

## Decision Summary LA20045

This document summarizes my reasons for issuing Approval LA20045 under the *Agricultural Operation Practices Act* (AOPA). Additional reasons are in Technical Document LA20045. All decision documents and the full application are available on the Natural Resources Conservation Board (NRCB) website at [www.nrcb.ca](http://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 29, 2020, Hutterian Brethren Church of Wheatland (Wheatland Colony) submitted a Part 1 application to the NRCB to expand an existing multi species CFO by constructing a chicken layer barn (82.3 m x 26.2 m (270 ft. x 86 ft.)) and increasing chicken layer numbers from 11,000 to 22,500. The Part 2 application was submitted on November 4, 2020. On November 13, 2020, I deemed the application complete.

Under AOPA, this type of application requires an approval.

#### a. Location

The existing CFO is located at NW 20-25-23 W4M in Wheatland County, roughly 15 km northeast of Strathmore, Alberta. The terrain is undulating with an intermittent drainage course near the site, and a general slope to the north and west. An irrigation canal passes around the CFO site on the west, south and east sides.

#### b. Existing permitted facilities

The CFO existed on January 1, 2002 with an unnumbered county permit issued in 1994. This permit is a deemed (i.e. grandfathered) permit under section 18.1(1)(b) of AOPA. Authorization LA06008, issued on May 24, 2006, deemed the capacity of the existing structures to be:

- 300 swine farrow to finish
- 180 milking cows (plus associated dries and replacements)
- 300 beef feeders
- 475 beef finishers
- 11,000 chicken layers (plus associated pullets)
- 6,000 chicken broilers
- 40 sheep
- 800 ducks
- 200 geese
- 20 horses

On April 5, 2016, LA16009 was issued for changing the under-floor liquid manure storage pits in the dry sow and finisher sections of the hog barn to allow for group housing in these areas. Technical Document LA16009, associated with this authorization, lists all of the CFO grandfathered facilities.

On May 26, 2020, LA20008 was issued for a dairy barn extension (dry pack). All existing permitted facilities are listed in the appendix of Approval LA20045.

## **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 1½ 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. Wheatland 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 Strathmore Times on November 13, 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 Wheatland County, Alberta Health Services (AHS), Alberta Environment and Parks (EP), Alberta Transportation, and the Western Irrigation District. Twenty five courtesy letters were sent to people identified by Wheatland County as owning or residing on land within the affected party radius.

## **3. Responses from the municipality, referral agencies, and affected parties**

I received responses from Wheatland County and Alberta Transportation. No response was received from AHS, AEP, the Western Irrigation District, individuals or other parties.

Ms. Suzanne Hayes, a Development Officer with Wheatland County, provided a written response on behalf of Wheatland County. As noted in section 2, Wheatland County is a directly affected party.

Ms. Hayes stated that the application is consistent with Wheatland County’s municipal development plan. The application’s consistency with Wheatland County’s municipal development plan, are addressed in appendix A, attached.

Ms. Hayes also listed the setbacks required by Wheatland County's land use bylaw (LUB) and requested that all of the applicable setbacks should be met.

The NRCB also received a response from Alberta Transportation. Mr. Gerry Benoit, development and planning technologist, stated in his response that the development is outside Alberta Transportation's development control zone and that his department has no concerns.

#### **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](http://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 Wheatland Colony's existing CFO facilities were assessed in 2016 and 2020 respectively. According to those assessments, all existing facilities (2016 assessment) and the recently permitted dairy barn extension (2020 assessment) pose a low risk to both surface water and groundwater, except the following facilities, which pose a moderate risk to surface water:

- Duck/goose shed and pens
- Feedlot catch basin
- Earthen liquid manure storage
- Dairy shed and pens (calf/heifer pens)
- Dairy exercise pens

The moderate risks to surface water were addressed in Authorization LA16009 and all mitigation measures are in place (see Appendix B of Authorization LA16009 for details on the required measures).

I also assessed the proposed new layer barn, 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 expansion is consistent with the land use provisions of Wheatland County's municipal development plan and with Wheatland 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 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 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. I also determined 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 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.)

## 6. Terms and conditions

Approval LA20045 specifies the new permitted livestock capacity as 180 milking cows (plus associated dries and replacements), 22,500 chicken layers (including associated pullets), 6,000 chicken broilers, 475 beef finishers, 800 ducks, 40 sheep (ewes with lambs), 300 swine farrow to finish, 300 beef feeders, 20 horses, and 200 geese and permits the construction of the layer barn.

Approval LA20045 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 LA20045 includes conditions that:

- Set a deadline of November 30, 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 written confirmation that the concrete used for the manure collection and storage areas meets the required specifications
- Prohibit Wheatland Colony from placing manure or livestock in the layer barn until the facility has been inspected by the NRCB following its construction

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

### a. Conditions carried forward from previously issued permits

For clarity, and pursuant to NRCB policy, I consolidated the following permits with Approval LA20045: Authorizations LA06008, LA16009, and LA20008 (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 LA20045 includes all existing terms and conditions in Authorizations LA06008, LA16009, and LA20008, except the terms and conditions noted below. Construction conditions that are being carried forward are included in an appendix to the new approval.

Pursuant to section 23 of AOPA (approval officer amendments), I have determined that condition #7 from Authorization LA06009 should be deleted and therefore is not carried forward to Approval LA20045. My reason for deleting this condition is provided in Appendix B.

## **7. Conclusion**

Approval LA20045 is issued for the reasons provided above, in the attached appendices, and in Technical Document LA20045.

Wheatland Colony's deemed approval, and NRCB-issued Authorizations LA06008, LA16009 and LA20008 are cancelled, unless Approval LA20045 is held invalid following a review and decision by the NRCB board or by a court, in which case Wheatland Colony's deemed approval, and NRCB-issued Authorizations LA06008, LA16009 and LA20008 will remain in effect.

January 13, 2021

(Original signed)  
Carina Weisbach  
Approval Officer

## **Appendices:**

- A. Consistency with the municipal development plan
- B. Explanation of conditions in Approval LA20045

## APPENDIX A: 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.”)

Wheatland Colony’s CFO is located in Wheatland County and is therefore subject to that county’s MDP. Wheatland County adopted the latest revision to this plan in 2018, under Bylaw #2013-18 Amendment 2018-40.

Section 3.1.3.1. of the MDP states that the county shall act as referral agency and respond in accordance with the MDP and LUB when the Natural Resources conservation Board is processing applications for CFO’s. In my interpretation, this is not a land use provision. Therefore, I will not consider this section in my consistency determination, Regardless, I notified the county.

As relevant here, section 3.1.3.2 of the MDP states that the county encourages CFOs on parcels of land of 160 acres or more. Wheatland Colony’s CFO is an existing CFO. I therefore interpret this provision to not apply to this CFO.

In my view, the text in 4.4.2 of Wheatland County’s MDP also provides a clear intent to adopt provisions from the land use bylaw (LUB).s Following the NRCB Operational Policy 2016-7: *Approvals*, part 8.2.3, I also consider Wheatland County’s Land Use #2016-01 (with its last amendment on March 24, 2020 under Bylaw 2020-04). Under that bylaw, the subject land is currently zoned as Agricultural General District. Confined feeding operations are not listed as a permitted, discretionary or prohibited use. There is a general listing “Agricultural Operation” which does not require a permit. Section 4.2.7 of Part 4 specifies these as ‘an agricultural operation as defined in the Act on a parcel designated AG. This is understandable as Section 8.6 of the LUB states that the NRCB has full authority over CFOs and manure storage facilities and that applicants/landowners are responsible for obtaining the necessary permits required by the NRCB under AOPA.

In the county’s response, Ms. Hayes requested that the development observes all applicable setbacks. The new chicken layer barn meets all of these setbacks. I therefore determined that the development is consistent with the MDP and the county’s LUB.

## **APPENDIX B: Explanation of conditions in Approval LA20045**

Approval LA20045 includes several conditions, discussed below, and carries forward all conditions from Authorizations LA06008, LA16009 and LA20008 but condition 7 from Authorization LA06008 (see sections 2 of this appendix).

### **1. New conditions in Approval LA20045**

#### **a. Construction Deadline**

Wheatland Colony proposes to complete construction of the proposed new layer barn by November 30, 2021. This time-frame seems short considering unexpected events. The deadline of November 30, 2022 is included as a condition in Approval LA20045.

#### **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 LA20045 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.”
- Wheatland Colony to provide documentation to confirm the specifications of the concrete used to construct the manure storage and collection portions of the layer barn.

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 LA20045 includes a condition stating that Wheatland Colony shall not place livestock or manure in the manure storage portions of the new layer barn until NRCB personnel have inspected the layer barn and confirmed in writing that it meets the approval requirements.

### **2. Condition not carried forward from Authorization LA06008**

Condition 7 states: *“The applicant must maintain manure application records as identified in AOPA and its associated regulations.”*

This condition repeats the opening statement in Approval LA20045 which states: *“The permit holder shall adhere to the descriptions contained in the filed application LA20045 and Authorizations LA06008, LA16009, and LA20008 together with the site plan, building plans, engineering reports and other attached documents, unless otherwise noted in the following conditions.”*

This condition is therefore redundant and will not be carried forward as a separate condition.