5, 2020

(Original signed)

Nathan Shirley
Approval Officer

Appendices:

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Authorization BA20015

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 8.2.5.) Under this interpretation, the term “land use provisions” also excludes MDP policies that impose procedural requirements. In addition, section 22(2.1) 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.”)

Pibroch Colony’s CFO is located in Westlock County and is therefore subject to that county’s MDP. Westlock County adopted the latest revision to this plan in April 2016, under Bylaw #05-2016.

Section 4.1 of the MDP relates to the agricultural area policies.

Policy 4.1.1.3 clarifies that the “primary use” of this area is for both “extensive and intensive agricultural uses and confined feeding operations”. This is considered a general guiding principle and is not considered a land use provision, therefore this is not relevant to my decision. In any respect, this application is consistent with this provision.

Policy 4.1.2.2 states that the county will provide “input” to the NRCB on applications for new or expanded CFOs, based on the “technical and locational merits” of each application. This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see Operational Policy 2016-7, *Approvals*, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application is not for a new or expanding CFO.

Policy 4.1.2.2 states further that CFOs and manure storage facilities “must fully satisfy all the requirements and regulations adopted under the Act, specifically the minimum distance separation requirements and land base requirements.” Policy 4.1.2.3 states “Minimum distance separations for CFOs shall conform to standards set out in the Agricultural Operations Practices Act.” Together, the use of the term “minimum distance separation” in policies 4.1.2.2 and 4.1.2.3 appear to be a reference to the minimum distance separation (MDS) requirement in section 3 of the Standards and Administration Regulation under AOPA. These MDP policies are likely not relevant to my MDP consistency determination, because these policies are based on AOPA’s MDS requirements. (See also Operational Policy, *Approvals*, part 8.2.5). That said, the CFO meets the MDS requirements under AOPA and meets all other AOPA technical requirements.

Policy 4.1.2.4 specifies CFOs requiring an approval, registration, or authorization maintain a 2.4 km setback from “corporate boundaries of any urban municipality within Westlock County” or a 0.8 km CFO setback from “Community Areas designated on Map 7.2.” Yoke farm’s is not within any of these setbacks and therefore meets this policy’s setback requirement.

Policy 4.1.2.5 states that CFOs are “discouraged from locating in environmentally sensitive areas where slope instability and or groundwater contamination may be a concern.” This policy is likely not a land use provision because it requires site-specific, discretionary determinations (see NRCB Operational Policy 2016-7, Approvals, part 8.2.5). Therefore, this policy is not relevant to the MDP consistency determination required by section 22(1) of AOPA. At any rate, the application meets the “technical and locational” requirements of AOPA and is not for a new CFO.

Policy 4.1.2.6 states that in addition to AOPA, Area Structure Plans (ASP) in Westlock County and MDP policies in respect to CFOs should be followed. The development officer confirmed that there are no ASPs or IDPs in place at this time that are applicable to this location.

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

In my view, the text of Westlock County’s MDP also provides a clear intent to adopt provisions from the LUB, in sections 1, 3, 4, 5, and 6. Following the NRCB Operational Policy 2016-7: Approvals, part 8.2.3, I also consider Westlock County’s Land Use Bylaw (LUB) #04-2016. Under that bylaw, the subject land is currently zoned as Agriculture District. CFOs (as defined by AOPA) are listed as discretionary use under this zoning.

Under NRCB policy, CFOs are considered to be consistent with an LUB if CFOs are listed as either a permitted or discretionary land use for the relevant land use district (See NRCB Operational Policy 2016-7: Approvals, part 8.3) However, Section 7.7.1 of the LUB expressly exempts CFOs from municipal control under the LUB, because CFOs are regulated by the NRCB under AOPA.

For these reasons, I conclude that the application is not inconsistent with Westlock County’s LUB.

APPENDIX B: Explanation of conditions in Authorization BA20015

Authorization BA20015 includes several conditions, discussed below:

a. Construction Deadline

Pibroch Colony proposes to complete construction of the proposed manure collection pit by December 2022. This time-frame is considered to be reasonable for the proposed scope of work. The deadline of December 1, 2022 is included as a condition in Authorization BA20015.

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 BA20015 includes conditions requiring:

- the concrete used to construct the liner of the manure collection and storage portion of the manure collection pit to meet the specification for category B (liquid manure shallow pits) in Technical Guideline Agdex 096-93 "Non-Engineered Concrete Liners for Manure Collection and Storage Areas."
- Pibroch Colony to provide documentation to confirm the specifications of the concrete used to construct the manure collection pit.

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 BA20015 includes a condition stating that Pibroch Colony shall not place manure in the manure storage portions of the new manure collection pit until NRCB personnel have inspected the pit and confirmed in writing that it meets the authorization requirements.